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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–16–0001; NOP–15–13]

National Organic Program: USDA Organic Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of 2016 Sunset Review.

SUMMARY: This document addresses the 2016 Sunset Review submitted to the Secretary of Agriculture (Secretary) through the Agricultural Marketing Service's (AMS) National Organic Program (NOP) by the National Organic Standards Board (NOSB) following the NOSB's October 2014 and April 2015 meetings. The 2016 Sunset Review pertains to the NOSB's review of the need for the continued allowance for seven substances on the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List). Consistent with the NOSB's review, this publication provides notice on the renewal of five synthetic and two nonsynthetic substances on the National List, along with any restrictive annotations. For substances that have been renewed on the National List, this document completes the 2016 National List Sunset Process.

DATES: This document is effective September 12, 2016.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of this document should be sent to Robert Pooler, Standards Division, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2642–S., Ag Stop 0268, Washington, DC 20250–0268. Telephone: (202) 720–3252. Email: *bob.pooler@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: The National Organic Program (NOP) is authorized by the Organic Foods Protection Act (OFPA) of 1990, as amended (7 U.S.C. 6501–6522). The USDA Agricultural Marketing Service (AMS) administers the NOP. Final regulations implementing the NOP, also referred to as the USDA organic regulations, were published December 21, 2000 (65 FR 80548), and became effective on October 21, 2002. Through these regulations, the AMS oversees national standards for the production, handling, and labeling of organically produced agricultural products. Since becoming effective, the USDA organic regulations have been frequently amended, mostly for changes to the National List in 7 CFR 205.601–205.606.

This National List identifies the synthetic substances that may be used and the nonsynthetic (natural) substances that may not be used in organic production. The National List also identifies synthetic, nonsynthetic nonagricultural, and nonorganic agricultural substances that may be used in organic handling. The OFPA and the USDA organic regulations, as indicated in § 205.105, specifically prohibit the use of any synthetic substance in organic production and handling unless the synthetic substance is on the National List. Section 205.105 also requires that any nonorganic agricultural substance, and any nonsynthetic nonagricultural substance used in organic handling appear on the National List.

As stipulated by OFPA, recommendations to propose or amend the National List are developed by the NOSB, operating in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2 *et seq.*), to assist in the evaluation of substances to be used or not used in organic production and handling, and to advise the Secretary on the USDA organic regulations. OFPA also requires a review of all substances included on the National List within 5 years of their addition to or renewal on the list. If a listed substance is not reviewed by NOSB and renewed by USDA within the five year period, its allowance or prohibition on the National List is no longer in effect. The NOSB sunset review includes considering any new information pertaining to a substance's impact on human health and the environment, its necessity, and its compatibility with organic production and handling.

To implement the sunset review requirement, AMS initially published an advanced notice of proposed rulemaking on the National List sunset review process on June 17, 2005 (70 FR 35177). This document described the process used by the NOSB to complete their responsibility to review National List substances within the OFPA required five year period.

AMS published a revised sunset review process in the **Federal Register** on September 16, 2013 (78 FR 56811). This revised process provides public notice on the renewal of National List substances. This renewal occurs after the NOSB review.

At its October 2014, and April 2015 public meetings, the NOSB considered seven substances that were added to or continued on the National List after sunset review in 2011. AMS has reviewed and accepted the NOSB sunset review and recommendations. Substances in Table 1 having final actions of ''renew'' will continue to be listed on the National List and will be included in their next sunset review (Sunset Review 2021).

TABLE 1—OVERVIEW OF FINAL ACTION FOR SUNSET 2016

National List section	Substance listing	Final action
	Synthetic substances allowed for use in organic crop production	
§ 205.601(h)	As slug or snail bait. Ferric phosphate (CAS # 10045–86–0)	Renew.
§ 205.601(n)	Seed preparations. Hydrogen chloride (CAS # 7647–01–0)—for delinting cotton seed for planting	Renew.

TABLE 1—OVERVIEW OF FINAL ACTION FOR SUNSET 2016—Continued

National List section	Substance listing	Final action
Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as ''organic'' or ''made with organic (specified ingredients or food group(s))''		
§ 205.605(a)	L—malic acid (CAS # 97–67–6)	Renew.
§ 205.605(a)	Microorganisms—any food grade bacteria, fungi, and other microorganism	Renew.
§ 205.605(b)	Activated charcoal (CAS #s 7440–44–0; 64365–11–3)—only from vegetative sources; for use only as a filtering aid.	Renew.
§ 205.605(b)	Peracetic acid/Peroxyacetic acid (CAS # 79–21–0)—for use in wash and/or rinse water according to FDA limitations. For use as a sanitizer on food contact surfaces.	Renew.
§ 205.605(b)	Sodium acid pyrophosphate (CAS # 7758–16–9)—for use only as a leavening agent	Renew.

Authority: 7 U.S.C. 6501–6522.

Dated: February 18, 2016.

Elanor Starmer,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2016–03808 Filed 2–22–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2015–0040]

Golden Nematode; Removal of Regulated Areas in Orleans, Nassau, and Suffolk Counties, New York

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the golden nematode regulations by removing areas in Orleans, Nassau, and Suffolk Counties in the State of New York from the list of generally infested areas. The interim rule was necessary to relieve restrictions on the movement of regulated articles from areas no longer under quarantine for golden nematode. As a result of the interim rule, movement of such articles from areas no longer under quarantine can proceed while preventing the spread of golden nematode from infested areas to noninfested areas of the United States.

DATES: Effective on February 23, 2016, we are adopting as a final rule the interim rule published at 80 FR 59551–59557 on October 2, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan M. Jones, National Policy Manager, Pest Management, Plant Protection and Quarantine, APHIS, 4700 River Road, Unit 160, Riverdale, MD 20737; (301) 851–2128.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule[1] effective and published in the **Federal Register** on October 2, 2015 (80 FR 59551–59557, Docket No. APHIS–2015–0040), we amended the golden nematode regulations in 7 CFR part 301 by removing areas in Orleans, Nassau, and Suffolk Counties in the State of New York from the list of areas regulated for golden nematode.

Comments on the interim rule were required to be received on or before December 1, 2015. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 80 FR 59551–59557 on October 2, 2015.

[1] To view the interim rule and supporting documents, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0040.*

Done in Washington, DC, this 17th day of February 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–03672 Filed 2–22–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1217

[Document No. AMS–SC–15–0079]

Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible domestic manufacturers and importers of softwood lumber to determine whether they favor continuance of the Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order (Order).

DATES: The referendum will be conducted by mail ballot from August 1 through 25, 2016. To be eligible to vote, softwood lumber manufacturers and importers must have domestically manufactured and shipped or imported 15 million board feet or more of softwood lumber during the representative period of January 1 through December 31, 2015, paid assessments during that period, and must currently be softwood lumber domestic manufacturers or importers subject to assessment under the Order. Ballots must be received by the referendum agents no later than the close of business on August 25, 2016, to be counted.

ADDRESSES: Copies of the Order may be obtained from: Referendum Agent,

Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Room 1406–S, Stop 0244, Washington, DC 20250–0244, telephone: (202) 720–9915; facsimile: (202) 205–2800; or contact Maureen Pello at (503) 632–8848 or via electronic mail: *Maureen.Pello@ams.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Maureen Pello, Marketing Specialist, PED, SC, AMS, USDA, 1400 Independence Avenue SW., Room 1406–S, Stop 0244, Washington, DC 20250–0244; telephone: (202) 720–9915, (503) 632–8848 (direct line); facsimile: (202) 205–2800; or electronic mail: *Maureen.Pello@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Commodity Promotion, Research and Information Act of 1996 (7 U.S.C. 7411–7425) (Act), it is hereby directed that a referendum be conducted to ascertain whether continuance of the Order (7 CFR part 1217) is favored by eligible domestic manufacturers and importers of softwood lumber. The Order is authorized under the Act.

The representative period for establishing voter eligibility for the referendum shall be the period from January 1 through December 31, 2015. Persons who domestically manufactured and shipped or imported 15 million board feet or more of softwood lumber during the representative period, paid assessments during that period, and are currently softwood lumber manufacturers or importers subject to assessment under the Order are eligible to vote. Persons who received an exemption from assessments for the entire representative period are ineligible to vote. The referendum will be conducted by mail ballot from August 1 through 25, 2016.

Section 518 of the Act authorizes continuance referenda. Under § 1217.81(b) of the Order, the U.S. Department of Agriculture (USDA) must conduct a referendum 5 years after the program has been in effect to determine whether persons subject to assessment favor continuance of the Order. The program became effective in 2011. USDA would continue the Order if continuance is favored by a majority of the domestic manufacturers and importers voting in the referendum, who also represent a majority of the volume of softwood lumber represented in the referendum.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the referendum ballot has been approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0093. It has been estimated that there are approximately 170 domestic manufacturers and 70 importers who will be eligible to vote in the referendum. It will take an average of 15 minutes for each voter to read the voting instructions and complete the referendum ballot.

Referendum Order

Maureen Pello, Marketing Specialist, and Heather Pichelman, Director, PED, SC, AMS, USDA, Stop 0244, Room 1406–S, 1400 Independence Avenue SW., Washington, DC 20250–0244, are designated as the referendum agents to conduct this referendum. The referendum procedures at 7 CFR 1217.100 through 1217.108, which were issued pursuant to the Act, shall be used to conduct the referendum.

The referendum agent will mail the ballots to be cast in the referendum and voting instructions to all known, eligible domestic manufacturers and importers prior to the first day of the voting period. Persons who domestically manufactured and shipped or imported 15 million board feet or more of softwood lumber during the representative period, paid assessments during that period, and are currently softwood lumber domestic manufacturers or importers subject to assessment under the Order are eligible to vote. Persons who received an exemption from assessments during the entire representative period are ineligible to vote. Any eligible domestic manufacturer or importer who does not receive a ballot should contact the referendum agent no later than one week before the end of the voting period. Ballots must be received by the referendum agent by 4:30 p.m. Eastern time, August 25, 2016, in order to be counted.

List of Subjects in 7 CFR Part 1217

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Promotion, Reporting and recordkeeping requirements, Softwood lumber.

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

Dated: February 18, 2016.

Elanor Starmer,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2016–03805 Filed 2–22–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–3699; Directorate Identifier 2015–NM–109–AD; Amendment 39–18402; AD 2016–04–08]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 787–8 airplanes. This AD requires revising the maintenance or inspection program, as applicable, to include an airworthiness limitation for repetitive inspections of the web fastener holes in the overwing flex-tees. This AD was prompted by a report that certain web fastener holes in the overwing flex-tees at the wing-to-body interface might not have been deburred properly when manufactured. Fastener holes without the deburr chamfer applied can develop fatigue cracking. We are issuing this AD to detect and correct cracking in the web fastener holes in the overwing flex-tees, which can weaken the primary wing structure so it cannot sustain limit load.

DATES: This AD is effective March 9, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 9, 2016.

We must receive comments on this AD by April 8, 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 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3699.

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–2016–3699; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket 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: Melanie Violette, Senior Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6422; fax: 425–917–6590; email: *Melanie.Violette@faa.gov.*

Discussion

We received a report that certain web fastener holes in the overwing flex-tees at the wing-to-body interface might not have been deburred properly when manufactured. A deburr chamfer should have been applied to the fastener holes in the overwing flex-tees. Fastener holes without the deburr chamfer applied can develop fatigue cracking before the required supplemental structural fatigue inspections are scheduled to begin. Such fatigue cracking, if not corrected, could result in the primary wing structure being weakened so it cannot sustain limit load. We are issuing this AD to correct the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing 787 Airworthiness Limitations—Line Number Specific, D011Z009–03–02, dated February 2015. The service information contains airworthiness limitation tasks pertaining to inspections for web fastener holes in the overwing flex-tees at the wing-to-body interface.

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.

FAA's Determination

We are issuing 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.

AD Requirements

This AD requires revising the maintenance or inspection program, as applicable, to include an airworthiness limitation for repetitive inspection of the web fastener holes in the overwing flex-tees.

This AD requires revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). 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 according to paragraph (h) of this AD. The request should include a description of changes to the required actions that will ensure the continued operational safety of the airplane.

FAA's Justification and Determination of the Effective Date

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future. Therefore, we find that notice and opportunity for prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2016–3699 and Directorate Identifier 2015–NM–109–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 AD.

Costs of Compliance

We estimate that this AD affects 0 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
Maintenance/inspection program revision	1 work-hour × $85 per hour = $85	$0	$85	$0

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):

2016–04–08 The Boeing Company: Amendment 39–18402; Docket No. FAA–2016–3699; Directorate Identifier 2015–NM–109–AD.

(a) Effective Date

This AD is effective March 9, 2016.

(b) Affected ADs

None.

(c) Applicability

The Boeing Company Model 787–8 airplanes, certificated in any category, having line numbers 78 and 82.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a report that certain web fastener holes in the overwing flex-tees at the wing-to-body interface might not have been deburred properly when manufactured. We are issuing this AD to detect and correct cracking in the web fastener holes in the overwing flex-tees, which can weaken the primary wing structure so it cannot sustain limit load.

(f) Compliance

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

(g) Revision to Maintenance or Inspection Program

Within 30 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the applicable inspection requirement identified in paragraphs (g)(1) and (g)(2) of this AD, as specified in Boeing 787 Airworthiness Limitations—Line Number Specific, D011Z009–03–02, dated February 2015. The initial compliance time for the tasks is at the applicable time specified in Boeing 787 Airworthiness Limitations—Line Number Specific, D011Z009–03–02, dated February 2015.

(1) For the airplane having line number 78: Principal Structural Element 57–10–06a_ MRB9, ''Overwing Flex-Tee—Web Fastener Holes.''

(2) For the airplane having line number 82: Principal Structural Element 57–10–06a_ MRB10, ''Overwing Flex-Tee—Web Fastener Holes.''

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Settle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (i) 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.

(i) Related Information

For more information about this AD, contact Melanie Violette, Senior Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6422; fax: 425–917–6590; email: *Melanie.Violette@faa.gov.*

(j) 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 787 Airworthiness Limitations—Line Number Specific, D011Z009–03–02, dated February 2015.

(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 February 10, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–03562 Filed 2–22–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 151209999–5999–01]

RIN 0694—AG81

Addition of Certain Persons and Modification of Certain Entries to the Entity List; and Removal of Certain Persons From the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by adding eight persons under eight entries to the Entity List. The eight persons who are added to the Entity List have been determined by the U.S. Government to be acting contrary to the national

security or foreign policy interests of the United States. These eight persons will be listed on the Entity List under the destination of the United Arab Emirates (U.A.E.). This final rule also removes nine persons from the Entity List, as the result of a request for removal submitted by these persons, a review of information provided in the removal request in accordance with the procedure for requesting removal or modification of an Entity List entity and further review conducted by the End-User Review Committee (ERC). Finally, this rule is also revising six existing entries in the Entity List. One entry under Iran is modified to correct the entry by updating the **Federal Register** citation. Five entries on the Entity List under the destinations of Armenia, Greece, India, Pakistan and the United Kingdom (U.K.) are modified to reflect a removal from the Entity List.

DATES: This rule is effective February 23, 2016.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, Email: *ERC@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to Part 744) identifies entities and other persons reasonably believed to be involved in or to pose a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States. The EAR imposes additional license requirements on, and limits the availability of most license exceptions for exports, reexports, and transfers (in-country) to those persons or entities listed on the Entity List. The ''license review policy'' for each listed entity or other person is identified in the License Review Policy column on the Entity List and the impact on the availability of license exceptions is described in the **Federal Register** notice adding entities or other persons to the Entity List. BIS places entities and other persons on the Entity List pursuant to sections of part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The ERC, composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entry List by majority vote and all decisions to remove or modify an entry by unanimous vote.

ERC Entity List Decisions

Additions to the Entity List

This rule implements the decision of the ERC to add eight persons under eight entries to the Entity List. These eight persons are being added on the basis of § 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The eight entries added to the entity list are located in the U.A.E.

The ERC reviewed § 744.11(b) (Criteria for revising the Entity List) in making the determination to add these eight persons to the Entity List. Under that paragraph, persons and those acting on behalf of such persons may be added to the Entity List if there is reasonable cause to believe, based on specific and articulable facts, that they have been involved, are involved, or pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy interests of the United States. Paragraphs (b)(1) through (b)(5) of § 744.11 include an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States. Pursuant to § 744.11 of the EAR, the ERC determined that the eight entities, located in the destination of the U.A.E., be added to the Entity List for actions contrary to the national security or foreign policy interests of the United States.

Specifically, the ERC determined that two entities located in the U.A.E., Euro Vision Technology LLC and Noun Nasreddine, should be be added to the Entity List on the basis of their attempts to procure U.S.-origin technology on behalf of designated persons, contrary to the national security and foreign policy interests of the United States. Specifically, these persons in the U.A.E. have been involved in supplying U.S.-origin items to persons designated by the Secretary of State as Foreign Terrorist Organizations (FTOs) and present a risk of supplying U.S.-origin items to embargoed destinations without the required authorizations. An additional two entities located in the U.A.E., Dow Technology and Hassan Dow, are also being added to the Entity List on the basis of their procurements of U.S.-origin technology on behalf of persons that have been involved in supplying U.S.-origin items to persons designated by the Secretary of State as FTOs.

Pursuant to § 744.11 of the EAR, the ERC determined that the conduct of these four persons raises sufficient concern that prior review of exports, reexports or transfers (in-country) of items subject to the EAR involving these persons, and the possible imposition of license conditions or license denials on shipments to the persons, will enhance BIS's ability to prevent violations of the EAR.

In addition, the ERC has determined that for four other entities located in the U.A.E., FWS Trading FZE, Rainbow General Trading Company, Hamed Kianynejad and Mojtaba Alikhani, there is reasonable cause to believe, based on specific and articulable facts, that they prevented the successful accomplishment of end-use checks by BIS officials. Prevention of an end-use check is one of the criteria for addition to the Entity List in the illustrative list of activities contrary to U.S. national security and foreign policy found in § 744.11 of the EAR.

Pursuant to § 744.11 (b)(4) of the EAR, the ERC determined that the conduct of these four persons (FWS Trading, Rainbow General, Kianynejad and Alikhani) raises sufficient concern that prior review of exports, reexports or transfers (in-country) of items subject to the EAR involving these persons, and the possible imposition of license conditions or license denials on shipments to the persons, will enhance BIS's ability to prevent violations of the EAR.

For the eight persons added to the Entity List, BIS imposes a license requirement for all items subject to the EAR and a license review policy of presumption of denial. The license requirements apply to any transaction in which items are to be exported, reexported, or transferred (in-country) to any of the persons or in which such persons act as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to the persons being added to the Entity List in this rule. The acronym ''a.k.a.'' (also known as) is used in entries on the Entity List to help exporters, reexporters and transferors better identify listed persons on the Entity List.

This final rule adds the following eight persons under eight entries to the Entity List:

United Arab Emirates

(1) *Dow Technology*,
W–38 Musalla Tower, Dubai, U.A.E.; *and* P.O. Box 5780, Dubai, U.A.E.;

(2) *Euro Vision Technology LLC,*
#701 Damas Tower, 702 Al Maktoum St, Dubai, U.A.E.; *and* 701 Attar Tower, Maktoum St, Dubai, U.A.E.; *and* City Tower, Al Maktoum St. Office No. 701, Dubai U.A.E.; *and* P.O. Box 40595, Dubai, U.A.E.; *and* Warehouse No. 8, Plot No. 238, Rashidiya, Dubai, U.A.E.;
(3) *FWS Trading FZE,*
Rainbow No. 1212, Ajman Free Zone, Ajman, U.A.E.; *and* City Tower 2, Office #2004, Dubai, U.A.E.;
(4) *Hamed Kianynejad,*
Rainbow No. 1212, Ajman Free Zone, Ajman, U.A.E.; *and* City Tower 2, Office #2004, Dubai, U.A.E.; *and* City Tower 2, 20th Floor, Office #2005, Sheikh Zayed Road, Dubai, U.A.E.;
(5) *Hassan Dow,*
W–38 Musalla Tower, Dubai, U.A.E.; *and* P.O. Box 5780, Dubai, U.A.E.;
(6) *Mojtaba Alikhani,*
Rainbow No. 1212, Ajman Free Zone, Ajman, U.A.E.; *and* City Tower 2, Office #2004, Dubai, U.A.E.;
(7) *Noun Nasreddine,* a.k.a., the following one alias:
—N.A. Nasreddine.
#701 Damas Tower, 702 Al Maktoum St, Dubai, U.A.E.; *and* 701 Attar Tower, Maktoum St, Dubai, U.A.E.; *and* City Tower, Al Maktoum St. Office No. 701, Dubai U.A.E.; *and* P.O. Box 40595, Dubai, U.A.E.; *and* Warehouse No. 8, Plot No. 238, Rashidiya, Dubai, U.A.E.; *and*
(8) *Rainbow General Trading Company,*
City Tower 2, 20th Floor, Office #2005, Sheikh Zayed Road, Dubai, U.A.E.

Removals From the Entity List

This rule implements a decision of the ERC to remove the following nine persons from the Entity List based on a removal request submitted by Indira, Jaideep and Nitin Mirchandani and their six companies: Agneet Sky Limited, located in Ireland; and Aeolus FZE, Aerospace Company FZE, Aircon Beibars FZE, Group Sky One, and Veteran Avia LLC, all located in the U.A.E. These entities were added to the Entity List on September 28, 2014 (79 FR 55999) pursuant to § 744.11 (b)(5) of the EAR. Jaideep Mirchandani and his family members, Indira Mirchandani and Nitin Mirchandani, and the entities owned, operated or controlled by them, were found to be involved in activities supporting the Syrian regime and attempting to export a U.S.-origin aircraft to Syria that would be used to further support the Syrian regime. The ERC's decision to remove these nine persons from the Entity List was based on information provided by the entities in their appeal request pursuant to § 744.16 (Procedure for requesting removal or modification of an Entity List entity) and further review conducted by the ERC.

In accordance with § 744.16(c), the Deputy Assistant Secretary for Export Administration has sent written notification informing these persons of the ERC's decision.

This final rule implements the decision to remove the following nine entities located in Ireland and the U.A.E. from the Entity List.

Ireland

(1) *Agneet Sky Limited,*
12, Fitzwilliam Place Dublin, 2 Ireland.

United Arab Emirates

(1) *Aeolus FZE,* a.k.a., the following one alias:
—Aeolus Air Group.
Sharjah Airport Saif Zone, P.O. Box 120435 Sharjah, U.A.E.;
(2) *Aerospace Company FZE,* a.k.a., the following one alias:
—Aerospace Consortium.
18, Fujairah Free Zone, P.O. Box 1729, Fujairah, U.A.E.; *and* Fujairah Free Zone, P.O. Box 7168, Fujairah, U.A.E.;
(3) *Aircon Beibars FZE,*
Plot of Land L4—03, 04, 05, 06, P.O. Box 121095, Sharjah, U.A.E.;
(4) *Indira Mirchandani,*
Town House 1033 Uptown Mirdif, Mirdif, Algeria Street, Dubai, U.A.E.;
(5) *Jaideep Mirchandani,* a.k.a., the following one alias:
—Jaidip Mirchandani.
Villa No. W10 Emirates Hills, Dubai, U.A.E.;
(6) *Nitin Mirchandani,* a.k.a., the following one alias:
—Nithin Merchandani.
H2601 Executive Towers, Business Bay, Dubai, U.A.E.;
(7) *Group Sky One,* a.k.a., the following one alias:
—Sky One FZE.
Q4 76, Sharjah Airport Free Zone, Sharjah, U.A.E., *and* Executive Desk, Q1–05, 030/C, P.O. Box 122849, Sharjah, U.A.E.; *and*
(8) *Veteran Avia LLC,* a.k.a., the following one alias:
—Veteran Airline.
Sharjah SAIF Zone, Sharjah, U.A.E.; *and* Y2–307, Saif Zone, Sharjah International Airport, P.O. Box 122598, Sharjah, U.A.E. (See also addresses under Armenia, Greece, India, Pakistan, and U.K., which have been revised to reflect this removal).

The removal of the nine persons referenced above, which was approved by the ERC, eliminates the existing license requirements in Supplement No. 4 to part 744 for exports, reexports and transfers (in-country) to these entities. However, the removal of these nine persons from the Entity List does not relieve persons of other obligations under part 744 of the EAR or under other parts of the EAR. Neither the removal of an entity from the Entity List nor the removal of Entity List-based license requirements relieves persons of their obligations under General Prohibition 5 in § 736.2(b)(5) of the EAR which provides that, ''you may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR.'' Additionally, these removals do not relieve persons of their obligation to apply for export, reexport or in-country transfer licenses required by other provisions of the EAR. BIS strongly urges the use of Supplement No. 3 to part 732 of the EAR, ''BIS's 'Know Your Customer' Guidance and Red Flags,'' when persons are involved in transactions that are subject to the EAR.

Corrections and Conforming Changes to the Entity List

This final rule implements corrections and conforming changes for six existing entries on the Entity List. Under the destination of Iran, the entry for Simin Neda Industrial and Electrical Parts is amended by correcting the **Federal Register** citation. Under the destinations of Armenia, Greece, India, Pakistan and the United Kingdom, the five entries for the entity Veteran Avia LLC, a.k.a., Veteran Airline, are amended to reflect the removal of the Veteran Avia LLC entity located in the U.A.E.

Correction for ***Federal Register*** *citation.* The original citation for the final rule that added Simin Neda Industrial and Electrical Parts to the Entity list was erroneously listed as 72 FR 38008, 7/12/07 in the following rule: *Addition of Certain Persons to the Entity List; and Implementation of Entity List Annual Review Changes*, April 25, 2012 (72 FR 24590). Simin Neda Industrial and Electrical Parts was added to the Entity List in the following rule: *Addition of Certain Persons to the Entity List; Removal of General Order From the Export Administration Regulations (EAR),* September 22, 2008 (73 FR 54507). This final rule corrects the original **Federal Register** citiation for this entity to correctly reference the **Federal Register** citation for the September 22, 2008 final rule. This final rule does not make any other changes to this Iranian entity. The entity name remains the same, the license

requirement remains for all items subject to the EAR, and the license application review policy remains a presumption of denial.

Conforming changes for an approved removal. This final rule revises five entries in the in the Entity List for the entity Veteran Avia LLC to remove all references to the U.A.E. location of Veteran Avia LLC. As described above, the U.A.E. location of Veteran LLC was approved for removal from the Entity List. Therefore, this final rule makes conforming changes to the remaining five entries for the entity Veteran Avia LLC to remove the cross reference to the U.A.E. This final rule does not make any other changes to these five entries. The license requirement remains for all items subject to the EAR, and the license application review policy remains a presumption of denial.

This final rule makes the following revisions to six entries on the Entity List:

Armenia

(1) *Veteran Avia LLC,* a.k.a., the following one alias:
—Veteran Airline.
64, Baghramyam Avenue, Apt 16, Yerevan 0033, Armenia; *and* 1 Eervand Kochari Street Room 1, 375070 Yerevan, Armenia (See also addresses under Greece, India, Pakistan, and U.K.).

Greece

(1) *Veteran Avia LLC,* a.k.a., the following one alias:
—Veteran Airline.
24, A. Koumbi Street, Markopoulo 190 03, Attika, Greece (See also addresses under Armenia, India, Pakistan, and U.K.).

India

(1) *Veteran Avia LLC,* a.k.a., the following one alias:
—Veteran Airline.
A–107, Lajpat Nagar—I New Delhi 110024, India; *and* Room No. 34 Import Cargo, IGI Aiport Terminal—II, New Delhi 110037, India; *and* 25B, Camac Street 3E, Camac Court Kolkatta, 700016, India; *and* Ali's Chamber #202, 2nd Floor Sahar Cargo Complex Andheri East Mumbai, 400099, India (See also addresses under Armenia, Greece, Pakistan, and U.K.).

Iran

(1) *Simin Neda Industrial and Electrical Parts,* a.k.a., the following alias:
—TTSN.
No. 22, Second Floor, Amjad Bldg., Jomhoori Ave., Tehran, Iran.

Pakistan

(1) *Veteran Avia LLC,* a.k.a., the following one alias:
—Veteran Airline.
Room No. 1, ALC Building, PIA Cargo Complex Jiap, Karachi, Pakistan (See also addresses under Armenia, Greece, India, and U.K.).

United Kingdom

(1) *Veteran Avia LLC,* a.k.a., the following one alias:
—Veteran Airline.
1 Beckett Place, South Hamptonshire, London, U.K. (See also addresses under Armenia, Greece, India, and Pakistan).

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export or reexport, on February 23, 2016 pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR).

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 7, 2015, 80 FR 48233 (August 11, 2015), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

Rulemaking Requirements

1. 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, 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 determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission.

Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov*, or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. For the eight persons added to the Entity List in this final rule, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (See 5 U.S.C. 553(a)(1)). BIS implements this rule to protect U.S. national security or foreign policy interests by preventing items from being exported, reexported, or transferred (in country) to the persons being added to the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, the entities being added to the Entity List by this action would continue to be able to receive items without a license and to conduct activities contrary to the national security or foreign policy interests of the United States. In addition, publishing a proposed rule would give these parties notice of the U.S. Government's intention to place them on the Entity List and would create an incentive for these persons to either accelerate receiving items subject to the EAR to conduct activities that are contrary to the national security or foreign policy

interests of the United States, and/or to take steps to set up additional aliases, change addresses, and other measures to try to limit the impact of the listing on the Entity List once a final rule was published. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

5. For the nine removals from the Entity List in this final rule, pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), BIS finds good cause to waive requirements that this rule be subject to notice and the opportunity for public comment because it would be contrary to the public interest.

In determining whether to grant removal requests from the Entity List, a committee of U.S. Government agencies (the End-User Review Committee (ERC)) evaluates information about and commitments made by listed persons requesting removal from the Entity List, the nature and terms of which are set forth in 15 CFR part 744, Supplement No. 5, as noted in 15 CFR 744.16(b). The information, commitments, and criteria for this extensive review were all established through the notice of proposed rulemaking and public comment process (72 FR 31005 (June 5, 2007) (proposed rule), and 73 FR 49311 (August 21, 2008) (final rule)). These nine removals have been made within the established regulatory framework of the Entity List. If the rule were to be delayed to allow for public comment, U.S. exporters may face unnecessary economic losses as they turn away potential sales because the customer remained a listed person on the Entity List even after the ERC approved the removal pursuant to the rule published at 73 FR 49311 on August 21, 2008. By publishing without prior notice and comment, BIS allows the applicant to receive U.S. exports immediately because the applicant already has received approval by the ERC pursuant to 15 CFR part 744, Supplement No. 5, as noted in 15 CFR 744.16(b).

The removals from the Entity List granted by the ERC involve interagency deliberation and result from review of public and non-public sources, including sensitive law enforcement information and classified information, and the measurement of such information against the Entity List removal criteria. This information is extensively reviewed according to the criteria for evaluating removal requests from the Entity List, as set out in 15 CFR part 744, Supplement No. 5 and 15 CFR 744.16(b). For reasons of national security, BIS is not at liberty to provide to the public detailed information on which the ERC relied to make the decisions to remove these nine entities. In addition, the information included in the removal request is information exchanged between the applicant and the ERC, which by law (section 12(c) of the Export Administration Act), BIS is restricted from sharing with the public. Moreover, removal requests from the Entity List contain confidential business information, which is necessary for the extensive review conducted by the U.S. Government in assessing such removal requests.

Section 553(d) of the APA generally provides that rules may not take effect earlier than thirty (30) days after they are published in the **Federal Register**. BIS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(1) because this rule is a substantive rule which relieves a restriction. This rule's removal of nine persons from the Entity List removes a requirement (the Entity-List-based license requirement and limitation on use of license exceptions) on these nine persons being removed from the Entity List. The rule does not impose a requirement on any other person for these nine removals from the Entity List.

In addition, the Department finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act (APA) requiring prior notice and the opportunity for public comment for the six corrections and conforming changes included in this rule because they are either unnecessary or contrary to the public interest. The following six corrections and conforming changes are non-substantive or are limited to ensure consistency with a past rulemaking, and thus prior notice and the opportunity for public comment is unnecessary. One correction is limited to correcting the **Federal Register** citation to ensure consistency with a past rulemaking. The other five conforming changes are limited to making a conforming change to reflect the removal of the Veteran Avia LLC entity located in the U.A.E. These five conforming changes are needed to correct the cross reference parenthetical phrase included in each of these five entries.

No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required under the APA or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. As a result, no final regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of January 21, 2015, 80 FR 3461 (January 22, 2015); Notice of August 7, 2015, 80 FR 48233 (August 11, 2015); Notice of September 18, 2015, 80 FR 57281 (September 22, 2015); Notice of November 12, 2015, 80 FR 70667, November 13, 2015.

■ 2. Supplement No. 4 to part 744 is amended:

■ a. By revising under Armenia, one Armenian entity, ''Veteran Avia LLC, a.k.a., the following one alias:

—Veteran Airline. 64, Baghramyam Avenue, Apt 16, Yerevan 0033, Armenia; *and* 1 Eervand Kochari Street Room 1, 375070 Yerevan, Armenia (See also addresses under Greece, India, Pakistan, and U.K.)'';

■ b. By revising, under Greece, one Greek entity, ''Veteran Avia LLC, a.k.a., the following one alias:

—Veteran Airline. 24, A. Koumbi Street, Markopoulo 190 03, Attika, Greece (See also addresses under Armenia, India, Pakistan, and U.K.)'';

■ c. By revising, under India, one Indian entity, ''Veteran Avia LLC, a.k.a., the following one alias:

—Veteran Airline. A–107, Lajpat Nagar—I New Delhi 110024, India; *and* Room No. 34 Import Cargo, IGI Aiport Terminal—II, New Delhi 110037, India; *and* 25B, Camac Street 3E, Camac Court Kolkatta, 700016, India; *and* Ali's Chamber #202, 2nd Floor Sahar Cargo Complex Andheri

East Mumbai, 400099, India (See also addresses under Armenia, Greece, Pakistan, and U.K.)'';

■ d. By revising under Iran, the Iranian entity ''Simin Neda Industrial and Electrical Parts, a.k.a., the following alias:

—TTSN. No. 22, Second Floor, Amjad Bldg., Jomhoori Ave., Tehran, Iran.'';

■ e. By removing, under Ireland, one Irish entity, ''Agneet Sky Limited, 12, Fitzwilliam Place Dublin, 2 Ireland.'';

■ f. By revising, under Pakistan, one Pakistani entity, ''Veteran Avia LLC, a.k.a., the following one alias:

—Veteran Airline. Room No. 1, ALC Building, PIA Cargo Complex Jiap, Karachi, Pakistan (See also addresses under Armenia, Greece, India, U.A.E., and U.K.)'';

■ g. By adding under the United Arab Emirates, in alphabetical order, eight Emirati entities;

■ h. By removing under the United Arab Emirates, eight Emirati entities, ''Aeolus FZE, a.k.a., the following one alias:

—Aeolus Air Group. Sharjah Airport Saif Zone, P.O. Box 120435 Sharjah, U.A.E.'';

''Aerospace Company FZE, a.k.a., the following one alias:

—Aerospace Consortium. 18, Fujairah Free Zone, P.O. Box 1729, Fujairah, U.A.E.; *and* Fujairah Free Zone, P.O. Box 7168, Fujairah, U.A.E.'';

''Aircon Beibars FZE, Plot of Land L4—03, 04, 05, 06, P.O. Box 121095, Sharjah, U.A.E.''; ''Indira Mirchandani, Town House 1033 Uptown Mirdif, Mirdif, Algeria Street, Dubai, U.A.E.''; ''Jaideep Mirchandani, a.k.a., the following one alias:

—Jaidip Mirchandani. Villa No. W10 Emirates Hills, Dubai, U.A.E.'';

''Nitin Mirchandani, a.k.a., the following one alias:

—Nithin Merchandani. H2601 Executive Towers, Business Bay, Dubai, U.A.E.'';

''Group Sky One, a.k.a., the following one alias:

—Sky One FZE. Q4 76, Sharjah Airport Free Zone, Sharjah, U.A.E., and Executive Desk, Q1–05, 030/C, P.O. Box 122849, Sharjah, U.A.E.''; *and*

''Veteran Avia LLC, a.k.a., the following one alias:

—Veteran Airline. Sharjah SAIF Zone, Sharjah, U.A.E.; *and* Y2–307, Saif Zone, Sharjah International Airport, P.O. Box 122598, Sharjah, U.A.E. (See also addresses under Armenia, Greece, India, Pakistan, and U.K.); and

■ i. By revising, under the United Kingdom, one British entity, ''Veteran Avia LLC, a.k.a., the following one alias:

—Veteran Airline. 1 Beckett Place, South Hamptonshire, London, U.K. (See also addresses under Armenia, Greece, India, and Pakistan).''

The additions and revisions read as follows:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	* * *	*	* *	*
ARMENIA	* * *	*	* *	*
	Veteran Avia LLC a.k.a., the following alias:. —Veteran Airline. 64, Baghramyam Avenue, Apt 16, Yerevan 0033, Armenia; *and* 1 Eervand Kochari Street Room 1, 375070 Yerevan, Armenia (See also addresses under Greece, India, Pakistan, and U.K.).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR 56003, 9/18/14. 81 FR [INSERT FR PAGE NUMBER], 2/23/16.
*	* * *	*	* *	*
GREECE	* * *	*	* *	*
	Veteran Avia LLC a.k.a., the following alias:. —Veteran Airline. 24, A. Koumbi Street, Markopoulo 190 03, Attika, Greece (See also addresses under Armenia, India, Pakistan, and U.K.).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR 56003, 9/18/14. 81 FR [INSERT FR PAGE NUMBER, 2/23/16.
*	* * *	*	* *	*
INDIA	* * *	*	* *	*
	Veteran Avia LLC a.k.a., the following alias:. —Veteran Airline. A–107, Lajpat Nagar—I New Delhi 110024, India; *and* Room No. 34 Import Cargo, IGI Airport Terminal—II, New Delhi 110037, India; *and* 25B, Camac Street 3E, Camac Court.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR 56003, 9/18/14. 81 FR [INSERT FR PAGE NUMBER], 2/23/16.

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Kolkatta, 700016, India; *and* Ali's Chamber #202, 2nd Floor Sahar Cargo Complex Andheri East Mumbai, 400099, India (See also addresses under Armenia, Greece, Pakistan, and U.K.).			
IRAN	* *	*	* *	*
	Simin Neda Industrial and Electrical Parts, a.k.a., the following alias:. —TTSN No. 22, Second Floor, Amjad Bldg., Jomhoori Ave., Tehran, Iran.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	73 FR 54507, 9/22/08. 77 FR 24590, 4/25/12.
	* *	*	* *	*
*	* * *	*	* *	*
PAKISTAN	* *	*	* *	*
	Veteran Avia LLC, a.k.a., the following one alias:. —Veteran Airline Room No. 1, ALC Building, PIA Cargo Complex Jiap, Karachi, Pakistan (See also addresses under Armenia, Greece, India, and U.K.).	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	79 FR 56003, 9/18/14. 81 FR [INSERT FR PAGE NUMBER], 2/23/16.
	* *	*	* *	*
*	* * *	*	* *	*
UNITED ARAB EMIRATES	* *	*	* *	*
	Dow Technology, W–38 Musalla Tower, Dubai, U.A.E.; *and* P.O. Box 5780, Dubai, U.A.E..	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	81 FR [INSERT FR PAGE NUMBER], 2/23/16.
	* *	*	* *	*
	Euro Vision Technology LLC, #701 Damas Tower, 702 Al Maktoum St., Dubai, U.A.E.; *and* 701 Attar Tower, Maktoum St. Dubai, U.A.E.; *and* City Tower, Al Maktoum St., Office No. 701, Dubai U.A.E.; *and* P.O. Box 40595, Dubai, U.A.E.; *and* Warehouse No. 8, Plot No. 238, Rashidiya, Dubai, U.A.E..	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	81 FR [INSERT FR PAGE NUMBER], 2/23/16.
	* *	*	* *	*
	FWS Trading FZE, Rainbow No. 1212, Ajman Free Zone, Ajman, U.A.E.; *and* City Tower 2, Office #2004, Dubai, U.A.E..	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	81 FR [INSERT FR PAGE NUMBER], 2/23/16.
	* *	*	* *	*
	Hamed Kianynejad, Rainbow No. 1212, Ajman Free Zone, Ajman, U.A.E.; City Tower 2, Office #2004, Dubai, U.A.E.; *and* City Tower 2, 20th Floor, Office #2005, Sheikh Zayed Road, Dubai, U.A.E..	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	81 FR [INSERT FR PAGE NUMBER], 2/23/16.
	* *	*	* *	*
	Hassan Dow, W–38 Musalla Tower, Dubai, U.A.E.; *and* P.O. Box 5780, Dubai, U.A.E..	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	81 FR [INSERT FR PAGE NUMBER], 2/23/16.
	* *	*	* *	*
	Mojtaba Alikhani, Rainbow No. 1212, Ajman Free Zone, Ajman, U.A.E.; *and* City Tower 2, Office #2004, Dubai, U.A.E..	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	81 FR [INSERT FR PAGE NUMBER], 2/23/16.
	* *	*	* *	*
	Noun Nasreddine, a.k.a., the following one alias:. —N.A. Nasreddine.	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	81 FR [INSERT FR PAGE NUMBER], 2/23/16.

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	**Federal Register** citation
	#701 Damas Tower, 702 Al Maktoum St., Dubai, U.A.E.; *and* 701 Attar Tower, Maktoum St. Dubai, U.A.E.; *and* City Tower, Al Maktoum St., Office No. 701, Dubai U.A.E.; *and* P.O. Box 40595, Dubai, U.A.E.; *and* Warehouse No. 8, Plot No. 238, Rashidiya, Dubai, U.A.E..			
	* *	*	*	*
	Rainbow General Trading Company, ... City Tower 2, 20th Floor, Office #2005, Sheikh Zayed Road, Dubai, U.A.E..	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	81 FR [INSERT FR PAGE NUMBER], 2/23/16.
	* *	*	*	*
UNITED KINGDOM	* *	*	*	*
	Veteran Avia LLC a.k.a., the following alias:. —Veteran Airline 1 Beckett Place, South Hamptonshire, London, U.K. (See also addresses under Armenia, Greece, India, and Pakistan)..	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	79 FR 56003, 9/18/14. 81 FR [INSERT FR PAGE NUMBER], 2/23/16.
	* *	*	*	*

Dated: February 16, 2016.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2016–03745 Filed 2–22–16; 8:45 am]

BILLING CODE 3510–33–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

20 CFR Part 900

[TD 9749]

RIN 1545–BM81

Regulations Governing Organization of the Joint Board for the Enrollment of Actuaries

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Final rule.

SUMMARY: This document contains final regulations relating to the organization of the Joint Board for the Enrollment of Actuaries. The regulations are being amended in order to conform one provision of the regulations to the Bylaws of the Joint Board. These regulations solely address the internal management of the Joint Board and do not affect pension plans, plan participants, actuaries, or the general public.

DATES: *Effective date:* These regulations are effective *April 25, 2016.*

FOR FURTHER INFORMATION CONTACT: Patrick McDonough, Executive Director, Joint Board for the Enrollment of Actuaries, at (703) 414–2173 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation

The Joint Board for the Enrollment of Actuaries was established on October 31, 1974 pursuant to section 3041 of the Employee Retirement Income Security Act of 1974 (88 Stat. 829), Public Law 93–406 (ERISA). Section 3041 of ERISA provides that the Secretary of Labor and the Secretary of the Treasury shall, not later than the last day of the first calendar month beginning after the date of enactment of ERISA, establish a Joint Board for the Enrollment of Actuaries (Joint Board).

Regulations under ERISA section 3041 were published in the **Federal Register** on April 30, 1975 (40 FR 18776) and are currently located in the Code of Federal Regulations at 20 CFR part 900 (the 1975 Joint Board regulations). These regulations provide that, pursuant to the Bylaws, three members are appointed by the Secretary of the Treasury, two members are appointed by the Secretary of Labor, the Chairman of the Joint Board is to be elected from among the Treasury Department representatives, and the Secretary is to be elected from among the Labor Department representatives.

On April 27, 1981, the Secretaries of Treasury and Labor approved restated Bylaws of the Joint Board (the 1981 Bylaws). Sections 3(b) and 3(c) of the 1981 Bylaws provide that the Chairman and Secretary, respectively, will be elected for a one-year term by the Joint Board from among its members, eliminating the requirement that the Chairman be a Treasury Department representative and the Secretary be a Labor Department representative.

These final regulations amend § 900.3 of the 1975 Joint Board regulations in order to conform the regulations to the 1981 Bylaws.

Special Analyses

These regulations are being published as a final rule because the amendments apply solely to the Joint Board's organization and management. Moreover, the Joint Board finds good cause that these changes do not impose any requirements on any member of the public. These amendments are the most efficient means for the Joint Board to harmonize the regulations and Bylaws involving the Board's internal election procedure.

Accordingly, pursuant to 5 U.S.C. 553(a)(2), 553(b)(3)(A), and 553(b)(3)(B), the Joint Board finds good cause that prior notice and other public procedures with respect to this rule are unnecessary. Because a notice of proposed rulemaking is not required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612, do not apply.

This rule is not a significant regulatory action pursuant to Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required.

List of Subjects in 20 CFR Part 900

Organization and functions (Government agencies).

Adoption of Amendments to the Regulations

Accordingly, 20 CFR part 900 is amended as follows:

PART 900—STATEMENT OF ORGANIZATION

■ **Paragraph 1.** The authority citation for part 900 continues to read as follows:

Authority: Sec. 3041–2, Pub. L. 93–406, 88 Stat. 829, 1002 (29 U.S.C. 1241–2).

■ **Par. 2.** Section 900.3 is revised to read as follows:

§ 900.3 Composition.

Pursuant to the Bylaws, the Joint Board consists of three members appointed by the Secretary of the Treasury and two members appointed by the Secretary of Labor. The Board elects a Chairman and a Secretary from among the Department of the Treasury and the Department of Labor members. The Pension Benefit Guaranty Corporation may designate a non-voting representative to sit with, and participate in, the discussions of the Board. All decisions of the Board are made by simple majority vote.

Approved: February 12, 2016.

Carolyn E. Zimmerman,

Chairman, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2016–03655 Filed 2–22–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. FDA–2016–N–0585]

Food Labeling: Nutrient Content Claims; Alpha-Linolenic Acid, Eicosapentaenoic Acid, and Docosahexaenoic Acid Omega-3 Fatty Acids; Small Entity Compliance Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the availability of a guidance for industry entitled ''Food Labeling: Nutrient Content Claims; Alpha-Linolenic Acid, Eicosapentaenoic Acid, and Docosahexaenoic Acid Omega-3 Fatty Acids—Small Entity Compliance Guide.'' The small entity compliance guide (SECG) is intended to help small entities comply with the final rule titled ''Food Labeling: Nutrient Content Claims; Alpha-Linolenic Acid, Eicosapentaenoic Acid, and Docosahexaenoic Acid Omega-3 Fatty Acids.''

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

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–2016–N–0585 for ''Food Labeling: Nutrient Content Claims; Alpha-Linolenic Acid, Eicosapentaenoic Acid, and Docosahexaenoic Acid Omega-3 Fatty Acids; Small Entity Compliance Guide.'' 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.

Submit written requests for single copies of the SECG to the Office of Nutrition and Food Labeling, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY**

INFORMATION section for electronic access to the SECG.

FOR FURTHER INFORMATION CONTACT: Vincent de Jesus, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1774.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of April 28, 2014 (79 FR 23262), (see also Docket Nos. FDA–2007–0601, FDA–2004–N–0382, FDA–2005–P–0371, and FDA–2006–P–0224 (formerly Docket Nos. 2004N–0217, 2005P–0189, and 2006P–0137)), we issued a final rule prohibiting certain nutrient content claims for foods, including conventional foods and dietary supplements, that contain omega-3 fatty acids based on our determination that such nutrient content claims do not meet the requirements of the Federal Food, Drug, and Cosmetics Act. The final rule became effective January 1, 2016.

We examined the economic implications of the final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612) and determined that the final rule may have a significant economic impact on a substantial number of small entities. In compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121, as amended by Pub. L. 110–28), we are making available the SECG to explain the actions that a small entity must take to comply with the rule.

We are issuing the SECG consistent with our good guidance practices regulation (21 CFR 10.115(c)(2)). The SECG represents the current thinking of the FDA on this topic. 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.

II. Electronic Access

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

Dated: February 18, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–03697 Filed 2–22–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF STATE

22 CFR Part 171

[Public Notice: 9448]

RIN 1400–AD78

Privacy Act; STATE–75, Family Advocacy Case Records

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State (the Department) finalizes its rule exempting portions of the Family Advocacy Case Records, State–75, from one or more provisions of the Privacy Act of 1974.

DATES: This rule is effective on February 23, 2016.

FOR FURTHER INFORMATION CONTACT: John Hackett, Director; Office of Information Programs and Services, A/GIS/IPS; Department of State, SA–2; 515 22nd Street NW., Washington, DC 20522–8001, or at *Privacy@state.gov.*

SUPPLEMENTARY INFORMATION: The Department maintains the Family Advocacy Case Records system of records. The primary purpose of this system of records is to be utilized at post by members of the Family Advocacy Team and in the Department of State by the Family Advocacy Committee. The information may be shared within the Department on a need to know basis and in medical clearance determinations for overseas assignment of covered employees and family members, as well as for making determinations involving curtailment, medical evacuation, suitability, and security clearance.

The Department published a notice of proposed rulemaking (NPRM) on September 9, 2015, (80 FR 54256) proposing to amend 22 CFR part 171 to exempt portions of this system of records from the following subsections of the Privacy Act pursuant to subsections (k)(1) and (k)(2):

- 5 U.S.C. 552a(c)(3) (requiring that an accounting of certain disclosures be made available to an individual upon request);
- 5 U.S.C. 552a(d) (establishing requirements related to an individual's right to access and request amendment to certain records);
- 5 U.S.C. 552a(e)(1) (providing that an agency that maintains a system of records shall ''maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President'');
- 5 U.S.C. 552a(e)(4)(G) (requiring that an agency that maintains a system of records publish in the **Federal Register** ''the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him'');
- 5 U.S.C. 552a(e)(4)(H) (requiring that an agency that maintains a system of records publish in the **Federal Register** ''the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content'');
- 5 U.S.C. 552a(e)(4)(I) (requiring that an agency that maintains a system of records publish in the **Federal Register** ''the categories of sources of records in the system''); and
- 5 U.S.C. 552a(f) (requiring that an agency that maintains a system of records promulgate certain regulations).

STATE–75 is exempted under subsection (k)(1) to the extent that records within that system are subject to the provisions of 5 U.S.C. 552(b)(1), which covers materials that: (i) Are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense and foreign policy, and (ii) are in fact properly classified pursuant to such Executive order. STATE–75 is exempted under subsection (k)(2) to the extent that records within that system are comprised of investigatory material compiled for law enforcement purposes, subject to the limitations set forth in subsection (k)(2). The subsection (k)(2) exemption is intended to prevent individuals who are the subject of investigation from frustrating the investigatory process, facilitate the proper functioning and integrity of law enforcement activities, prevent disclosure of investigative techniques, maintain the confidence of foreign governments in the integrity of the procedures under which privileged or confidential information may be provided, fulfill commitments made to sources to protect their identities and the confidentiality of information, and avoid endangering sources and law enforcement personnel.

For additional background, see the NPRM published on September 9, 2015. (80 FR 54256) and the system of records notice published on January 5, 2009 (74 FR 330). The Department received no public comments on these documents.

List of Subjects in 22 CFR Part 171

Privacy.

For the reasons stated in the preamble, 22 CFR part 171 is amended as follows:

PART 171—[AMENDED]

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 22 U.S.C. 2651a; Pub. L. 95–521, 92 Stat. 1824, as amended; E.O. 13526, 75 FR 707; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

§ 171.36 [Amended]

■ 2. Section 171.36 is amended by adding an entry, in alphabetical order, for ''Family Advocacy Case Records, State–75'' to the lists in paragraphs (b)(1) and (2)

Joyce A. Barr,

Assistant Secretary for Administration, U.S. Department of State.

[FR Doc. 2016–03630 Filed 2–22–16; 8:45 am]

BILLING CODE 4710–36–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9752]

RIN 1545–BM54

Reporting of Specified Foreign Financial Assets

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance regarding the requirements for certain domestic entities to report specified foreign financial assets to the Internal Revenue Service. These regulations set forth the conditions under which a domestic entity will be considered a specified domestic entity required to undertake such reporting. These regulations affect certain domestic corporations, partnerships, and trusts.

DATES: *Effective date:* These regulations are effective on February 23, 2016.

Applicability date: For dates of applicability, see §§ 1.6038D–2(g) and 1.6038D–6(e).

FOR FURTHER INFORMATION CONTACT: Joseph S. Henderson, (202) 317–6942 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 6038D was enacted by section 511 of the Hiring Incentives to Restore Employment (HIRE) Act, Public Law 111–147 (124 Stat. 71). Section 6038D(a) requires certain individuals to report information about specified foreign financial assets. Section 6038D(f) provides that, to the extent provided by the Secretary in regulations or other guidance, section 6038D shall apply to any domestic entity which is formed or availed of for purposes of holding, directly or indirectly, specified foreign financial assets, in the same manner as if the entity were an individual.

On December 19, 2011, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) published temporary regulations (the ''2011 temporary regulations'') (TD 9567) and a notice of proposed rulemaking by cross-reference to temporary regulations (REG–130302–10) in the **Federal Register** (76 FR 78553 and 76 FR 78594, respectively) addressing the reporting requirements under section 6038D. The notice of proposed rulemaking also included proposed § 1.6038D–6, which set forth the conditions under which a domestic entity will be considered a specified domestic entity and, therefore, required to report specified foreign financial assets in which it holds an interest. Corrections to the 2011 temporary regulations were published on February 21, 2012, in the **Federal Register** (77 FR 9845). Corrections to proposed § 1.6038D–6 were published on February 21, 2012, and February 22, 2012, in the **Federal Register** (77 FR 9877 and 77 FR 10422, respectively). The 2011 temporary regulations were issued as final regulations (TD 9706; 79 FR 73817) on December 12, 2014 (the ''2014 final regulations''). The Treasury Department and the IRS did not adopt proposed § 1.6038D–6 (REG–144339–14) as a final regulation at that time.

The Treasury Department and the IRS received written comments on proposed § 1.6038D–6. All comments are available at *www.regulations.gov* or upon request. Because no requests to speak were received, no public hearing was held. After consideration of the comments received, the Treasury Department and the IRS adopt proposed § 1.6038D–6 as a final regulation with the modifications described herein.

Summary of Comments and Explanation of Revisions

I. Organizational Changes Regarding the Reporting Threshold

Proposed §§ 1.6038D–6(b)(1)(i) and 1.6038D–6(c)(1) provide that, in order to be treated as a specified domestic entity, an entity must have an interest in specified foreign financial assets (excluding assets excepted under § 1.6038D–7T) that exceeds the reporting threshold in § 1.6038D–2T(a)(1). Under the proposed regulations, a domestic entity applies the reporting threshold in § 1.6038D–2T(a)(1) to determine whether it is a specified domestic entity. In making this determination, the proposed regulations require a corporation or partnership to take into account the aggregation rules in proposed § 1.6038D–6(b)(4)(i). Proposed §§ 1.6038D–6(b)(1)(i) and 1.6038D–6(c)(1), however, suggested that a specified domestic entity is required to again apply § 1.6038D–2T(a)(1) to determine whether it has a reporting requirement.

The Treasury Department and the IRS did not intend for domestic entities to apply the reporting threshold described in § 1.6038D–2(a)(1) twice in order to determine their section 6038D reporting responsibilities. Therefore, these final regulations eliminate the requirement to apply § 1.6038D–2(a)(1) as part of determining whether an entity is a specified domestic entity. Instead, a domestic entity that meets the definition of a specified domestic entity, which under these final regulations is determined without regard to whether the reporting threshold in § 1.6038D–2(a)(1) is met, applies the reporting threshold under § 1.6038D–2(a)(1) once, as part of determining whether it has a filing obligation. The aggregation rule for corporations and partnerships and the rule excluding assets excepted under § 1.6038D–7 from the reporting threshold have been moved to § 1.6038D–2(a)(6). These changes are organizational and no change is intended to the substantive reporting requirements for a specified domestic entity.

II. Elimination of Principal Purpose Test

Proposed § 1.6038D–6(b)(1)(iii) provides that a corporation or partnership is treated as formed or availed of for purposes of holding, directly or indirectly, specified foreign financial assets if either: (1) At least 50 percent of the corporation or partnership's gross income or assets is passive; or (2) at least 10 percent of the corporation or partnership's gross income or assets is passive and the corporation or partnership is formed or availed of by a specified individual with a principal purpose of avoiding section 6038D (the principal purpose test). Under proposed § 1.6038D–6(b)(1)(iii), all facts and circumstances are taken into account to determine whether a specified individual has a principal purpose of avoiding section 6038D.

The Treasury Department and the IRS believe that a 50-percent passive assets or income threshold appropriately captures situations in which specified individuals may use a domestic

corporation or partnership to circumvent the reporting requirements of section 6038D. Furthermore, the Treasury Department and the IRS have concluded that taxpayers should be able to determine their reporting requirements under section 6038D based on objective requirements rather than a subjective principal purpose test. Therefore, these final regulations eliminate the principal purpose test for determining whether a corporation or partnership is a specified domestic entity. However, the Treasury Department and the IRS will continue to monitor whether domestic corporations and partnerships not required to report under these final regulations are being used inappropriately by specified individuals to avoid reporting under section 6038D. If needed, the Treasury Department and the IRS may expand the definition of a specified domestic entity in future guidance.

III. Definition of Passive Income

Proposed § 1.6038D–6(b)(2) defines ''passive income'' by listing specific items of income that are treated as passive. Following the issuance of proposed § 1.6038D–6(b)(2), on February 15, 2012, comprehensive regulations (77 FR 9022 (REG–121647–10)) were proposed under sections 1471 through 1474, which were also enacted as part of the HIRE Act that enacted section 6038D. A definition of passive income was included in the proposed regulations under section 1472 for purposes of identifying certain active nonfinancial foreign entities (NFFEs), which are excepted from withholding under section 1472(a) and therefore do not have to report their substantial U.S. owners in order to avoid withholding. The definition of passive income in proposed § 1.1472–1(c)(1)(v) contained a list of items that was similar, although not identical, to the list contained in proposed § 1.6038D–6(b)(2). On January 28, 2013, the proposed regulations under sections 1471 through 1474 were finalized (78 FR 5874, TD 9610). In the final regulations, the Treasury Department and the IRS clarified the scope of the definition of passive income, made modifications in response to comments received, and moved the provision to § 1.1472–1(c)(1)(iv)(A). In addition, exceptions for look-through payments and dealers were added in § 1.1472–1(c)(1)(iv)(B).

The definitions of passive income under sections 1472 and 6038D serve a similar function, which is to identify entities that have a high risk of being used for tax evasion and to reduce compliance burdens for active entities. Therefore, these final regulations in § 1.6038D–6(b)(2) adopt several of the modifications to the term ''passive income'' that were included in § 1.1472–1(c)(1)(iv)(A). Specifically, these modifications: (1) Clarify that ''dividends'' includes substitute dividends and expand ''interest'' to cover income equivalent to interest, including substitute interest, (2) add a new exception for certain active business gains or losses from the sale of commodities, and (3) define notional principal contracts by adding a reference to § 1.446–3(c)(1). In addition, these final regulations add the exception for dealers that is described in § 1.1472–1(c)(1)(iv)(B)(*2*).

In addition, the proposed regulations under both sections 1472 and 6038D excluded from the definition of passive income rents or royalties derived in the active conduct of a trade or business conducted by employees of the relevant entity. A comment submitted in response to proposed § 1.6038D–6(b)(2)(iii) expressed concern that the exception applies only to rents and royalties derived in an active trade or business conducted exclusively by a corporation's or partnership's employees, and noted that it is difficult to find a trade or business that is conducted solely by a business's employees. These final regulations provide, consistent with § 1.1472–1(c)(1)(iv)(A)(*4*), that rents and royalties derived in the active conduct of a trade or business conducted ''at least in part'' by employees of the corporation or partnership will not be considered passive income.

The exception for certain look-through income from related persons in § 1.1472–1(c)(1)(iv)(B)(*1*) is not adopted in these final regulations because § 1.6038D–6(b)(3)(ii) already eliminates passive income or assets arising from related party transactions for purposes of applying the passive income and asset thresholds to a corporation or partnership with related entities.

Finally, the proposed regulations did not specify how to determine whether 50 percent of a corporation's or partnership's assets are passive assets. The Treasury Department and the IRS believe that the weighted average test for active NFFEs in the regulations under section 1472 provides an administrable way to determine the passive asset percentage. Therefore, these final regulations provide that the passive asset percentage is determined based on a weighted average approach similar to the rule in § 1.1472–1(c)(1)(iv). Under this test, corporations or partnerships may use either fair market value or book value (as reflected on the entity's balance sheet and as determined under either a U.S. or an international financial accounting standard) to determine the value of their assets. Corporations or partnerships may be required to substantiate their determination of the passive asset percentage upon request by the IRS. *See* section 6001.

IV. Annual Determination of Specified Person's Interest in a Domestic Partnership

Proposed § 1.6038D–6(a) provides that whether a domestic partnership is a specified domestic entity is determined annually, and proposed § 1.6038D–6(b)(3)(ii) provides that a partnership is closely held if at least 80 percent of the capital or profits interest in the partnership is held directly, indirectly, or constructively by a specified individual on the last day of the partnership's taxable year.

A commenter recommended that a partner's interest in a partnership should be calculated on a year-by-year basis for purposes of determining whether a domestic partnership is a specified domestic entity. The comment noted that it is often difficult to determine the precise capital or profits interest of a partner because it may shift depending on the performance of the partnership.

The requirement to determine a partner's capital or profits interest on a particular day is present in other provisions of the Internal Revenue Code, Treasury regulations, and published guidance, and the Treasury Department and the IRS believe it is an appropriate measure of an individual's economic interest in a partnership and, in general, is not overly complex. Accordingly, these final regulations retain the rule in the proposed regulations for determining if a domestic partnership is closely held.

V. Clarification to Aggregation Rules

Proposed § 1.6038D–6(b)(4) provides aggregation rules for purposes of applying proposed § 1.6038D–6(b)(1)(i), the § 1.6038D–2(a)(1) reporting threshold, and the passive income and asset thresholds under proposed § 1.6038D–6(b)(1)(iii). The proposed regulations provide that, for purposes of applying proposed § 1.6038D–6(b)(1)(i) and the reporting threshold, all domestic corporations and domestic partnerships that have an interest in specified foreign financial assets and are closely held by the same specified individual are treated as a single entity, and each such related corporation or partnership is treated as owning the specified foreign financial assets held by all such related corporations or

partnerships. Similarly, the proposed regulations provide that, for purposes of applying the passive income and asset thresholds, all domestic corporations and domestic partnerships that are closely held by the same specified individual and connected through stock or partnership interest ownership with a common parent corporation or partnership are treated as a single entity, and each member of such a group is treated as owning the combined assets and receiving the combined income of all members of that group.

The Treasury Department and the IRS have determined that it is not necessary both to treat a group as a single entity and to attribute the assets or income of members of the group to an entity. Therefore, these final regulations simplify the aggregation rules by eliminating the reference to treating all domestic corporations and partnerships as a single entity.

VI. Domestic Trusts

Proposed § 1.6038D–6(c) provides that a trust described in section 7701(a)(30)(E) is a specified domestic entity if and only if the trust has one or more specified persons as a current beneficiary. The term current beneficiary means, with respect to the taxable year, any person who at any time during such taxable year is entitled to, or at the discretion of any person may receive, a distribution from the principal or income of the trust (determined without regard to any power of appointment to the extent that such power remains unexercised at the end of the taxable year). The Treasury Department and the IRS intend that a specified domestic entity include a trust whereby a specified person has an immediately exercisable general power of appointment, even if such specified person is not technically a beneficiary. Therefore, these final regulations clarify that the term current beneficiary also includes any holder of a general power of appointment, whether or not exercised, that was exercisable at any time during the taxable year, but does not include any holder of a general power of appointment that is exercisable only on the death of the holder.

VII. Expanding the Exceptions for Domestic Entities

Proposed § 1.6038D–6(d) excepts certain entities from being treated as a specified domestic entity. A commenter recommended that the final regulations expand proposed § 1.6038D–6(d) to also except certain domestic trusts that are not required to file a Form 1041, ''U.S. Fiduciary Income Tax Return,'' or any information returns. The Treasury Department and the IRS do not adopt this comment because the 2014 final regulations already address the commenter's concerns. The 2014 final regulations provide in § 1.6038D–2(a)(7) that a specified person, including a specified domestic entity, is not required to file Form 8938, ''Statement of Specified Foreign Financial Assets,'' with respect to a taxable year if the specified person is not required to file an annual return with the IRS with respect to that taxable year. In the case of a specified domestic entity, the term ''annual return'' means an annual federal income tax return or information return filed with the IRS, including returns required under section 6012. *See* § 1.6038D–1(a)(11). A Form 1041 is an annual return for purposes of § 1.6038D–1(a)(11) of the final regulations.

A commenter recommended that the final regulations except publicly traded partnerships from being specified domestic entities because they are similar to publicly traded corporations described in section 1473(3), which are excepted from the definition of specified domestic entity under proposed § 1.6038D–6(d)(1). The Treasury Department and the IRS do not adopt this comment. The requirement under proposed § 1.6038D–6(b) that to be a specified domestic entity at least 80 percent of the capital or profits interest in a partnership must be held by a specified individual on the last day of the partnership's taxable year establishes appropriate general criteria that, as a practical matter, should exempt most publicly traded partnerships from being specified domestic entities.

A commenter recommended that the final regulations except an employer trust established for the benefit of more than a minimum number of employees, such as 50, from being a specified domestic entity even if the employer trust holds stock of a foreign company. The Treasury Department and the IRS believe the exception under proposed § 1.6038D–6(d)(1) for domestic entities that are not ''specified United States persons'' pursuant to section 1473(3), together with the exception for trusts whose trustees satisfy the supervisory oversight requirements and the income tax and information return filing requirements under proposed § 1.6038D–6(d)(2), are sufficiently broad to except employer trusts that represent a low risk of tax avoidance from characterization as a specified domestic entity. Therefore, this comment is not adopted.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required.

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). In the case of domestic corporations and partnerships, these regulations apply only when two separate tests are met. The first requires that at least 80 percent of the entity must be owned, directly, indirectly, or constructively, by a specified individual, generally a U.S. citizen or resident. The second test compares the entity's business income and assets with its passive income and assets. If more than 50 percent of the entity's annual gross income for the year is active business income and more than 50 percent of its assets for the taxable year are assets that produce or are held for the production of active income, then the entity is not subject to the reporting requirements under section 6038D. This two-part test reduces the burden imposed by these final regulations on domestic small business entities because closely-held domestic corporations and partnerships that are predominantly engaged in an active business generally will be excluded from reporting. Furthermore, small not-for-profit organizations that are tax-exempt under section 501(a) of the Internal Revenue Code and small governmental jurisdictions are not subject to these regulations.

For closely-held domestic corporations and partnerships that meet both tests, these final regulations limit the burden imposed. First, reporting is required only when the aggregate value of the entity's interests in specified foreign financial assets exceeds the reporting threshold under § 1.6038D–2(a)(1). Second, the final regulations exclude the value of specified foreign financial assets reported on one or more of the following forms from being taken into consideration in determining whether the small entity satisfies the reporting threshold under § 1.6038D–2(a)(1): Form 3520, ''Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts''; Form 3520–A, ''Annual Information Return of Foreign Trust With a U.S. Owner''; Form 5471, ''Information Return of U.S. Persons

With Respect To Certain Foreign Corporations''; Form 8621, ''Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund''; or Form 8865, ''Return of U.S. Persons With Respect to Certain Foreign Partnerships.'' Third, small entities that hold specified foreign financial assets generally will be excepted from reporting such assets if the assets are reported on one or more of the these forms, thereby further limiting the burden imposed by the final regulations on small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Joseph S. Henderson, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry for § 1.6038D–6 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6038D–6 is also issued under 26 U.S.C. 6038D.

■ **Par. 2.** Section 1.6038D–0 is amended by:

■ 1. Revising the entry for § 1.6038D–1(a)(12).

■ 2. Adding entries for § 1.6038D–2(a)(6)(i) and (ii).

■ 3. Revising the entry for § 1.6038D–6.

The revisions and additions read as follows:

§ 1.6038D–0 Outline of regulation provisions

* * * * *

§ 1.6038D–1 Reporting with respect to specified foreign financial assets, definition of terms.

(a) * * *

* * * * *

(12) Specified domestic entity.

* * * * *

§ 1.6038D–2 Requirement to report specified foreign financial assets.

(a) * * *

* * * * *

(6) * * *

(i) Specified individual.

(ii) Specified domestic entity.

* * * * *

§ 1.6038D–6 Specified domestic entities.

(a) Specified domestic entity.

(b) Corporations and partnerships.

(1) Formed or availed of.

(2) Closely held.

(i) Domestic corporation.

(ii) Domestic partnership.

(iii) Constructive ownership.

(3) Determination of passive income and assets.

(i) Definition of passive income.

(ii) Exception from passive income treatment for dealers.

(iii) Related entities.

(4) Examples.

(c) Domestic trusts.

(d) Excepted domestic entities.

(1) Certain persons described in section 1473(3).

(2) Certain domestic trusts.

(3) Domestic trusts owned by one or more specified persons.

(e) Effective/applicability dates.

* * * * *

■ **Par. 3.** Section 1.6038D–1(a)(12) is revised to read as follows:

§ 1.6038D–1 Reporting with respect to specified foreign financial assets, definition of terms.

(a) * * *

* * * * *

(12) *Specified domestic entity.* The term *specified domestic entity* has the meaning set forth in § 1.6038D–6.

* * * * *

■ **Par. 4.** Section 1.6038D–2 is amended by:

■ 1. Redesignating the text of paragraph (a)(6) as paragraph (a)(6)(i) and adding a paragraph heading to newly redesignated paragraph (a)(6)(i).

■ 2. Adding paragraph (a)(6)(ii).

■ 3. Revising paragraph (g).

The additions and revision read as follows:

§ 1.6038D–2 Requirement to report specified foreign financial assets.

(a) * * *

(6) *Aggregate value calculation in case of specified foreign financial asset excluded from reporting*—(i) *Specified individual.* * * *

(ii) *Specified domestic entity.* The value of any specified foreign financial asset in which a specified domestic entity has an interest and that is excluded from reporting on Form 8938 pursuant to § 1.6038D–7(a) (concerning certain assets reported on another form) is excluded for purposes of determining the aggregate value of specified foreign financial assets. For purposes of determining the aggregate value of specified foreign financial assets, a specified domestic entity that is a corporation or partnership and that has an interest in any specified foreign financial asset is treated as owning all the specified foreign financial assets (excluding specified foreign financial assets excluded from reporting on Form 8938 pursuant to § 1.6038D–7(a)) held by all domestic corporations and domestic partnerships that are closely held by the same specified individual as determined under § 1.6038D–6(b)(2).

* * * * *

(g) *Effective/applicability dates.* This section, with the exception of § 1.6038D–2(a)(6)(ii), applies to taxable years ending after December 19, 2011. Section 1.6038D–2(a)(6)(ii) applies to taxable years beginning after December 31, 2015. Taxpayers may elect to apply the rules of this section, with the exception of § 1.6038D–2(a)(6)(ii), to taxable years ending on or prior to December 19, 2011.

■ **Par 5.** Section 1.6038D–6 is added to read as follows:

§ 1.6038D–6 Specified domestic entities.

(a) *Specified domestic entity.* A specified domestic entity is a domestic corporation, a domestic partnership, or a trust described in section 7701(a)(30)(E), if such corporation, partnership, or trust is formed or availed of for purposes of holding, directly or indirectly, specified foreign financial assets. Whether a domestic corporation, a domestic partnership, or a trust described in section 7701(a)(30)(E) is a specified domestic entity is determined annually.

(b) *Corporations and partnerships*—(1) *Formed or availed of.* Except as otherwise provided in paragraph (d) of this section, a domestic corporation or a domestic partnership is formed or availed of for purposes of holding, directly or indirectly, specified foreign financial assets if and only if—

(i) The corporation or partnership is closely held by a specified individual as determined under paragraph (b)(2) of this section; and

(ii) At least 50 percent of the corporation's or partnership's gross income for the taxable year is passive income or at least 50 percent of the assets held by the corporation or

partnership for the taxable year are assets that produce or are held for the production of passive income as determined under paragraph (b)(3) of this section (passive assets). For purposes of this paragraph (b)(1)(ii), the percentage of passive assets held by a corporation or partnership for a taxable year is the weighted average percentage of passive assets (weighted by total assets and measured quarterly), and the value of assets of a corporation or partnership is the fair market value of the assets or the book value of the assets that is reflected on the corporation's or partnership's balance sheet (as determined under either a U.S. or an international financial accounting standard).

(2) *Closely held*—(i) *Domestic corporation.* A domestic corporation is closely held by a specified individual if at least 80 percent of the total combined voting power of all classes of stock of the corporation entitled to vote, or at least 80 percent of the total value of the stock of the corporation, is owned, directly, indirectly, or constructively, by a specified individual on the last day of the corporation's taxable year.

(ii) *Domestic partnership.* A partnership is closely held by a specified individual if at least 80 percent of the capital or profits interest in the partnership is held, directly, indirectly, or constructively, by a specified individual on the last day of the partnership's taxable year.

(iii) *Constructive ownership.* For purposes of this paragraph (b)(2), sections 267(c) and (e)(3) apply for the purpose of determining the constructive ownership of a specified individual in a corporation or partnership, except that section 267(c)(4) is applied as if the family of an individual includes the spouses of the individual's family members.

(3) *Determination of passive income and assets*—(i) *Definition of passive income.* Except as provided in paragraph (b)(3)(ii) of this section, for purposes of paragraph (b)(1)(ii) of this section, passive income means the portion of gross income that consists of—

(A) Dividends, including substitute dividends;

(B) Interest;

(C) Income equivalent to interest, including substitute interest;

(D) Rents and royalties, other than rents and royalties derived in the active conduct of a trade or business conducted, at least in part, by employees of the corporation or partnership;

(E) Annuities;

(F) The excess of gains over losses from the sale or exchange of property that gives rise to passive income described in paragraphs (b)(3)(i)(A) through (b)(3)(i)(E) of this section;

(G) The excess of gains over losses from transactions (including futures, forwards, and similar transactions) in any commodity, but not including—

(*1*) Any commodity hedging transaction described in section 954(c)(5)(A), determined by treating the corporation or partnership as a controlled foreign corporation; or

(*2*) Active business gains or losses from the sale of commodities, but only if substantially all the corporation or partnership's commodities are property described in paragraph (1), (2), or (8) of section 1221(a);

(H) The excess of foreign currency gains over foreign currency losses (as defined in section 988(b)) attributable to any section 988 transaction; and

(I) Net income from notional principal contracts as defined in § 1.446–3(c)(1).

(ii) *Exception from passive income treatment for dealers.* Notwithstanding paragraph (b)(3)(i) of this section, in the case of a corporation or partnership that regularly acts as a dealer in property described in paragraph (b)(3)(i)(F) of this section (referring to the sale or exchange of property that gives rise to passive income), forward contracts, option contracts, or similar financial instruments (including notional principal contracts and all instruments referenced to commodities), the term passive income does not include—

(A) Any item of income or gain (other than any dividends or interest) from any transaction (including hedging transactions and transactions involving physical settlement) entered into in the ordinary course of such dealer's trade or business as such a dealer; and

(B) If such dealer is a dealer in securities (within the meaning of section 475(c)(2)), any income from any transaction entered into in the ordinary course of such trade or business as a dealer in securities.

(iii) *Related entities.* For purposes of applying the passive income and asset thresholds of paragraph (b)(1)(ii) of this section, all domestic corporations and domestic partnerships that are closely held by the same specified individual as determined under paragraph (b)(2) of this section and that are connected through stock or partnership interest ownership with a common parent corporation or partnership are treated as owning the combined assets and receiving the combined income of all members of that group. For purposes of the preceding sentence, assets relating to any contract, equity, or debt existing between members of such a group, as well as any items of gross income arising under or from such contract, equity, or debt, are eliminated. A domestic corporation or a domestic partnership is considered connected through stock or partnership interest ownership with a common parent corporation or partnership if stock representing at least 80 percent of the total combined voting power of all classes of stock of the corporation entitled to vote or of the value of such corporation, or partnership interests representing at least 80 percent of the profits interests or capital interests of such partnership, in each case other than stock of or partnership interests in the common parent, is owned by one or more of the other connected corporations, connected partnerships, or the common parent.

(4) *Examples.* The following examples illustrate the application of this section:

Example 1. Closely held and constructive ownership. (i) *Facts.* DC1 is a domestic corporation the total value of the stock of which is owned 60% by A, a specified individual, 30% by B, a member of A's family for purposes of section 267(c)(2) who is not a specified individual, and 10% by FC1, a foreign corporation. DC1 owns 90% of the total value of the stock of DC2, a domestic corporation. FC2, a foreign corporation, owns 10% of DC2. Neither A nor B owns, directly, indirectly, or constructively, any stock in FC1 or FC2.

(ii) *Closely held ownership determination.* A is considered to own 90% and 81% of the total value of DC1 and DC2, respectively, by application of the rules of section 267(c) and this section. DC1 and DC2 are closely held by A within the meaning of paragraph (b)(2) of this section because A, a specified individual, is considered to own more than 80% of their total value.

Example 2. Application of aggregation rule and reporting threshold. (i) *Facts.* L is a specified individual. In Year X, L wholly owns DC1, a domestic corporation, and also owns a 90% capital interest in DP, a domestic partnership. DC1 owns 80% of the sole class of stock of DC2, a domestic corporation. DC1 has no assets other than its interest in DC2. DC2's only assets are assets that produce passive income, with a maximum value in Year X of $40,000 on October 12. DC2's assets are comprised in relevant part of specified foreign financial assets with a maximum value in Year X of $15,000 on October 12. DP's only assets are assets that produce passive income and that are specified foreign financial assets with a maximum value of $90,000 in Year X on October 12.

(ii) *Specified domestic entity status*—(A) *DC1 and DC2.* DC1 and DC2 are closely held by a specified individual for purposes of paragraph (b)(2) of this section. DC1 and DC2 are considered related entities that are connected through stock ownership with a common parent corporation under paragraph (b)(3)(iii) of this section, because DC1 and

DC2 are closely held by L, and DC2 is connected with DC1 through DC1's ownership of stock of DC2 representing at least 80% of the voting power or value of DC2. As a result, for purposes of applying paragraph (b)(1)(ii) of this section, each of DC1 and DC2 is considered as owning the combined assets, and receiving the combined income, of both DC1 and DC2; however, DC1's equity interest in DC2 is disregarded for this purpose under paragraph (b)(3)(iii) of this section. Therefore, DC1 and DC2 each satisfies the passive asset threshold of paragraph (b)(1)(ii) of this section, because 100 percent of each company's assets is passive. DC1 and DC2 are specified domestic entities for Year X.

(B) *DP.* DP is closely held by a specified individual for purposes of paragraph (b)(2) of this section. DP is not considered a related entity with DC1 and DC2 under paragraph (b)(3)(iii) of this section, because DC1 and DP are not owned by a common parent corporation or partnership. As a result, whether the passive income or passive asset threshold of paragraph (b)(1)(ii) of this section is met with respect to DP is determined solely by reference to DP's separately earned passive income and separately held passive assets. DP holds only passive assets during Year X and therefore satisfies paragraph (b)(1)(ii) of this section. DP is a specified domestic entity for Year X.

(iii) *Reporting requirements*—(A) *DC1.* Under § 1.6038D–2(a)(6)(ii), DC1 is not treated as owning the specified foreign financial assets held by DC2 and DP for purposes of applying the reporting threshold of § 1.6038D–2(a)(1), because DC1 does not have an interest in any specified foreign financial assets. DC1 is not required to file Form 8938 because DC1 does not satisfy the reporting threshold of § 1.6038D–2(a)(1).

(B) *DC2 and DP.* Under § 1.6038D–3, DC2 and DP each has an interest in specified foreign financial assets. For purposes of applying the reporting threshold of § 1.6038D–2(a)(1), § 1.6038D–2(a)(6)(ii) provides that DC2 is treated as owning in addition to its own assets the assets of DP, and DP is treated as owning in addition to its own assets the assets of DC2. As a result, DC2 and DP each satisfies the reporting threshold of § 1.6038D–2(a)(1), because the value of the specified foreign financial assets each is considered as owning for purposes of § 1.6038D–2(a)(1) is $105,000 on October 12, Year X, which exceeds DC2's and DP's $75,000 reporting threshold. DC2 and DP must each file Form 8938 for Year X to report their respective specified foreign financial assets in which they have an interest and disclose their maximum values as provided in § 1.6038D–4 ($15,000 in the case of DC2 and $90,000 in the case of DP).

Example 3. Application of aggregation rule and entity with an active trade or business. (i) *Facts.* The facts are the same as in *Example 2,* except that DC2 also owns an active business. The assets attributable to the business are not passive assets and constitute at least 60% of the value of DC2's assets at all times during Year X. The income from the business is not passive income and constitutes at least 60% of the gross income generated by DC2 in Year X.

(ii) *Specified domestic entity status*—(A) *DC1 and DC2.* DC1 and DC2 are considered related entities that are connected through stock ownership with a common parent corporation under paragraph (b)(3)(iii) of this section because DC1 and DC2 are closely held by L, and DC2 is connected with DC1 though DC1's ownership of stock of DC2 representing at least 80% of the voting power or value of DC2. As a result, for purposes of applying paragraph (b)(1)(ii) of this section, each of DC1 and DC2 is treated as owning the combined assets, and receiving the combined income, of both DC1 and DC2; however, DC1's equity interest in DC2 is disregarded for this purpose under paragraph (b)(3)(iii) of this section. As a result, no more than 40 percent of the value of DC1's and DC2's assets at all times during Year X are passive and no more than 40 percent of DC1's and DC2's gross income for Year X is passive. DC1 and DC2 do not satisfy the passive income or passive asset threshold in paragraph (b)(1)(ii) of this section for Year X. DC1 and DC2 are not specified domestic entities for Year X.

(B) *DP.* For the reasons described in paragraph (ii)(B) of *Example 2,* DP is a specified domestic entity for Year X.

(iii) *Reporting requirements*—(A) *DC1 and DC2.* DC1 and DC2 are not specified domestic entities for Year X, and are not required to file Form 8938.

(B) *DP.* Under § 1.6038D–3, DP has an interest in specified foreign financial assets. Under § 1.6038D–2(a)(6)(ii), DP is treated as owning in addition to its own assets the assets of DC2. As a result, DP satisfies the reporting threshold of § 1.6038D–2(a)(1) because the value of the specified foreign financial assets it is considered to own for purposes of § 1.6038D–2(a)(1) is $105,000 on October 12, Year X, which exceeds DP's $75,000 reporting threshold. DP must file Form 8938 for Year X to report the specified foreign financial assets in which it has an interest and disclose their maximum values as provided in § 1.6038D–4, which is $90,000.

(c) *Domestic trusts.* Except as otherwise provided in paragraph (d) of this section, a trust described in section 7701(a)(30)(E) is formed or availed of for purposes of holding, directly or indirectly, specified foreign financial assets if and only if the trust has one or more specified persons as a current beneficiary. The term current beneficiary means, with respect to the taxable year, any person who at any time during such taxable year is entitled to, or at the discretion of any person may receive, a distribution from the principal or income of the trust (determined without regard to any power of appointment to the extent that such power remains unexercised at the end of the taxable year). The term current beneficiary also includes any holder of a general power of appointment, whether or not exercised, that was exercisable at any time during the taxable year, but does not include any holder of a general power of appointment that is exercisable only on the death of the holder.

(d) *Excepted domestic entities.* An entity is not considered to be a specified domestic entity if the entity is—

(1) *Certain persons described in section 1473(3).* An entity, except for a trust that is exempt from tax under section 664(c), that is excepted from the definition of the term ''specified United States person'' under section 1473(3) and the regulations issued under that section;

(2) *Certain domestic trusts.* A trust described in section 7701(a)(30)(E) provided that the trustee of the trust—

(i) Has supervisory authority over or fiduciary obligations with regard to the specified foreign financial assets held by the trust;

(ii) Timely files (including any applicable extensions) annual returns and information returns on behalf of the trust; and

(iii) Is—

(A) A bank that is examined by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the National Credit Union Administration;

(B) A financial institution that is registered with and regulated or examined by the Securities and Exchange Commission; or

(C) A domestic corporation described in section 1473(3)(A) or (B), and the regulations issued with respect to those provisions.

(3) *Domestic trusts owned by one or more specified persons.* A trust described in section 7701(a)(30)(E) to the extent such trust or any portion thereof is treated as owned by one or more specified persons under sections 671 through 678 and the regulations issued under those sections.

(e) *Effective/applicability dates.* This section applies to taxable years beginning after December 31, 2015.

Karen M. Schiller,

Deputy Commissioner for Services and Enforcement.

Approved: January 19, 2016.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2016–03795 Filed 2–22–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0113]

Drawbridge Operation Regulation; Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Cape Fear Memorial Bridge which carries US 17 across the Cape Fear River, mile 26.8, at Wilmington, North Carolina. The deviation is necessary to facilitate routine biennial maintenance and inspection of the lift span for the bridge. This deviation allows the bridge to open with an advanced notice instead of opening on signal.

DATES: This deviation is effective from 9 a.m. on March 7, 2016, through 4 p.m. on March 17, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0113] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mrs. Jessica Shea, Fifth Coast Guard District (dpb), at (757) 398–6422, email *jessica.c.shea2@uscg.mil.*

SUPPLEMENTARY INFORMATION: The North Carolina Department of Transportation has requested a temporary deviation from the current operating schedule for the Cape Fear Memorial Bridge that carries US 17 across the Cape Fear River, mile 26.8, at Wilmington, NC. The requested deviation will accommodate the routine biennial maintenance and inspection of the vertical lift span for the drawbridge. To facilitate this work, the draw of the bridge will be maintained in the closed-to-navigation position every day from 9 a.m. until 4 p.m. March 7 through 10, 2016 and again every day from 9 a.m. until 4 p.m. March 14 through 17, 2016. The bridge will open on signal at all other times.

The Cape Fear Memorial Bridge has a vertical clearance of 65 feet above mean high water (MHW) in the closed position and 135 feet above MHW in the open position. It also has an operating schedule set out in 33 CFR 117.822; however this deviation will have no effect on that schedule.

Due to the nature of the work, vessels that require less than 45 feet of clearance do not need to request an opening and may transit safely under the bridge in the closed position. Vessels that require more than 45 feet of clearance but less than 65 feet must provide 30 minutes advanced notice of their transit. The snooper crane that will hang over the side of the bridge to inspect the bridge will be removed to allow for safe transit. Vessels that require 65 feet or greater of clearance must provide one hour advance notice so equipment and personnel can be moved to a safe location to allow for vessel transit. The bridge will be able to open for emergencies and there is no alternate route for vessels. Most waterway traffic consists of recreational boats with a few barges and tugs. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notice to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by this temporary deviation.

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

Dated: February 18, 2016.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2016–03723 Filed 2–22–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0058]

RIN 1625–AA09

Drawbridge Operation Regulation; Acushnet River, New Bedford and Fairhaven, MA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is making a correction to the operating schedule that governs the New Bedford-Fairhaven Rt-6 Bridge, mile 0.0, across the Acushnet River, between New Bedford and Fairhaven, MA. On July 1, 2013, a technical amendment was published that updated the name of the bridge, however, the requested correction was drafted incorrectly and three subparagraphs were inadvertently removed from the section.

DATES: This rule is effective February 23, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type [USCG–2016–0058]. In the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Christopher J. Bisignano, Supervisory Bridge Management Specialist, First Coast Guard District, Coast Guard; telephone (212) 514–4331 or email *Christopher.J.Bisignano@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

Each year on July 1, the printed edition of Title 33 of the Code of Federal Regulations (CFR) is recodified. On July 1, 2013, the Coast Guard published a Final Rule entitled, ''Navigation and Navigable Waters; Technical, Organizational, and Conforming Amendments'' in the **Federal Register** (78 FR 39163). This 2013 rule made technical and editorial corrections throughout Title 33 but did not create any substantive requirements. In this rule the Coast Guard requested that the term ''drawspan'' be replaced with the actual name of the bridge (New Bedford-Fairhaven Rt-6 Bridge) in 33 CFR 117.585(a). However, misinterpretation of the asterisks in the regulatory text, which were used to denote that all paragraphs and subordinate paragraphs after paragraph (a) in § 117.585 were to remain unchanged, caused the subparagraphs (1) through (3) to be removed.

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to

comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the publishing of the Final Rule entitled, ''Navigation and Navigable Waters; Technical, Organizational, and Conforming Amendments,'' in the **Federal Register** (78 FR 39163) on July 1, 2013, inadvertently removed established regulatory language. The three subparagraphs under 33 CFR 117.585(a) were inadvertently removed from the CFR. Therefore, it is unnecessary to issue a rule without prior notice and opportunity to comment.

We are issuing this rule under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register** for the same reasons as stated above.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

The purpose of this rule is to correct an error that occurred in the publication of the Final Rule on July 1, 2013, entitled, ''Navigation and Navigable Waters; Technical, Organizational, and Conforming Amendments,'' in the **Federal Register** (78 FR 39163). The use of the asterisks in the regulatory text were misinterpreted causing subparagraphs (1) through (3) to be inadvertently removed from 33 CFR 117.585(a).

The New Bedford-Fairhaven Rt-6 Bridge remains an active bridge and subparagraph's (1) through (3) contain the actual operating schedule for the bridge. The bridge continues to operate under that schedule and the subparagraphs need to be reinserted into 33 CFR 117.585(a) to inform the public of the legal operating schedule of the bridge.

IV. Discussion of Final Rule

This rule will correct 33 CFR 117.585(a) by restoring subparagraphs (1) through (3) which contain the actual operating schedule for the New Bedford-Fairhaven Rt-6 Bridge. As paragraph (a) is currently codified in the rule, there is only the introductory language. This language by itself does not explain to the public the operating schedule for the bridge. The intention of this rule is to restore the operating language to 33 CFR 117.585(a) as it appeared immediately prior to the July 1, 2013, codification of 33 CFR.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. 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 not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

The Coast Guard does not consider this rule to be ''significant'' under that Order because it corrects inadvertently omitted language that is consistent with the current operation of the bridge. Therefore, this rule does not affect the way vessels operate on the waterway near and through the bridge.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator. While the operating schedule was inadvertently removed from the rule, the bridge continues to operate as it had prior to the removal of the operating schedule in the CFR.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.585(a) to read as follows:

§ 117.585 Acushnet River.

(a) The New Bedford-Fairhaven RT–6 Bridge, mile 0.0 will be opened promptly, provided proper signal is given, on the following schedule:

(1) On the hour between 6 a.m. and 10 a.m. inclusive.

(2) At a quarter past the hour between 11:15 a.m. and 6:15 p.m. inclusive.

(3) At all other times on call.

* * * * *

Dated: February 8, 2016.

L.L. Fagan,

Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2016–03789 Filed 2–22–16; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[GN Docket No. 12–268; FCC 16–12]

Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Commission dismisses, and on separate grounds, denies petitions for reconsideration seeking reconsideration of the Commission's decisions in the *Incentive Auction R&O* and the *Incentive Auction Second Order on Reconsideration* not to protect certain broadcast television stations (WOSC–CD, Pittsburgh, PA; WPTG–CD, Pittsburgh, PA; WIAV–CD, Washington, DC; and KKYK–CD, Little Rock, AK) in the repacking process or make them eligible for the reverse auction. The Commission also concludes that WDYB–CD, Daytona Beach, Florida is not entitled to discretionary repacking protection or eligible to participate in the reverse auction.

DATES: Effective February 23, 2016.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Lynne Montgomery, (202) 418–2229, or by email at *Lynne.Montgomery@fcc.gov,* Media Bureau; Joyce Bernstein, (202) 418–1647, or by email at *Joyce.Bernstein@fcc.gov,* Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration* in GN Docket No. 12–268, FCC 16–12, adopted on February 8, 2016 and released on February 12, 2016. The full text may also be downloaded at: *www.fcc.gov*. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Synopsis of Order on Reconsideration

I. Introduction

1. Petitioners The Videohouse, Inc. (Videohouse), Abacus Television (Abacus), WMTM, LLC (WMTM), and KMYA, LLC (KMYA) seek reconsideration of the Commission's decision, on procedural and substantive grounds, not to protect their broadcast television stations in the repacking process or make them eligible for the reverse auction. At the time the Petition was filed, Videohouse, Abacus, WMTM, and KMYA were the licensees of the following stations, respectively: WOSC–CD, Pittsburgh, Pennsylvania; WPTG–CD, Pittsburgh; WIAV–CD, Washington, DC; and KKYK–CD, Little Rock, Arkansas. WPTG–CD and KKYK–CD have since been acquired by Fifth Street Enterprise, LLC and Kaleidoscope Foundation, Inc., respectively. We dismiss and, on alternative and independent grounds, deny the Petition. For the reasons below, we also conclude that WDYB–CD, Daytona Beach, Florida, licensed to Latina Broadcasters of Daytona Beach, LLC (Latina), is not entitled to discretionary repacking protection or eligible to participate in the reverse auction.

II. Background

2. In the *Incentive Auction R&O,* the Commission concluded that the Spectrum Act mandates that the Commission make all reasonable efforts to preserve, in the repacking process associated with the broadcast television spectrum incentive auction, the coverage area and population served of only full power and Class A broadcast television facilities (1) licensed as of February 22, 2012, the date of enactment of the Spectrum Act, or (2) for which an application for a license to cover was on file as of February 22, 2012. The Commission did not interpret the Spectrum Act, however, as precluding it from exercising discretion to protect additional facilities beyond the statutory floor. The Commission granted discretionary protection to a handful of categories of facilities, based on a careful balancing of different factors in order to achieve the goals of the Spectrum Act and other statutory and Commission goals.

3. One category to which the Commission declined to extend discretionary protection was ''out-of-core'' Class A-eligible LPTV stations'': Low power television (LPTV) stations that operated on ''out-of-core'' channels (channels 52–69) when the Community Broadcasters Protection Act (CBPA) was enacted in 1999 and obtained an authorization for an ''in-core'' channel

(channels 2–51), but did not file for a Class A license to cover by February 22, 2012. The CBPA accorded ''primary'' or protected Class A status to certain qualifying LPTV stations. Although the statute prohibited granting Class A status to LPTV stations on out-of-core channels, it provided such stations with an opportunity to achieve Class A status on an in-core channel. The Commission explained that protecting these stations, which numbered approximately 100, would encumber additional broadcast television spectrum, thereby increasing the number of constraints on the repacking process and limiting the Commission's flexibility to repurpose spectrum for flexible use. The Commission recognized that these stations had made investments in their facilities, but concluded that this equitable interest did not outweigh the ''significant detrimental impact on repacking flexibility that would result from protecting them,'' especially in light of their failure to take the necessary steps to obtain a Class A license and eliminate their secondary status during the ten-plus years between passage of the CBPA and the Spectrum Act. The Commission did decide to protect one station in this category, KHTV–CD, based on licensee Venture Technologies Group, LLC's (Venture) showing in response to the *Incentive Auction NPRM* that discretionary protection of KHTV–CD was warranted, based upon the fact that it made repeated efforts over the course of a decade to find an in-core channel, had a Class A construction permit application on file certifying that it was meeting the regulatory requirements applicable to Class A stations prior to enactment of the Spectrum Act, and filed an application for a license to cover a Class A facility on February 24, 2012, just two days after the Spectrum Act was enacted.

4. Abacus and Videohouse, licensees of two stations in the out-of-core Class A-eligible LPTV station category, filed petitions for reconsideration of the *Incentive Auction R&O* asking the Commission to protect their stations in the repacking process and make them eligible for the reverse auction. The Commission rejected their claims that they are entitled to repacking protection under the CBPA. The Commission dismissed on procedural grounds their claims that they should be protected because they are similarly situated to KHTV–CD, but also considered and rejected the claims on the merits. In addition, the Commission rejected arguments disputing its estimate that the category of out-of-core Class A-eligible stations included approximately 100 stations. Asiavision, Inc, the previous licensee of WIAV–CD, submitted a responsive filing raising arguments similar to those raised by Abacus and Videohouse and the Commission dismissed this filing as a late-filed petition for reconsideration but nonetheless treated it as an informal comment.

5. In the *Reconsideration Order,* the Commission also clarified that a Class A station that had an application for a license to cover a Class A facility on file or granted as of February 22, 2012 is entitled to mandatory protection, but that a Class A station that had an application for a Class A construction permit on file or granted as of that date would not be entitled to such protection. An application for a license to cover a Class A facility signifies that the Class A-eligible LPTV station has constructed its authorized Class A facility, and authorizes operation of the facility. A Class A construction permit application seeks to convert an LPTV construction permit to a Class A permit. Grant of a construction permit standing alone does not authorize operation of the authorized facility. Based on a careful balancing of relevant factors, it also decided to extend discretionary protection to stations in the latter category—stations that did not construct in-core Class A facilities until after February 22, 2012 but requested Class A construction permits prior to that date. The Commission reasoned that these stations are similarly situated to KHTV–CD because as of February 22, 2012, the date established by Congress for determining which stations are entitled to repacking protection, these stations had certified in an application filed with the Commission that they were acting like Class A stations. By filing an application for a Class A construction permit prior to February 22, 2012, each of these stations documented efforts prior to passage of the Spectrum Act to remove their secondary status and avail themselves of Class A status. Under the Commission's rules, these stations were required to make the same certifications as if they had applied for a license to cover a Class A facility. Among other things, each was required to certify that it 'does, and will continue to, broadcast' a minimum of 18 hours per day and an average of at least three hours per week of local programming and that it complied with requirements applicable to full-power stations that apply to Class A stations. The Commission concluded that there were significant equities in favor of protecting the approximately 12 stations in this category that outweighed the limited adverse impact that such protection would have on its flexibility to repurpose spectrum for flexible use through the incentive auction. The Commission also recognized that, having first filed a Class A construction permit application prior to February 22, 2012, the licensees of these stations may not have realized that the stations were not entitled to mandatory protection under the Spectrum Act. Conversely, the Commission explained, Abacus and Videohouse did not certify continuing compliance with Class A requirements until after the enactment of the Spectrum Act.

6. Abacus, Videohouse, and the licensees of two other stations in the out-of-core Class A-eligible LPTV category that did not seek to obtain Class A status until after February 22, 2012, seek reconsideration of the *Reconsideration Order*. Petitioners also attached to the Petition a copy of each of their Petitions for Eligible Entity Status (''Eligibility Petition'') filed July 9, 2015 in GN Docket No. 12–268 in response to the Media Bureau's June 9, 2015 Public Notice. They argue that the Commission erred procedurally by dismissing the 2014 Petitions, and exceeded its authority by extending protection to a different group of Class A stations that had not asked for reconsideration. On the merits, they contend that their stations are no different from the out-of-core Class A-eligible LPTV stations that the Commission decided to protect, and that extending protection to their stations would not adversely impact the Commission's repacking flexibility. They claim the equities weigh in favor of protecting stations that obtained a Class A license by the Pre-Auction Licensing Deadline (May 29, 2015) and met other auction-related filing requirements. For the reasons below, we affirm our action in the *Reconsideration Order*.

III. Discussion

7. Petitioners' claims are both procedurally and substantively defective and we therefore dismiss their claims and, in the alternative, deny them on the merits.

A. Petitioners' Claims Are Procedurally Improper

8. First, as we explained in the *Reconsideration Order,* the Commission squarely raised the question of which broadcast television facilities to protect in the repacking process in the *Incentive Auction NPRM,* but none of the Petitioners presented facts or arguments as to why its station should be protected until after the Commission adopted the

Incentive Auction R&O, although all of the facts and arguments they now present existed beforehand. While Videohouse notes that its owner on behalf of a related entity (Bruno Goodworth Network, Inc.) filed reply comments in response to the *Incentive Auction NPRM,* those comments did not pertain to out-of-core Class A-eligible LPTV stations generally or to its station in particular. Videohouse also claims that it discussed out-of-core Class A-eligible LPTV stations with Commission staff at an industry forum in April 2013, but Videohouse never made these statements part of the record of this proceeding until July 2015, over a year after adoption of the *Incentive Auction R&O.* Abacus refers to an email it sent Commission staff in March 2014, but Abacus never filed this email in the record, and the first reference to it in the record was not until July 2015. In contrast, Venture submitted comments in response to the *Incentive Auction NPRM* regarding the particular facts and circumstances that it maintained—and the Commission agreed—justified protection of KHTV–CD. Contrary to Petitioners' arguments, therefore, the Commission did not err in dismissing the 2014 Petitions, and the current Petition likewise is subject to dismissal. In addition, the facts and arguments put forth in the Petition are repetitious with regard to Abacus, Videohouse, and WMTM, each of whom sought reconsideration of the *Incentive Auction R&O:* The Commission considered and rejected those facts and arguments in the *Reconsideration Order.* Asiavision, the previous licensee of WIAV–CD, now licensed to WMTM, filed informal comments in response to the 2014 Petitions.

9. For reasons similar to those on which we relied in the *Reconsideration Order,* we also reject Petitioners' new argument that, notwithstanding their failure to advocate protection of their stations in a timely manner, their claims were procedurally proper because other parties generally advocated protection of Class A stations in response to the *Incentive Auction NPRM.* Contrary to Petitioners' argument, no commenter generally advocated discretionary protection of out-of-core Class A-eligible stations. With the exception of the Venture Reply Comments, which pertain specifically to KHTV–CD only, none of the comments in response to the *Incentive Auction NPRM* cited by Petitioners address out-of-core Class A-eligible LPTV stations at all. As we previously explained, Venture put forth particular facts in response to the *Incentive Auction NPRM* demonstrating why KHTV–CD should be afforded discretionary protection. The decision to protect KHTV–CD was based in part on this evidence. Petitioners now argue that, like KHTV–CD, each of their stations faced ''unique'' ''hardships and obstacles.'' But as we noted in the *Reconsideration Order,* Petitioners did not attempt to demonstrate in response to the *Incentive Auction NPRM* why they should be afforded discretionary protection. Venture's presentation regarding KHTV–CD's unique circumstances does not bear at all on Petitioners' stations and did not constitute an ''opportunity [for the Commission] to pass'' on the facts and arguments that Petitioners now rely on. We note that whether the Commission had an ''opportunity to pass'' on an issue is not the relevant statutory test. Rather, Section 405(a) provides that ''no evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence, or evidence which the Commission or designated authority within the Commission believes should have been taken in the original proceeding shall be taken on any reconsideration.'' Additionally, as discussed below, Petitioners fail to meet the test for discretionary protection adopted in the *Reconsideration Order.*

10. While the rules allow petitioners to raise facts or arguments on reconsideration that have not previously been presented under certain circumstances, Petitioners have not demonstrated such circumstances, and their reliance on section 1.429(b)(1) is therefore misplaced. Contrary to Petitioners' claims, the July 9, 2015 deadline for submission of the Pre-Auction Technical Certification Form is not a relevant event that has occurred since their last opportunity to present facts or arguments. That date would be relevant only if we agreed with their challenges. As we do not, the July 9, 2015 deadline is not a relevant circumstance for purposes of section 1.429(b)(1). We also reject Petitioners' argument that the public interest would be served by reconsideration. The Commission has a ''well-established policy of not considering matters that are first raised on reconsideration,'' premised on the statutory goals of ''procedural regularity, administrative efficiency, and fundamental fairness.'' Those goals would not be served by allowing Petitioners to sit back and hope for a decision in their favor, and only then, when the decision is adverse to them, to offer evidence of why they should be treated differently. We also reject Petitioners' claim that section 1.429(b)(2) is met here because they could not have known that the Commission would reject their Petition and extend protection to a different group of Class A stations. As explained below, our decision in the *Reconsideration Order* to extend protection to certain stations but not to Petitioners' was a logical outgrowth of the proposals in the *Incentive Auction NPRM* and consistent with our statutory authority. Accordingly, it does not furnish a basis for reconsideration under section 1.429(b)(2).

B. Petitioners' Claims Fail on Substantive Grounds

11. As an alternative and independent ground for our decision, we consider and deny Petitioners' claims that discretionary protection of their stations is warranted. Petitioners argue that the Commission failed to distinguish their efforts to demonstrate compliance with the regulatory requirements applicable to Class A stations from those of the out-of-core Class A-eligible LPTV stations that it decided to protect. On the contrary, we clearly explained in the *Reconsideration Order* that KHTV–CD and the other stations in the protected group filed applications for a Class A construction permit (FCC Form 302–CA) before February 22, 2012, and Petitioners did not. The Form 302–CA requires the applicant to certify that it ''does, and will continue to'' meet all of the full power and Class A regulatory requirements that are applicable to Class A stations, subject to significant penalties for willful false statements. Thus, as of February 22, 2012, the date established by Congress for determining which stations are entitled to repacking protection, these stations had on file with the Commission certifications that they were operating like Class A stations. Petitioners concede that they did not file a Form 302–CA application before February 22, 2012. Videohouse identifies no reasonable basis for its claim that it believed it could not file a Form 302–CA application in March 2009 because it was not certain the in-core channel it proposed in its LPTV construction permit application was feasible. With respect to Abacus and WMTM, we previously addressed their claims that Commission staff advised them not to file a Form 302–CA until after their in-core facilities were licensed as LPTV stations. In addition, to the extent these entities relied on informal staff advice, they did so at their own risk. KMYA offers no explanation for failing to file a Form 302–CA application before February 22, 2012. Their other pre-February 22, 2012 filings on which they rely do not

demonstrate that their stations were operating like Class A stations. Unlike the Form 302–CA, the documents Petitioners placed in their public inspection files before February 22, 2012 did not certify that their stations were in compliance with the full power requirements that apply to Class A stations. Petitioners claim to have met one requirement applicable to full power stations: The airing of children's programming. In the cases of Abacus and Videohouse, however, the required children's television reporting forms (FCC Form 398) were not filed until the second half of 2012, purporting to cover periods dating back to 2006. Moreover, Videohouse's FCC Forms 398 concede that WOSC–CD did not comply with certain children's television requirements because the station ''has not filed its application for a Class A license.'' In the case of Petitioner WMTM, the FCC Forms 398 in WIAV's online public file commence in the first quarter of 2013, and say nothing as to whether it was complying with children's programming requirements as of February 22, 2012. Also unlike the Form 302–CA, the certifications contained in these documents as to compliance with regulatory requirements that apply to Class A stations only were voluntary and unenforceable, making them less reliable indicators as to whether the stations were providing the service required of a Class A station as of February 22, 2012. In addition, Form 302–CA must be filed with the Commission, whereas there is no means to verify when Petitioners' certifications were placed in their public files. In their most recent filing, Petitioners for the first time claim that KKYK–CD obtained a Class A construction permit on February 16, 2012, prior to the statutory enactment date. This claim is unsupported by an examination of the Commission's records. Petitioners' apparent attempt to recast the history of KKYK–CD, like their efforts to demonstrate that they were acting like Class A stations prior to February 22, 2012 based on post-dated public file submissions, illustrate the reasonableness of the Commission's bright-line test based on the filing of FCC Form 302–CA.

12. Contrary to Petitioners' arguments, it was reasonable for us to limit discretionary repacking protection and auction eligibility to out-of-core Class A-eligible LPTV stations that filed a Form 302–CA application before February 22, 2012, because that is the date established by Congress for determining which stations are entitled to repacking protection. A station that filed a Form 302–CA application before February 22, 2012, demonstrated that it sought to avail itself of Class A status as of that date, and thus warranted protection and auction eligibility under the statutory scheme. Conversely, Petitioners neither requested Class A status, nor demonstrated that they were providing Class A service, until after passage of the Spectrum Act created the potential for Class A status to yield substantial financial rewards through auction participation—over ten years after the CBPA made them eligible for such status. On the date of enactment of the Spectrum Act, Petitioners operated LPTV stations. Congress did not include LPTV stations within the definition of broadcast television licensees entitled to repacking protection, and protecting them as a matter of discretion would significantly constrain the Commission's repacking flexibility. In addition, Petitioners' stations are particularly likely to impact repacking flexibility because they are located in congested markets such as Pittsburgh and Washington, DC where the constraints on the Commission's ability to repurpose spectrum through the auction will be greater than in less congested markets. Accordingly, we reject the comments of the LPTV Coalition and WatchTV alleging that the Petitioners' four stations would have little or no impact on repacking flexibility. While some of the protected Class A stations also are located in congested markets, the impact on repacking flexibility is just one of the factors we must consider.

13. While Petitioners are correct that there was no deadline for out-of-core Class A-eligible LPTV stations to file an application for a Class A construction permit (or an application for a license to cover a Class A facility), a Class A-eligible LPTV station with a Form 302–CA application pending or granted as of February 22, 2012 demonstrated objective steps, prior to enactment of the Spectrum Act, to avail itself of Class A status, subject to all of the regulatory requirements that status entails. Prior to February 22, 2012, these stations invested in broadcast television facilities based on the expectation that the facilities would receive protection as ''primary'' Class A stations. In contrast, Petitioners only sought Class A status after Congress designated such stations as eligible to participate in the auction—and after the date set by Congress to establish entitlement to repacking protection and auction eligibility.

14. We also reject Petitioners' argument that, regardless of whether they demonstrated that their stations were acting like Class A stations as of February 22, 2012, discretionary protection is warranted based on their overall efforts to achieve Class A status. Soon after enactment of the CBPA in 1999, the Commission warned that ''it would be in the best interest of qualified LPTV stations operating outside the core to try to locate an in-core channel now, as the core spectrum is becoming increasingly crowded and it is likely to become increasingly difficult to locate an in-core channel in the future.'' Unlike KHTV–CD, which demonstrated that it commenced efforts to achieve Class A status soon after enactment of the CBPA, Petitioners are silent as to any such efforts before 2009, almost a decade after enactment of the CBPA. Videohouse claims that it had to wait until the DTV transition ended in 2009 to seek a new channel because it operated in a ''highly congested market'' (Pittsburgh), yet Venture demonstrated efforts to find a new channel for KHTV–CD in the even more congested Los Angeles market despite the DTV transition. Furthermore, as discussed above, the evidence presented by Petitioners regarding their efforts to obtain Class A status between 2009 and February 22, 2012 does not demonstrate that they acted like Class A stations during that time period. Granting discretionary protection based on Petitioners' initiation of Class A service after February 22, 2012 would not serve Congress's goal of preserving full power and Class A service as of the Spectrum Act's enactment date. We also reject KMYA's claim that it is entitled to protection under the terms of the *Incentive Auction R&O* and CBPA. KMYA is not entitled to protection under section 336(f)(6)(A) of the CBPA because it did not file an application for a Class A authorization (either a Class A license or a Class A construction permit) with its application for a construction permit to move to an in-core channel. Rather, KMYA did not file an application for a Class A authorization until July 2012, after enactment of the Spectrum Act.

15. We reject Petitioners' claim that the equities weigh in favor of granting discretionary protection to stations that obtained a Class A license by the Pre-Auction Licensing Deadline (May 29, 2015) and met other auction-related filing requirements. Petitioners have conveniently found a line that would protect their stations, but the Commission never linked the May 29, 2015 Pre-Auction Licensing Deadline to repacking protection for out-of-core Class A-eligible LPTV stations. On the contrary, the Commission plainly stated

that it would *not* protect such stations based on their obtaining Class A licenses by that deadline. By contrast, the line the Commission chose is tied directly to the date established by Congress for repacking protection. As discussed above, Petitioners have not shown that their stations provided the service required of Class A stations before that date, or that they took steps to avail themselves of Class A status until it was clear that doing so could yield substantial financial rewards through auction participation. Accordingly, we reject the contention that the equities weigh in favor of granting the relief Petitioners seek.

16. Petitioners attempt to buttress their argument for discretionary protection by questioning the validity of the Commission's statement that approximately 100 stations would be eligible for protection if it protected out-of-core Class A-eligible LPTV stations that obtained Class A licenses after February 22, 2012, as Petitioners advocate. But that statement does not bear on the decisional issue presented by the Petition: The reasonableness of the Commission's determination not to protect Petitioners' four stations. As set forth above, the equities do not weigh in favor of granting such protection, regardless of how many stations fell into the relevant category at the time the *Incentive Auction R&O* was adopted.

17. In any event, Petitioners' complaints regarding the Commission's estimate—that it never provided a list of the stations, and that its explanation of how interested parties could identify the stations is unworkable—lack merit. Interested parties were free to compile their own station lists from publicly available data. We explained in the *Reconsideration Order* that the stations can be identified by comparing the publicly available list of LPTV stations whose certifications of Class A eligibility were accepted by the Commission in 2000 to the public records in the Commission's Consolidated Database System (CDBS) to determine which LPTV stations were on out-of-core channels and obtained authorizations for in-core channels, and then determining when the station filed an application for a license to cover a Class A facility. Those stations (both Class A and Class A-eligible LPTV stations) that did not file such an application by February 22, 2012 (with the exception of KHTV–CD) fall into the category identified by the Commission. Petitioners mistakenly argue that the 2000 list cannot be compared to the CDBS records because many stations have converted from analog to digital using a digital companion channel since 2000 and were assigned a new digital facility ID number and call sign in CDBS that cannot be matched with the 2000 list. The new digital facility ID numbers are linked to the former analog facility ID numbers in CDBS, meaning that any change in facility ID numbers does not impede matching stations to the 2000 list. In addition, despite Petitioners' claims, Commission staff has never deleted an underlying analog facility ID number associated with a station. Similarly, while a call sign may be ''deleted'' through the entry of a ''D'' before a cancelled or revoked station's call sign, the call sign nonetheless remains in the station's record in CDBS. Moreover, after filing the Petition, Petitioners developed their own list of stations based on analysis of the 2000 list and CDBS. Petitioners' November 2015 List confirms that any interested party could have conducted the same exercise as the Commission using publicly-available data. Although Petitioners' analysis does not match the Commission's estimate of approximately 100 stations because Petitioners sought to demonstrate something different, even their analysis does reflect that there are at least 55 stations in the category the Commission defined.

18. We also reject Petitioners' claim that our ''refus[al] to consider'' their claims on procedural grounds, while at the same time extending discretionary protection to other stations that never filed for reconsideration, arbitrarily discriminated against them. As an initial matter, we did not ''refuse to consider'' Petitioners' claims. While we dismissed certain claims on procedural grounds, we went on to consider all of their claims (including those we dismissed) on the merits. In any event, the Commission acted within its authority in dismissing or denying Abacus's and Videohouse's 2014 Petitions in the *Reconsideration Order,* but extending protection to other stations that did not ask for reconsideration. First, the Commission did not reconsider the *Incentive Auction R&O* in clarifying that out-of-core Class A-eligible stations that had a Class A construction permit application pending or granted as of February 22, 2012 and now hold a Class A license are not entitled to mandatory repacking protection. The Commission may act on its own motion to issue a declaratory ruling removing uncertainty at any time. The Commission's authority to issue declaratory rulings to remove uncertainty is well-established. The lack of a citation to Section 1.2 of the rules in the *Reconsideration Order* did not undermine the Commission's authority to issue a declaratory ruling. Petitioners are mistaken that there was no ambiguity in the *Incentive Auction R&O* that required clarification. The *Incentive Auction R&O* explained that stations would be entitled to mandatory protection if they held a Class A license or had a ''Class A license application'' on file as of February 22, 2012. The *Incentive Auction R&O* was ambiguous, however, as to whether a ''Class A license application'' meant only an application for a license to cover a Class A facility or whether it also meant a Class A construction permit application. Examination of the record also reflected uncertainty as to the scope of mandatory protection under the terms of the *Incentive Auction R&O.* The *Reconsideration Order* clarified this ambiguity.

19. Second, in extending discretionary protection to these stations, the Commission acted well within its authority to act on reconsideration. The Commission is ''free to modify its rule on a petition for reconsideration as long as the modification was a 'logical outgrowth' of the earlier version of the rule, . . . and provided the agency gave a reasoned explanation for its decision that is supported by the record.'' Here, the issue of which Class A stations to protect in the repacking process, either as required by the Spectrum Act or as a matter of discretion, was squarely within the scope of the *Incentive Auction NPRM.* There is no support for Petitioners' contention that the Commission on reconsideration is limited to either granting or denying the specific relief requested in a petition for reconsideration. The D.C. Circuit rejected this claim in *Globalstar.* Petitioners attempt to distinguish *Globalstar* by arguing that the petitioner in that case requested broadly that the Commission ''reverse'' its decision, whereas Abacus and Videohouse asked the Commission to extend discretionary protection only to their stations in the 2014 Petitions. This is a distinction without a difference. The 2014 Petitions asked the Commission to reconsider the scope of discretionary protection for out-of-core Class A-eligible LPTV stations that now hold Class A licenses. Both Abacus and Videohouse stated in sweeping terms that the Commission ''should exercise its discretion to ensure that similarly situated entities are not subject to arbitrarily disparate treatment.'' In response, the Commission appropriately reconsidered the scope of discretionary protection for stations in that category and extended protection to a number that it concluded

are similarly situated to KHTV–CD, the station in the same category that it already had accorded such protection. Because the Commission addressed the specific issue that was presented by the 2014 Petitions, the suggestion that the Commission exercised ''unbounded discretion'' on reconsideration lacks merit.

20. Finally, Petitioners complain that the Commission ''[w]ithout any explanation'' included WDYB–CD on the June 30, 2015 list of eligible stations although, like Petitioners, WDYB–CD's current licensee, Latina, did not file an application for a license to cover a Class A facility until after February 22, 2012 or advocate for protection of its station until after adoption of the *Incentive Auction R&O*. WDYB–CD was included on the June 30, 2015 list in light of our decision to protect stations that ''hold a Class A license today and that had an application for a Class A construction permit pending or granted as of February 22, 2012.'' Further examination of the record reveals, however, that WDYB–CD did not have an application for a Class A authorization pending or granted as of February 22, 2012. WDYB–CD's prior licensee obtained a Class A construction permit prior to that date, but the permit expired in December 2011. Instead of constructing the Class A station, Latina filed an application for an LPTV construction permit for WDYB–CD in February 2011, which superseded the Class A construction permit. The LPTV application did not require a certification that WDYB–CD was and would continue to meet all of the full power and Class A regulatory requirements that are applicable to Class A stations. WDYB–CD was constructed and operated as an LPTV station until November 2012. Thus, Latina was not pursuing Class A status before the Commission as of February 22, 2012.

21. We disagree with Latina that WDYB–CD properly was included in the eligible stations list simply because it had a Class A authorization prior to February 22, 2012, regardless of its status as of that date. Latina's argument that our authority on reconsideration is limited to granting or denying the relief requested by Petitioners fails for the same reasons as Petitioners' arguments regarding our authority to act on reconsideration. We also find unpersuasive Latina's recent estoppel and notice arguments. Latina maintains that it relied on the standard the Commission announced in the *Second Order on Reconsideration,* its inclusion in eligibility notices beginning in June 2015, and the Commission's statements regarding WDYB–CD in litigation. Latina's reliance on the *Second Order on Reconsideration* was misplaced: As Petitioners point out, the Commission specifically rejected Latina's argument that it was entitled to protection because it was similarly situated to Petitioners, and Latina never argued that it was entitled to protection on any other basis until filing its *1/22 Ex Parte Letter*. The eligibility notices that Latina cites emphasized that they were neither final nor intended to decide eligibility issues. For example, the June 9, 2015 public notice stated that it was ''not intended to pre-judge [the] outcome'' of pending reconsideration petitions regarding the scope of protection, a June 30, 2015 public notice emphasized that ''the list of stations included in the baseline data released today is not the final list of stations eligible for repacking protection,'' and the most recent public notice listing eligible stations noted the possibility of revisions to the baseline data. Finally, before the D.C. Circuit, the Commission merely pointed out that, unlike Petitioners' stations, Class A construction permits had been obtained for WDYB–CD prior to February 22, 2012, without stating that this factual distinction entitled WDYB–CD to protection under the standard in the *Second Order on Reconsideration*. We therefore conclude that WDYB–CD is not entitled to discretionary repacking protection or eligible to participate in the reverse auction.

22. In the Incentive Auction Report and Order, and again in the Second Reconsideration Order, the Commission determined that if a Class A station obtains a license after February 22, 2012, but is displaced by the auction repacking process, it will be eligible to file for a new channel in one of the first two filing opportunities for alternate channels. WDYB–CD would be eligible to file such a displacement application. Previously, we delegated authority to the Media Bureau to determine whether such stations should be allowed to file during the first or the second filing opportunity. We now direct the Media Bureau to allow such stations to file during the first filing opportunity. In the event of mutual exclusivity with an application from a full power or Class A station entitled to repacking protection the application of the full power or Class A station will prevail.

23. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

24. The Commission will not send a copy of this Order pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because no rules are being adopted by the Commission.

IV. Ordering Clauses

25. *It is ordered* that, pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and section 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration filed by The Videohouse, Inc., Abacus Television, WMTM, LLC, and KMYA, LLC *is dismissed and/or denied* to the extent described herein.

26. *It is further ordered* that WDYB–CD, Daytona Beach, Florida, which is licensed to Latina Broadcasters of Daytona Beach, LLC, is not entitled to discretionary repacking protection or eligible to participate in the reverse auction.

27. *It is further ordered* that this Order on Reconsideration *shall be effective* upon release.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2016–03801 Filed 2–22–16; 8:45 am]

BILLING CODE 6712–01–P

SURFACE TRANSPORTATION BOARD

49 CFR Parts 1001, 1002, 1005, 1007, 1011, 1012, 1013, 1014, 1016, 1017, 1018, 1019, 1021, 1034, 1035, 1039, 1090, 1101, 1102, 1103, 1104, 1105, 1110, 1111, 1113, 1114, 1115, 1118, 1139, 1144, 1146, 1150, 1151, 1152, 1180, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, and 1253

[Docket No. EP 712]

Improving Regulation and Regulatory Review

AGENCY: Surface Transportation Board.

ACTION: Final rules.

SUMMARY: The Surface Transportation Board (Board) is revising, correcting, and updating its regulations. These modifications include replacing obsolete statutory references, updating office and address references, and correcting spelling, grammatical, terminology, explanatory, and typographical errors. The Board is also making changes to certain authority citations and to certain regulations related to reporting requirements.

DATES: Effective March 25, 2016.

FOR FURTHER INFORMATION CONTACT: Allison Davis: (202) 245–0378. Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.

SUPPLEMENTARY INFORMATION: In accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' and Executive Order 13579, ''Regulation and Independent Regulatory Agencies,'' the Board began this proceeding on October 12, 2011, to review its existing regulations and sought public comments on whether any of its regulations may be outmoded, ineffective, insufficient, or excessively burdensome, and how to modify, streamline, expand, or repeal them, as appropriate. *See* Exec. Order No. 13563, 76 FR 3821 (Jan. 21, 2011); Exec. Order No. 13579, 76 FR 41587 (Jul. 14, 2011). In this decision, we are revising, correcting, and updating our regulations in 49 CFR Chapter X, pursuant to the comments received and the Board's own internal review of its regulations.

The changes made by this decision generally fall into the following categories: Eliminating or changing obsolete agency/office titles (*e.g.,* 49 CFR 1007.6(a)(8)); making spelling, grammatical, terminology, explanatory, and typographical changes (*e.g.,* 49 CFR 1016.105(a)); correcting references to United States Code or Code of Federal Regulations sections that have been moved or are otherwise incorrect (*e.g.,* 49 CFR 1013.2(d), 49 CFR 1018.6(a));[1] and amending rules of agency organization, procedure, or practice (*e.g.,* 49 CFR 1011.7(a), 49 CFR 1111.1(a)). Additionally, this decision makes certain nonsubstantive updates related to the Board's reporting requirements, including adding the option of electronic submissions and eliminating language requiring the filing of duplicate copies (*e.g.,* 49 CFR 1243.1), and updating form titles (*e.g.,* 49 CFR 1245.2).[2]

Because these changes either remove obsolete regulations, make revisions that are not substantive, or update rules to reflect current agency practice, we find good cause to dispense with notice and comment under the Administrative Procedure Act (APA). 5 U.S.C. 553(b)(3)(A) and (B). These changes are not intended to be a comprehensive response to the comments received in this docket; the Board will continue to evaluate those comments and review its regulations, and may promulgate additional revisions at a later date.

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601–612, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because the Board has determined that notice and comment are not required under the APA for this rulemaking, the requirements of the RFA do not apply.

These final rules do not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3549.

It is ordered:

1. The rule modifications set forth below are adopted as final rules.

2. This decision is effective March 25, 2016.

List of Subjects

49 CFR Part 1001

Administrative practice and procedure, Confidential business information, Freedom of information.

49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information.

49 CFR Part 1005

Claims, Freight, Investigations, Maritime carriers, Motor carriers, Railroads.

49 CFR Part 1007

Privacy.

49 CFR Part 1011

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

49 CFR Part 1012

Sunshine Act.

49 CFR Part 1013

Common carriers, Reporting and recordkeeping requirements, Securities, Trusts and trustees.

49 CFR Part 1014

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

49 CFR Part 1016

Claims, Equal access to justice, Lawyers.

49 CFR Part 1017

Claims, Government employees, Wages.

49 CFR Part 1018

Claims, Income taxes.

49 CFR Part 1019

Conflict of interests.

49 CFR Part 1021

Claims.

49 CFR Part 1034

Railroads.

49 CFR Part 1035

Maritime carriers, Railroads.

49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Railroads.

49 CFR Part 1090

Freight, Intermodal transportation, Maritime carriers, Motor carriers, Railroads.

49 CFR Part 1101

Administrative practice and procedure.

49 CFR Part 1102

Administrative practice and procedure.

49 CFR Part 1103

Administrative practice and procedure, Lawyers.

49 CFR Part 1104

Administrative practice and procedure.

49 CFR Part 1105

Environmental impact statements, Reporting and recordkeeping requirements.

49 CFR Part 1110

Administrative practice and procedure.

49 CFR Part 1111

Administrative practice and procedure, Investigations.

49 CFR Part 1113

Administrative practice and procedure.

49 CFR Part 1114

Administrative practice and procedure.

[1] We recognize that the recently enacted Surface Transportation Board Reauthorization Act of 2015, Pub. L. 114–110, recodifies provisions of title 49, United States Code. To the extent those provisions are referenced in our regulations, the Board will address those and other changes to the Code of Federal Regulations stemming from that Act at a later date.

[2] These changes were proposed in *Accelerating Reporting Requirements for Class I Railroads,* EP 701 (STB served July 8, 2015).

49 CFR Part 1115

Administrative practice and procedure.

49 CFR Part 1118

Administrative practice and procedure.

49 CFR Part 1139

Administrative practice and procedure, Buses, Freight, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 1144

Railroads.

49 CFR Part 1146

Railroads.

49 CFR Part 1150

Administrative practice and procedure, Railroads.

49 CFR Part 1151

Administrative practice and procedure, Railroads.

49 CFR Part 1152

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements, Uniform System of Accounts.

49 CFR Part 1180

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1241

Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1242

Railroads, Taxes.

49 CFR Part 1243

Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1244

Freight, Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1245

Railroad employees, Reporting and recordkeeping requirements, Wages.

49 CFR Part 1246

Railroad employees, Reporting and recordkeeping requirements.

49 CFR Part 1247

Freight, Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1248

Freight, Railroads, Reporting and recordkeeping requirements, Statistics.

49 CFR Part 1253

Freight forwarders, Maritime carriers, Motor carriers, Pipelines, Railroads, Reporting and recordkeeping requirements.

Decided: February 11, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman. Commissioner Begeman commented with a separate expression.

Kenyatta Clay,

Clearance Clerk.

For the reasons set forth in the preamble, under the authority of 49 U.S.C. 1321, title 49, chapter X, parts 1001, 1002, 1005, 1007, 1011, 1012, 1013, 1014, 1016, 1017, 1018, 1019, 1021, 1034, 1035, 1039, 1090, 1101, 1102, 1103, 1104, 1105, 1110, 1111, 1113, 1114, 1115, 1118, 1139, 1144, 1146, 1150, 1151, 1152, 1180, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, and 1253 of the Code of Federal Regulations are amended as follows:

PART 1001—INSPECTION OF RECORDS

■ 1. The authority citation for part 1001 continues to read as follows:

Authority: 5 U.S.C. 552, 49 U.S.C. 702, and 49 U.S.C. 721.

§ 1001.3 [Amended]

■ 2. In § 1001.3, remove the words ''within 10 days of receipt of a request'' and add in their place the words ''within 20 days of receipt of a request''.

PART 1002—FEES

■ 3. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701; and 49 U.S.C. 721. Section 1002.1(g)(11) is also issued under 5 U.S.C. 5514 and 31 U.S.C. 3717.

§ 1002.2 [Amended]

■ 4. In § 1002.2(f)(78), add ''($26 flat fee for electronic filing.)'' following ''($26 min. charge.)''

PART 1005—PRINCIPLES AND PRACTICES FOR THE INVESTIGATION AND VOLUNTARY DISPOSITION OF LOSS AND DAMAGE CLAIMS AND PROCESSING SALVAGE

■ 5. The authority citation for Part 1005 continues to read as follows:

Authority: 49 U.S.C. 721, 11706, 14706, 15906.

■ 6. Revise § 1005.5 to read as follows:

§ 1005.5 Disposition of claims.

Each carrier subject to the Interstate Commerce Act which receives a written or electronically transmitted claim for loss or damage to baggage or for loss, damage, injury, or delay to property transported shall pay, decline, or make a firm compromise settlement offer in writing or electronically to the claimant within 120 days after receipt of the claim by the carrier; *provided, however,* that, if the claim cannot be processed and disposed of within 120 days after the receipt thereof, the carrier shall at that time and at the expiration of each succeeding 60-day period while the claim remains pending, advise the claimant in writing or electronically of the status of the claim and the reason for the delay in making the final disposition thereof, and it shall retain a copy of such advice to the claimant in its claim file thereon.

PART 1007—RECORDS CONTAINING INFORMATION ABOUT INDIVIDUALS

■ 7. The authority citation for Part 1007 continues to read as follows:

Authority: 5 U.S.C. 552, 49 U.S.C. 721.

§ 1007.6 [Amended]

■ 8. In § 1007.6:

■ a. In paragraph (a)(8), remove the title ''National Archives of the United States'' and add in its place ''National Archives and Records Administration'' and remove the title ''Administrator of General Services'' and add in its place ''Archivist of the United States''.

■ b. In paragraph (a)(11), remove the title ''General Accounting Office'' and add in its place ''Government Accountability Office''.

PART 1011—BOARD ORGANIZATION; DELEGATIONS OF AUTHORITY

■ 9. The authority citation for Part 1011 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 49 U.S.C. 701, 721, 11123, 11124, 11144, 14122, and 15722.

■ 10. Revise the first sentence of § 1011.2(a)(7) to read as follows:

§ 1011.2 The Board.

(a) * * *

(7) All appeals of initial decisions issued by the Director of the Office of Proceedings under the authority delegated by § 1011.7(a), and all appeals of initial decisions issued by the Office of Public Assistance, Governmental Affairs, and Compliance under the authority delegated by § 1011.7(b). * * *

* * * * *

§ 1011.4 [Amended]

■ 11. In § 1011.4(a)(7), remove ''section 308 of the Regional Rail Reorganization

Act of 1973'' and add in its place ''section 308 of the Regional Rail Reorganization Act of 1973, 45 U.S.C. 748,''.

§ 1011.6 [Amended]

■ 12. In § 1011.6(h), remove ''section 308 of the Regional Rail Reorganization Act of 1973'' and add in its place ''section 308 of the Regional Rail Reorganization Act of 1973, 45 U.S.C. 748,''.

■ 13. In § 1011.7:
■ a. Revise paragraph (a)(1).
■ b. In paragraph (a)(2)(xvii), remove the word ''meditation'' and add in its place the word ''mediation''.
■ c. Add paragraph (b)(6).

The revision and addition read as follows:

§ 1011.7 Delegations of authority by the Board to specific offices of the Board.

(a) *Office of Proceedings.* (1) The Director of the Office of Proceedings is delegated the authority to determine (in consultation with involved Offices) whether to waive filing fees set forth at 49 CFR 1002.2(f).

* * * * *

(b) * * *

(6) Issue, on written request, informal opinions and interpretations which are not binding on the Board. In issuing informal opinions or interpretations, the Director of the Office of Public Assistance, Governmental Affairs, and Compliance shall consult with the Directors of the appropriate Board offices. Such requests must be directed to the Director of the Office of Public Assistance, Governmental Affairs, and Compliance, Surface Transportation Board, Washington, DC.

PART 1012—MEETINGS OF THE BOARD

■ 14. The authority citation for Part 1012 continues to read as follows:

Authority: 5 U.S.C. 552b(g), 49 U.S.C. 701, 721.

§ 1012.3 [Amended]

■ 15. In § 1012.3:
■ a. In paragraph (c), remove the words ''in paragraphs (d) and (e) of this section'' and add in their place the words ''in paragraph (d) of this section''.
■ b. Remove paragraph (d).
■ c. Redesignate paragraph (e) as paragraph (d).
■ d. Redesignate paragraph (f) as paragraph (e).

PART 1013—GUIDELINES FOR THE PROPER USE OF VOTING TRUSTS

■ 16. The authority citation for Part 1013 continues to read as follows:

Authority: 49 U.S.C. 721, 13301(f).

§ 1013.2 [Amended]

■ 17. In § 1013.2(d), remove the reference to ''49 U.S.C. 11343'' and add in its place ''49 U.S.C. 11323''.

■ 18. Revise § 1013.3(c) to read as follows:

§ 1013.3 Review and reporting requirements for regulated carriers.

* * * * *

(c) Any carrier required to file a Schedule 13D with the Securities and Exchange Commission (17 CFR 240.13d–1) which reports the purchase of 5 percent or more of the registered securities of another Board regulated carrier (or the listed shares of a company controlling 10 percent or more of the stock of a Board regulated carrier), must simultaneously file a copy of that schedule with the Board, along with any supplements to that schedule.

* * * * *

PART 1014—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE SURFACE TRANSPORTATION BOARD

■ 19. The authority citation for Part 1014 continues to read as follows:

Authority: 29 U.S.C. 794.

§ 1014.110 [Removed]

■ 20. Remove § 1014.110.

PART 1016—SPECIAL PROCEDURES GOVERNING THE RECOVERY OF EXPENSES BY PARTIES TO BOARD ADJUDICATORY PROCEEDINGS

■ 21. The authority citation for Part 1016 continues to read as follows:

Authority: 5 U.S.C. 504(c)(1), 49 U.S.C. 721.

§ 1016.103 [Amended]

■ 22. In § 1016.103(a), remove the reference to ''49 U.S.C. 10925'' and add in its place ''49 U.S.C. 13905'' and remove the reference to ''49 CFR 1100.11'' and add in its place ''49 CFR 1103.5''.

§ 1016.105 [Amended]

■ 23. In § 1016.105:
■ a. In paragraph (a), remove ''The term 'party'is defined'' and add in its place ''The term 'party' is defined''.
■ b. In paragraph (b)(3), remove the reference to ''Internal Revenue Code of 1954'' and add in its place ''Internal Revenue Code of 1986''.

■ 24. Revise the first sentence of § 1016.107(b) to read as follows:

§ 1016.107 Allowable fees and expenses.

* * * * *

(b) No award for the fee of an attorney or agent under these rules may exceed the amount specified by 5 U.S.C. 504(b)(1)(A), unless a higher fee is justified. * * *

* * * * *

§ 1016.202 [Amended]

■ 25. In § 1016.202(a), remove the reference to ''§ 1016.105(f)'' and add in its place ''§ 1016.105(e)''.

PART 1017—DEBT COLLECTION—COLLECTION BY OFFSET FROM INDEBTED GOVERNMENT AND FORMER GOVERNMENT EMPLOYEES

■ 26. Revise the authority citation for Part 1017 to read as follows:

Authority: 31 U.S.C. 3716, 5 U.S.C. 5514; Pub. L. 97–365; 31 CFR parts 900–904; 5 CFR part 550.

§ 1017.9 [Amended]

■ 27. In § 1017.9(b)(2), remove the reference to ''5 CFR 1108'' and add in its place ''5 CFR 550.1109'' and remove the word ''provided'' and add in its place ''followed''.

PART 1018—DEBT COLLECTION

■ 28. Revise the authority citation for Part 1018 to read as follows:

Authority: 31 U.S.C. 3701, 31 U.S.C. 3711 *et seq.,* 49 U.S.C. 721, 31 CFR parts 900–904.

■ 29. Revise § 1018.3 to read as follows:

§ 1018.3 Communications.

Unless otherwise specified, all communications concerning the regulations in this part should be addressed to the Chief, Section of Financial Services, Surface Transportation Board, Washington, DC.

§ 1018.6 [Amended]

■ 30. In § 1018.6(a), remove the reference to ''4 CFR parts 101 through 105'' and add in its place ''31 CFR parts 900 through 904''.

§ 1018.8 [Amended]

■ 31. In § 1018.8, remove the words ''compromising or suspending or terminating collection'' and add in their place ''compromising, suspending, or terminating''.

§ 1018.20 [Amended]

■ 32. In § 1018.20:
■ a. In paragraph (a)(4), remove the reference to ''4 CFR 102.13'' and add in its place ''31 CFR 901.9''.
■ b. In paragraph (b)(3)(iii), remove the reference to ''4 CFR 102.5'' and add in its place ''31 CFR 901.4''.

§ 1018.25 [Amended]

■ 33. In § 1018.25:
■ a. In paragraph (a), remove ''a certified or cashier's check or a money order'' and add in its place ''a certified check, cashier's check, or money order''.
■ b. In paragraph (a), remove the words ''or insurance filing fee''.
■ c. In paragraph (b), remove the words ''or insurance'' wherever they appear.
■ d. In paragraph (d), remove the words ''or insurance'' wherever they appear.
■ e. In the heading of paragraph (d), remove the words ''privileges or certificates,'' and add in their place ''privileges, certificates,''.

§ 1018.28 [Amended]

■ 34. In § 1018.28:
■ a. In paragraph (a), remove the reference to ''4 CFR 102.2, 102.3, and 102.4'' and add in its place ''31 CFR 901.2 and 901.3''.
■ b. In paragraph (b), remove the reference to ''4 CFR 102.4'' and add in its place ''31 CFR 901.3(e)''.
■ c. In paragraph (d)(1)(vi), remove the reference to ''4 CFR 102.3(c)'' and add in its place ''31 CFR 901.3(e)''.

§ 1018.30 [Amended]

■ 35. In § 1018.30:
■ a. In paragraph (a), remove the reference to ''4 CFR 102.13'' and add in its place ''31 CFR 901.9''.
■ b. In paragraph (b), remove the reference to ''4 CFR 102.2 and 102.13'' and add in its place ''31 CFR 901.2 and 901.9''.

§ 1018.51 [Amended]

■ 36. In § 1018.51:
■ a. In paragraph (a)(3), remove the reference to ''4 CFR 103.4'' and add in its place ''31 CFR 902.2''.
■ b. In paragraph (b), remove the reference to ''4 CFR part 103'' and add in its place ''31 CFR part 902''.

§ 1018.72 [Amended]

■ 37. In § 1018.72(d), remove the reference to ''4 CFR 105.2'' and add in its place ''31 CFR 904.2''.

■ 38. Amend § 1018.91 as follows:
■ a. At the end of paragraphs (b)(3) and (b)(4), remove the periods and add semicolons in their place.
■ b. Revise paragraph (b)(7).
■ c. In paragraph (b)(8), remove the reference to ''26 CFR 301.6402–6T'' and add in its place ''26 CFR 301.6402–6''.

The revision reads as follows:

§ 1018.91 Applicability and scope.

* * * * *

(b) * * *

(7) Is at least $25.00; and

* * * * *

PART 1019—REGULATIONS GOVERNING CONDUCT OF SURFACE TRANSPORTATION BOARD EMPLOYEES

■ 39. The authority citation for Part 1019 continues to read as follows:

Authority: 49 U.S.C. 721.

§ 1019.2 [Amended]

■ 40. In § 1019.2(a), remove the title ''Executive Counsel'' and add in its place ''General Counsel''.

PART 1021—ADMINISTRATIVE COLLECTION OF ENFORCEMENT CLAIMS

■ 41. The authority citation for Part 1021 continues to read as follows:

Authority: 31 U.S.C. 3701, 3711, 3717, 3718.

■ 42. Revise § 1021.1 to read as follows:

§ 1021.1 Standards.

The regulations issued jointly by the Comptroller General of the United States and the Attorney General of the United States under section 3 of the Federal Claims Collection Act of 1966, as amended, (31 U.S.C. 3701 *et seq.*) and published in 31 CFR parts 900 through 904 are hereby adopted by the Surface Transportation Board for the administrative collection of enforcement claims.

PART 1034—ROUTING OF TRAFFIC

■ 43. The authority citation for Part 1034 continues to read as follows:

Authority: 49 U.S.C. 721, 11123.

§ 1034.1 [Amended]

■ 44. In § 1034.1:
■ a. In paragraph (a), remove the words ''submit a written or telegraphic notice'' and add in their place ''submit a written or electronic notice'' and remove the title ''Office of Compliance and Enforcement'' and add in its place ''Office of Public Assistance, Governmental Affairs, and Compliance''.
■ b. In paragraph (c), remove the title ''Office of Compliance and Enforcement'' and add in its place ''Office of Public Assistance, Governmental Affairs, and Compliance''.

PART 1035—BILLS OF LADING

■ 45. The authority citation for Part 1035 continues to read as follows:

Authority: 49 U.S.C. 721, 11706, 14706.

■ 46. In Appendix A to Part 1035 remove '', 19____'' and add in its place '', 20____''.

■ 47. In Appendix B to Part 1035, remove ''4. (a)'' and add in its place ''Sec. 4. (a)''.

PART 1039—EXEMPTIONS

■ 48. The authority citation for Part 1039 continues to read as follows:

Authority: 49 U.S.C. 10502, 13301.

§ 1039.12 [Removed]

■ 49. Remove § 1039.12.

§ 1039.14 [Amended]

■ 50. Amend § 1039.14 by removing ''.'' and adding in its place '';'' at the end of paragraphs (b)(1) through (4) and removing ''.''and adding in its place ''; and'' at the end of paragraph (b)(5).

§ 1039.21 [Removed]

■ 51. Remove § 1039.21.

§ 1039.22 [Amended]

■ 52. In § 1039.22(a)(2), remove the reference to ''49 U.S.C. 10713'' and add in its place ''49 U.S.C. 10709'', remove the reference to ''49 U.S.C. 10761(a)'' and add in its place ''49 U.S.C. 13702(a)'', and remove the reference to ''10762(a)(1)'' and add in its place ''13702(b)–(d)''.

PART 1090—PRACTICES OF CARRIERS INVOLVED IN THE INTERMODAL MOVEMENT OF CONTAINERIZED FREIGHT

■ 53. The authority citation for Part 1090 continues to read as follows:

Authority: 49 U.S.C. 721.

§ 1090.2 [Amended]

■ 54. In § 1090.2, remove the reference to ''49 U.S.C. 10505(e) and (g), 109229(1), and 10530'' and add in its place ''49 U.S.C. 10502(e) and (g) and 13902''.

PART 1101—DEFINITIONS AND CONSTRUCTION

■ 55. The authority citation for Part 1101 continues to read as follows:

Authority: 49 U.S.C. 721.

§ 1101.2 [Amended]

■ 56. In § 1101.2(e)(1), remove the reference to ''1130.3'' and add in its place ''1130.2''.

PART 1102—COMMUNICATIONS

■ 57. The authority citation for Part 1102 continues to read as follows:

Authority: 49 U.S.C. 721.

§ 1102.2 [Amended]

■ 58. In § 1102.2(c)(1) and (2), remove the words ''joint board member, employee board member''.

PART 1103—PRACTITIONERS

■ 59. The authority citation for Part 1103 continues to read as follows:

Authority: 21 U.S.C. 862; 49 U.S.C. 703(e), 721.

■ 60. In § 1103.3:
■ a. In paragraph (d), remove the reference to ''49 CFR 1002.2(f)(100)'' and add in its place ''49 CFR 1002.2(f)(99)(i)''.
■ b. Revise paragraph (h).
■ c. In paragraphs (l), (m), and (n), remove the reference to ''49 CFR 1002.2(f)(100)'' and add in its place ''49 CFR 1002.2(f)(99)(i)''.
■ d. Revise paragraph (o).

The revisions read as follows:

§ 1103.3 Persons not attorneys-at-law—qualifications and requirements for practice before the Board.

* * * * *

(h) *Location of examination.* Examinations will be conducted at the Board's office in Washington, DC.

* * * * *

(o) *Content and grading of examination.* A Board staff member is responsible, under the general supervision of the Vice Chairman, for the examination of non-attorney applicants, the preparation of examination questions, and the grading of examinations. The staff member is appointed by the Chairman, with the approval of the Board. The staff member must be an attorney and must have at least two years of experience with the Board.

* * * * *

§ 1103.16 [Amended]

■ 61. In § 1103.16(c), remove the words ''secrets or confidence'' and add in their place ''secrets or confidences''.

■ 62. In § 1103.20:
■ a. Revise paragraph (b).
■ b. In paragraph (g), remove ''in behalf of the client'' and add in its place ''on behalf of the client''.

The revision reads as follows:

§ 1103.20 Practitioner's fees and related practices.

* * * * *

(b) *Compensation, commission, and rebates.* A practitioner shall accept no compensation, commission, rebates, or other advantages from the parties in a proceeding other than his client without the knowledge and consent of his client after full disclosure.

* * * * *

PART 1104—FILING WITH THE BOARD–COPIES–VERIFICATION–SERVICE–PLEADINGS, GENERALLY

■ 63. The authority citation for Part 1104 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 18 U.S.C. 1621; 21 U.S.C. 862; and 49 U.S.C. 721.

■ 64. Amend § 1104.3(a) by adding the following sentence at the end of the paragraph:

§ 1104.3 Copies.

(a)* * * When confidential documents are filed, redacted versions must also be filed.

* * * * *

■ 65. Revise § 1104.5(c) to read as follows:

§ 1104.5 Affirmation or declarations under penalty of perjury in accordance with 18 U.S.C. 1621 in lieu of oath.

* * * * *

(c) Knowing and willful misstatements or omissions of material facts constitute federal criminal violations punishable under 18 U.S.C. 1001. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621.

§ 1104.6 [Amended]

■ 66. In the last sentence of § 1104.6, remove ''5 p.m.'' and add in its place ''11:59 p.m.''

■ 67. In § 1104.12:

■ a. Amend § 1104.12(a) by adding a sentence at the end of the paragraph.
■ b. In the parenthetical, remove the reference to ''49 U.S.C. 10321'' and add in its place ''49 U.S.C. 721''.

The addition reads as follows:

§ 1104.12 Service of pleadings and papers.

(a) * * * If a document is filed with the Board through the e-filing process, a copy of the e-filed document should be emailed to other parties, or a paper copy of the document should be personally served on the other parties, but if neither email nor personal service is feasible, service of a paper copy should be by first-class or express mail.

* * * * *

■ 68. Amend § 1104.14(a) by adding a sentence at the end of the paragraph to read as follows:

§ 1104.14 Protective orders to maintain confidentiality.

(a) * * * When confidential documents are filed, redacted versions must also be filed.

* * * * *

PART 1105—PROCEDURES FOR IMPLEMENTATION OF ENVIRONMENTAL LAWS

■ 69. Revise the authority citation for Part 1105 to read as follows:

Authority: 16 U.S.C. 1456 and 1536; 42 U.S.C. 4332 and 6362(b); 49 U.S.C. 701 note (1995) (Savings Provisions), 721(a), 10502, and 10903–10905; 54 U.S.C. 306108.

■ 70. Revise § 1105.2 to read as follows:

§ 1105.2 Responsibility for administration of these rules.

The Director of the Office of Environmental Analysis is delegated the authority to sign, on behalf of the Board, memoranda of agreement entered into pursuant to 36 CFR 800.5(e)(4) regarding historic preservation matters. The Director of the Office of Environmental Analysis is responsible for the preparation of documents under these rules and is delegated the authority to provide interpretations of the Board's National Environmental Policy Act (NEPA) process, to render initial decisions on requests for waiver or modification of any of these rules for individual proceedings, and to recommend rejection of environmental reports not in compliance with these rules. This delegated authority shall be used only in a manner consistent with Board policy. Appeals to the Board will be available as a matter of right.

■ 71. Revise § 1105.3 to read as follows:

§ 1105.3 Information and assistance.

Information and assistance regarding the rules and the Board's environmental and historic review process is available by writing or calling the Office of Environmental Analysis.

■ 72. In § 1105.4:
■ a. Revise paragraph (i).
■ b. In paragraph (j), remove the references to ''SEA's'' wherever they appear and add in their place ''OEA's''.

The revision reads as follows:

§ 1105.4 Definitions.

* * * * *

(i) *Office of Environmental Analysis* or ''OEA'' means the Office that prepares the Board's environmental documents and analyses.

* * * * *

§ 1105.5 [Amended]

■ 73. In § 1105.5(c)(3), remove the reference to ''49 U.S.C. 10905'' and add in its place ''49 U.S.C. 10904''.

§ 1105.6 [Amended]

■ 74. In § 1105.6:
■ a. In paragraph (b)(4) introductory text, remove the reference to ''49 U.S.C.

10901 or 10910'' and add in its place ''49 U.S.C. 10901, 10902, or 10907'', and remove the reference to ''49 U.S.C. 11343'' and add in its place ''49 U.S.C. 11323 and 14303.''

■ b. In paragraph (b)(5), add ''and'' following ''environmental impacts;''.

■ c. Remove paragraph (b)(6).

■ d. Redesignate paragraph (b)(7) as paragraph (b)(6).

■ e. Remove paragraph (c)(1).

■ f. Redesignate paragraphs (c)(2) through (7) as paragraphs (c)(1) through (6).

■ g. In newly redesignated paragraph (c)(1)(i), remove the reference to ''49 U.S.C. 10901 or 10910'' and add in its place ''49 U.S.C. 10901, 10902, or 10907'', and remove the reference to ''49 U.S.C. 11343'' and add in its place ''49 U.S.C. 11323 and 14303.''

■ h. Remove newly redesignated paragraph (c)(1)(v).

■ i. Further redesignate newly redesignated paragraph (c)(1)(vi) as paragraph (c)(1)(v).

■ 75. Amend § 1105.7 as follows:

■ a. Add a sentence to the end of paragraph (a).

■ b. In paragraph (e)(3)(iv), remove the reference ''49 U.S.C. 10906'' and add in its place ''49 U.S.C. 10905''.

The addition reads as follows:

§ 1105.7 Environmental reports.

(a) *Filing.* * * * The Environmental Report may be filed with the Board electronically.

* * * * *

■ 76. Amend § 1105.8(a) by adding a sentence at the end of the paragraph to read as follows:

§ 1105.8 Historic Reports.

(a) *Filing.* * * * The Historic Report may be filed with the Board electronically.

* * * * *

§ 1105.10 [Amended]

■ 77. In § 1105.10:

■ a. In paragraphs (b) and (d), remove the references to ''SEA'' wherever they appear and add in their place ''OEA''.

■ b. In paragraph (d), remove the references to ''SEA's'' wherever they appear and add in their place ''OEA's''.

■ c. In paragraph (f), remove the abbreviation ''CZMA'' and add in its place ''Coastal Zone Management Act''.

§ 1105.11 [Amended]

■ 78. In the appendix to § 1105.11, remove the reference to ''the Section of Environmental Analysis (SEA), Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423'' and add in its place ''the Office of Environmental Analysis (OEA), Surface Transportation Board, Washington, DC''.

§ 1105.12 [Amended]

■ 79. In the appendix to § 1105.12:

■ a. In the Sample Local Newspaper Notice for Out-of-Service Abandonment Exemptions:

■ i. In the first paragraph, remove the zip code ''20423''.

■ ii. In the second paragraph, remove the references to ''Section of Environmental Analysis (SEA)'' wherever they appear and add in their place ''Office of Environmental Analysis (OEA)''; and remove the zip code ''20423''.

■ iii. In the third paragraph remove the reference to ''Section of Administration, Office of Proceedings, 395 E Street, SW., Washington, DC 20423–0001'' and add in its place ''Office of Proceedings, Washington, DC''.

■ b. In the Sample Local Newspaper Notice for Petitions for Abandonment Exemptions:

■ i. In the first paragraph, remove the zip code ''20423''.

■ ii. In the second paragraph, remove the references to ''Section of Environmental Analysis (SEA)'' wherever they appear and add in their place ''Office of Environmental Analysis (OEA)''; and remove the zip code ''20423''.

■ iii. In the third paragraph remove the reference to ''Section of Administration, Office of Proceedings, 395 E Street SW., Washington, DC 20423–0001'' and add in its place ''Office of Proceedings, Washington, DC''.

PART 1110—PROCEDURES GOVERNING INFORMAL RULEMAKING PROCEEDINGS

■ 80. The authority citation for Part 1110 continues to read as follows:

Authority: 49 U.S.C. 721.

■ 81. Amend § 1110.2 by revising paragraphs (b) and (c)(1) to read as follows:

§ 1110.2 Opening of proceeding.

* * * * *

(b) Any person may petition the Board to open a proceeding to issue, amend, or repeal a rule.

* * * * *

(c) * * *

(1) Be submitted, along with 15 copies, to the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington DC;

* * * * *

§ 1110.5 [Amended]

■ 82. In § 1110.5, remove the word ''additional'' and add in its place ''undue''.

PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES

■ 83. The authority citation for Part 1111 continues to read as follows:

Authority: 49 U.S.C. 721, 10704, and 11701.

§ 1111.1 [Amended]

■ 84. In § 1111.1:

■ a. In paragraph (a), remove the words ''at the hearing''.

■ b. In paragraph (e), remove the reference to ''49 CFR 1244.8'' and add in its place ''49 CFR 1244.9''.

PART 1113—ORAL HEARING

■ 85. The authority citation for Part 1113 continues to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 721.

§ 1113.2 [Amended]

■ 86. In § 1113.2:

■ a. In paragraph (d), remove ''return on the subpoena'' and add in its place ''return of the subpoena''.

■ b. In paragraph (e), remove ''at whose instance'' and add in its place ''at whose insistence''.

§ 1113.3 [Amended]

■ 87. In § 1113.3(c)(2), remove ''after the close of hearing'' and add in its place ''after the close of the hearing''.

§ 1113.8 [Amended]

■ 88. In § 1113.8, remove ''in whose behalf'' and add in its place ''on whose behalf''.

§ 1113.11 [Amended]

■ 89. In § 1113.11, remove ''damage'' and add in its place ''damages''.

PART 1114—EVIDENCE; DISCOVERY

■ 90. The authority citation for Part 1114 continues to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 721.

§ 1114.21 [Amended]

■ 91. In § 1114.21(a)(1), remove the reference to ''§ 1011.6'' and add in its place ''§ 1011.5''.

§ 1114.24 [Amended]

■ 92. In § 1114.24(g), remove ''(1) Not a relative'' and add in its place ''(1) not a relative''.

§ 1114.25 [Amended]

■ 93. In § 1114.25:

■ a. In paragraph (b)(2), remove ''seasonable'' and add in its place ''reasonable''.
■ b. In paragraph (c), remove ''Errors and irregularities'' and add in its place ''Objections to errors and irregularities''.

§ 1114.26 [Amended]

■ 94. In § 1114.26(a), remove the reference to ''§ 1114.21(b)(2)'' and add in its place ''§ 1114.21(a)''.

§ 1114.27 [Amended]

■ 95. In § 1114.27(a), remove the reference to ''§ 1114.21(b)(2)'' and add in its place ''§ 1114.21(a)''.

PART 1115—APPELLATE PROCEDURES

■ 96. The authority citation for Part 1115 continues to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 721.

§ 1115.2 [Amended]

■ 97. In § 1115.2(b)(3), remove the words ''governing precedent;'' and add in their place ''governing precedent; or''.

PART 1118—PROCEDURES IN INFORMAL PROCEEDINGS BEFORE EMPLOYEE BOARDS

■ 98. Under the authority of 49 U.S.C. 1321, Part 1118 is removed.

PART 1139—PROCEDURES IN MOTOR CARRIER REVENUE PROCEEDINGS

■ 99. Under the authority of 49 U.S.C. 1321, Part 1139 is removed.

PART 1144—INTRAMODAL RAIL COMPETITION

■ 100. The authority citation for Part 1144 continues to read as follows:

Authority: 49 U.S.C. 721, 10703, 10705, and 11102.

§ 1144.2 [Amended]

■ 101. In § 1144.2:
■ a. In paragraph (a) introductory text, remove the reference to ''49 U.S.C. 11102'' and add in its place ''49 U.S.C. 11102(c)''.
■ b. In paragraph (a)(1), remove the reference to ''and 11102'' and add in its place ''and 11102(c)''.

PART 1146—EXPEDITED RELIEF FOR SERVICE EMERGENCIES

■ 102. The authority citation for Part 1146 continues to read as follows:

Authority: 49 U.S.C. 721, 11101, and 11123.

§ 1146.1 [Amended]

■ 103. In § 1146.1(d)(1), remove ''Carrier are'' and add in its place ''Carriers are''.

PART 1150—CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE RAILROAD LINES

■ 104. The authority citation for Part 1150 continues to read as follows:

Authority: 49 U.S.C. 721(a), 10502, 10901, and 10902.

§ 1150.3 [Amended]

■ 105. In § 1150.3(h), remove the reference to ''paragraphs (e) or (f)'' and add in its place ''paragraphs (f) or (g)''.
■ 106. In § 1150.21 revise the second sentence to read as follows:

§ 1150.21 Scope of rules.

* * * The rail line must have been fully abandoned, or approved for abandonment by the Board or a bankruptcy court. * * *

§ 1150.31 [Amended]

■ 107. In § 1150.31(b), remove the words ''and the from securities regulation at 49 CFR part 1175'' and add in their place ''and the exemption from securities regulation at 49 CFR part 1177''.
■ 108. In § 1150.35:
■ a. Revise paragraph (b) introductory text.
■ b. In paragraph (f), remove the sentence ''Stay petitions must be filed within 7 days of the filing of the notion of exemption.''
■ c. In paragraph (g), remove the reference to ''§ 1150.33(g)'' and add in its place ''§ 1150.32(d)''.
The revision reads as follows:

§ 1150.35 Procedures and relevant dates—transactions that involve creation of Class I or Class II carriers.

* * * * *

(b) The notice of intent must contain all of the information required in § 1150.33, exclusive of § 1150.33(g), plus:

* * * * *

§ 1150.42 [Amended]

■ 109. Remove the last sentence of § 1150.42(a).

PART 1151—FEEDER RAILROAD DEVELOPMENT PROGRAM

■ 110. The authority citation for Part 1151 continues to read as follows:

Authority: 49 U.S.C. 10907.

■ 111. Amend § 1151.3 by revising the last sentence in paragraphs (a)(9) and (12) and revising the first sentence in paragraph (a)(14) introductory text to read as follows:

§ 1151.3 Contents of application.

(a) * * *

(9) * * * (This statement will be binding upon applicant if the application is approved.)

* * * * *

(12) * * * (This statement will be binding upon applicant if the application is approved.)

* * * * *

(14) If applicant requests Board-prescribed joint rates and divisions in the feeder line proceeding, a description of any joint rate and division agreement must be included in the application.

* * *

* * * * *

§ 1151.4 [Amended]

■ 112. In § 1151.4(e), remove the reference to ''49 U.S.C. 10709(d)(2)'' and add in its place ''49 U.S.C. 10707''.

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

■ 113. The authority citation for Part 1152 continues to read as follows:

Authority: 11 U.S.C. 1170; 16 U.S.C. 1247(d) and 1248; 45 U.S.C. 744; and 49 U.S.C. 701 note (1995) (section 204 of the ICC Termination Act of 1995), 721(a), 10502, 10903–10905, and 11161.

■ 114. In § 1152.30:

■ a. In paragraph (b), remove the reference to ''49 CFR part 1201'' and add in its place ''49 CFR part 1201, subpart B''.

■ b. Revise paragraph (c)(1) to read as follows:

§ 1152.30 General.

* * * * *

(c) *Final payment of financial assistance.* (1) When a financial assistance agreement to subsidize is concluded, the final payment will be adjusted to reflect the actual revenues derived, avoidable costs incurred, and value of the properties used in the subsidy year.

* * * * *

§ 1152.32 [Amended]

■ 115. In § 1152.32:

■ a. In paragraph (j)(4), remove the reference to ''paragraphs (f)(2) or (3)'' and add in its place ''paragraphs (j)(2) or (3)''.

■ b. In paragraph (o) introductory text, remove the words ''depreciation cost'' and add in their place ''depreciation expense''.

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

■ 116. The authority citation for Part 1180 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 11 U.S.C. 1172; 49 U.S.C. 721, 10502, 11323–11325.

§ 1180.3 [Amended]

■ 117. In § 1180.3(h), remove the reference to ''1180.4(d)(4)(ii)'' and add in its place ''1180.4(d)(2)''.

■ 118. In § 1180.4(c)(8), revise the last sentence of the paragraph to read as follows:

§ 1180.4 Procedures

* * * * *

(c) * * *

(8) * * * See *Railroad Consolidation Procedures,* 363 I.C.C. 767 (1980).

* * * * *

PARTS 1240–1259—REPORTS

■ 119. Revise the note for Parts 1240–1259 to read as follows:

Note: The report forms prescribed by parts 1240–1259 are available upon request from the Office of Economics, Surface Transportation Board, Washington, DC.

PART 1241—ANNUAL, SPECIAL, OR PERIODIC REPORTS—CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT

■ 120. The authority citation for Part 1241 continues to read as follows:

Authority: 49 U.S.C. 11145.

■ 121. Revise the note for Part 1241 to read as follows:

Note: The report forms prescribed by part 1241 are available upon request from the Office of Economics, Surface Transportation Board, Washington, DC.

§ 1241.11 [Amended]

■ 122. In § 1241.11(a), remove the title ''Office of Economics, Environmental Analysis, and Administration'' and add in its place ''Office of Economics'' and remove the zip code ''20423''.

§ 1241.15 [Amended]

■ 123. In § 1241.15, remove the title ''Bureau of Accounts'' and add in its place ''Office of Economics'' and remove the zip code ''20423''.

PART 1242—SEPARATION OF COMMON OPERATING EXPENSES BETWEEN FREIGHT SERVICE AND PASSENGER SERVICE FOR RAILROADS

■ 124. The authority citation for Part 1242 continues to read as follows:

Authority: 49 U.S.C. 721, 11142.

■ 125. Revise the note for Part 1242 to read as follows:

Note: The report forms prescribed by part 1242 are available upon request from the Office of Economics, Surface Transportation Board, Washington, DC.

■ 126. In the note to § 1242.87, remove the title ''Bureau of Accounts'' and add in its place ''Office of Economics''.

PART 1243—QUARTERLY OPERATING REPORTS—RAILROADS

■ 127. The authority citation for Part 1243 continues to read as follows:

Authority: 49 U.S.C. 721, 11145.

■ 128. Revise the note for Part 1243 to read as follows:

Note: The report forms prescribed by part 1243 are available upon request from the Office of Economics, Surface Transportation Board, Washington, DC.

■ 129. In § 1243.1, revise the last sentence to read as follows:

§ 1243.1 Revenues, expenses and income.

* * * Such quarterly reports shall be submitted, in paper or electronically, to the Office of Economics, Surface Transportation Board, Washington, DC, within 30 days after the end of the quarter to which they relate.

■ 130. In § 1243.2, revise the last sentence to read as follows:

§ 1243.2 Condensed balance sheet.

* * * Such quarterly reports shall be submitted, in paper or electronically, to the Office of Economics, Surface Transportation Board, Washington, DC, within 30 days after the end of the quarter to which they relate.

■ 131. In § 1243.3, revise the last sentence of the introductory text to read as follows:

§ 1243.3 Report of fuel cost, consumption, and surcharge revenue.

* * * Such reports shall be submitted, in paper or electronically, to the Office of Economics, Surface Transportation Board, Washington, DC, within 30 days after the end of the quarter reported.

PART 1244—WAYBILL ANALYSIS OF TRANSPORTATION OF PROPERTY—RAILROADS

■ 132. The authority citation for Part 1244 continues to read as follows:

Authority: 49 U.S.C. 721, 10707, 11144, 11145.

§ 1244.3 [Amended]

■ 133. In § 1244.3(b)(4), remove the title ''Office of Economics, Environmental Analysis, and Administration'' and add in its place ''Office of Economics'' and remove the zip code ''20423–0001''.

§ 1244.9 [Amended]

■ 134. In § 1244.9:

■ a. In paragraph (a), remove the title ''Office of Economics, Environmental Analysis, and Administration'' and add in its place ''Office of Economics''.

■ b. In paragraph (d)(2), remove the title ''Office of Economics, Environmental Analysis, and Administration'' and add in its place ''Office of Economics''.

■ c. In paragraph (d)(3)(ii), remove the title ''Office of Economics, Environmental Analysis, and Administration'' and add in its place ''Office of Economics'' and remove the zip code ''20423''.

■ d. In paragraph (d)(4)(i), remove the title ''Office of Economics, Environmental Analysis, and Administration'' and add in its place ''Office of Economics''.

■ e. In paragraph (e)(2), remove the title ''Office of Economics, Environmental Analysis, and Administration'' and add in its place ''Office of Economics'' and remove the zip code ''20423''.

■ f. In paragraph (f)(4), remove the title ''OTA'' and add in its place ''Office of Economics''.

■ g. In paragraph (g)(3), remove the title ''Office of Economics, Environmental Analysis, and Administration'' and add in its place ''Office of Economics'' and remove the zip code ''20423''.

PART 1245—CLASSIFICATION OF RAILROAD EMPLOYEES; REPORTS OF SERVICE AND COMPENSATION

■ 135. The authority citation for Part 1245 continues to read as follows:

Authority: 49 U.S.C. 721, 11145.

■ 136. Revise the note for Part 1245 to read as follows:

Note: The report forms prescribed by part 1245 are available upon request from the Office of Economics, Surface Transportation Board, Washington, DC.

■ 137. Revise § 1245.2 to read as follows:

§ 1245.2 Reports of railroad employees, service and compensation.

Each Class I railroad is required to file a Quarterly Report of Railroad Employees, Service, and Compensation, (Quarterly Wage Forms A & B). In addition, such carriers shall also file an Annual Report of Railroad Employees, Service, and Compensation, (Annual Wage Forms A & B) for each calendar year. Both reports shall be submitted, in paper or electronically, to the Office of Economics, Surface Transportation Board, Washington, DC. The quarterly report shall be submitted within 30 days after the end of each calendar quarter. The annual report shall be submitted within 45 days after the end of the reporting year.

PART 1246—NUMBER OF RAILROAD EMPLOYEES

■ 138. The authority citation for Part 1246 continues to read as follows:

Authority: 49 U.S.C. 721, 11145.

■ 139. Revise § 1246.1 to read as follows:

§ 1246.1 Monthly report of number of railroad employees.

Each Class I railroad shall file a Monthly Report of Number of Railroad Employees (Form C) each month. The report should be submitted, in paper or electronically, to the Office of Economics, Surface Transportation Board, Washington, DC, by the end of the month to which it applies.

■ 140. Revise the note for part 1246 to read as follows:

Note: The report forms prescribed by part 1246 are available upon request from the Office of Economics, Surface Transportation Board, Washington, DC.

PART 1247—REPORT OF CARS LOADED AND CARS TERMINATED

■ 141. The authority citation for Part 1247 continues to read as follows:

Authority: 49 U.S.C. 721, 10707, 11144, 11145.

§ 1247.1 [Amended]

■ 142. In § 1247.1:
■ a. Remove the title ''Office of Economics, Environmental Analysis, and Administration (OEEAA)'' and add in its place ''Office of Economics''.
■ b. Remove the zip code ''20243''.
■ c. In the last sentence, remove ''(*http://www.stb.dot.gov/infoex1.htm#forms*)'' and add in its place ''(*http://www.stb.dot.gov*)''.
■ d. Remove ''OEEAA'' and add in its place ''the Office of Economics''.

PART 1248—FREIGHT COMMODITY STATISTICS

■ 143. The authority citation for Part 1248 continues to read as follows:

Authority: 49 U.S.C. 721, 11144 and 11145.

■ 144. Revise the note for Part 1248 to read as follows:

Note: The report forms prescribed by part 1248 are available upon request from the Office of Economics, Surface Transportation Board, Washington, DC.

■ 145. In § 1248.5(a), revise the first sentence to read as follows:

§ 1248.5 Report forms and date of filing.

(a) Reports required from Class I carriers by this section shall be submitted, in paper or electronically, to the Office of Economics, Surface Transportation Board, Washington, DC, on forms which will be furnished to the carriers. * * *

* * * * *

PART 1253—RATE-MAKING ORGANIZATION; RECORDS AND REPORTS

■ 146. The authority citation for Part 1253 continues to read as follows:

Authority: 49 U.S.C. 721, 10706, 13703, 11144 and 11145.

■ 147. Revise the note for Part 1253 to read as follows:

Note: The report forms prescribed by part 1253 are available upon request from the Office of Economics, Surface Transportation Board, Washington, DC.

Note: The following comment will not appear in the Code of Federal Regulations.

COMMISSIONER BEGEMAN, commenting:

It is disappointing that today's decision is all we can muster up more than four years after receiving public comments on whether any of the Board's regulations are ''ineffective, insufficient, or excessively burdensome, and how to modify, streamline, expand, or repeal them. . . .'' I certainly don't object to replacing obsolete references and correcting spelling and other errors, but we should be doing so as a matter of course. Today's decision is simply not responsive to what we set out to do in 2011. Nor does it meet the spirit—let alone achieve the purpose—of the President's two Executive Orders.

[FR Doc. 2016–03298 Filed 2–22–16; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 150708591–6096–02]

RIN 0648–XE043

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement annual management measures and harvest specifications to establish the allowable catch levels (*i.e.* annual catch limit (ACL)/harvest guideline (HG)) for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the Pacific Coast for the fishing season of July 1, 2015, through June 30, 2016. This rule is implemented pursuant to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The 2015–2016 HG for Pacific mackerel is 21,469 metric tons (mt). This is the total commercial fishing target level. This action also implements an annual catch target (ACT), of 20,469 mt. If the fishery attains the ACT, the directed fishery will close, reserving the difference between the HG (21,469 mt) and ACT as a 1,000 mt set-aside for incidental landings in other CPS fisheries and other sources of mortality. This final rule is intended to conserve and manage the Pacific mackerel stock off the U.S. West Coast.

DATES: Effective March 24, 2016 through June 30, 2016.

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, West Coast Region, NMFS, (562) 980–4034 *Joshua.Lindsay@noaa.gov.*

SUPPLEMENTARY INFORMATION: During public meetings each year, the estimated biomass for Pacific mackerel is presented to the Pacific Fishery Management Council's (Council) CPS Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel) and the Council's Scientific and Statistical Committee (SSC), and the biomass and the status of the fishery are reviewed and discussed. The biomass estimate is then presented to the Council along with the recommended overfishing limit (OFL) and acceptable biological catch (ABC) calculations from the SSC, along with the calculated ACL, HG and ACT recommendations, and

comments from the Team and Subpanel. Following review by the Council and after reviewing public comment, the Council adopts a biomass estimate and makes its catch level recommendations to NMFS. NMFS manages the Pacific mackerel fishery in the U.S. EEZ off the Pacific Coast (California, Oregon, and Washington) in accordance with the FMP. Annual specifications published in the **Federal Register** establish the allowable harvest levels (*i.e.* OFL/ACL/HG) for each Pacific mackerel fishing year. The purpose of this final rule is to implement the 2015–2016 ACL, HG, ACT and other annual catch reference points, including OFL and an ABC that takes into consideration uncertainty surrounding the current estimate of biomass for Pacific mackerel in the U.S. EEZ off the Pacific Coast.

The CPS FMP and its implementing regulations require NMFS to set these annual catch levels for the Pacific mackerel fishery based on the annual specification framework and control rules in the FMP. These control rules include the HG control rule, which in conjunction with the OFL and ABC rules in the FMP, are used to manage harvest levels for Pacific mackerel, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* According to the FMP, the quota for the principal commercial fishery is determined using the FMP-specified HG formula. The HG is based, in large part, on the current estimate of stock biomass. The annual biomass estimates are an explicit part of the various harvest control rules for Pacific mackerel, and as the estimated biomass decreases or increases from one year to the next, the resulting allowable catch levels similarly trend. The harvest control rule in the CPS FMP is HG = [(Biomass-Cutoff) * Fraction * Distribution] with the parameters described as follows:

1. *Biomass.* The estimated stock biomass of Pacific mackerel. For the 2015–2016 management season this is 120,435 mt.

2. *Cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 18,200 mt.

3. *Fraction.* The harvest fraction is the percentage of the biomass above 18,200 mt that may be harvested.

4. *Distribution.* The average portion of the Pacific mackerel biomass estimated in the U.S. EEZ off the Pacific Coast is 70 percent and is based on the average historical larval distribution obtained from scientific cruises and the distribution of the resource according to the logbooks of aerial fish-spotters.

At the June 2015 Council meeting, the Council adopted the ''Pacific Mackerel (*Scomber japonicus*) Stock Assessment for USA Management in the 2015–16 and 2016–2017 Fishing Years'' (completed by NMFS Southwest Fisheries Science Center) and the resulting Pacific mackerel biomass estimate for use in the 2015–2016 fishing year of 120,435 mt. Based on recommendations from its SSC and other advisory bodies, the Council recommended, and NMFS is implementing, an OFL of 25,291 mt, an ABC and ACL of 23,104 mt, a HG of 21,469 mt, and an ACT of 20,469 mt for the fishing year of July 1, 2015, to June 30, 2016. As of the publication of this final rule, the level of Pacific mackerel harvest since July 1, 2015, in the EEZ off the Pacific Coast has not reached 20,469 mt; Pacific mackerel harvested in this area between July 1, 2015, and the effective date of this final rule will count toward the 20,469 mt ACT. Additionally, the Council also adopted and recommended harvest specifications for the 2016–2017 fishing year; however, currently NMFS is only implementing the annual harvest measures for the 2015–2016 fishing year. A subsequent rule will be published later in the year that will propose the Council's recommendations for the 2016–2017 fishing year.

Upon attainment of the ACT, the directed fishing would close, reserving the difference between the HG and ACT (1,000 mt) as a set aside for incidental landings in other CPS fisheries and other sources of mortality. For the remainder of the fishing year incidental landings would also be constrained to a 45 percent incidental catch allowance when Pacific mackerel are landed with other CPS (in other words, no more than 45 percent by weight of the CPS landed per trip may be Pacific mackerel), except that up to 3 mt of Pacific mackerel could be landed incidentally without landing any other CPS. Upon attainment of the HG (21,469 mt), no retention of Pacific mackerel would be allowed in CPS fisheries. In previous years, the incidental set-aside established in the mackerel fishery has been, in part, to ensure that if the directed quota for mackerel was reached that the operation of the Pacific sardine fishery was not overly restricted. There is no directed Pacific sardine fishery for the 2015–2016 season, therefore the need for a high incidental set-aside is reduced. The purpose of the incidental set-aside is to manage incidental landings of Pacific mackerel in other fisheries, particularly other CPS fisheries, when the directed fishery is closed to reduce potential discard of Pacific mackerel and allow for continued prosecution of other important CPS fisheries in which incidental catch of Pacific mackerel cannot be avoided.

The NMFS West Coast Regional Administrator will publish a notice in the **Federal Register** announcing the date of any closure to either directed or incidental fishing. Additionally, to ensure the regulated community is informed of any closure, NMFS will also make announcements through other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies.

On September 10, 2015, a proposed rule was published for this action and public comments solicited (80 FR 54507), with a comment period that ended on October 13, 2015. NMFS received two comments, explained below, regarding the proposed Pacific mackerel specifications. After consideration of public comment, no changes were made from the proposed rule. Detailed information on the fishery and the stock assessment are found in the reports ''Pacific Mackerel (*Scomber japonicus*) Stock Assessment for USA Management in the 2015–16 Fishing Year'' and ''Pacific Mackerel Biomass Projection Estimate for USA Management (2015–16)'' (see **FOR FURTHER INFORMATION CONTACT**).

Comments and Responses

Comment 1: The commenter expressed general support for this action, but only if the fishery is potentially subject to overfishing or if the decrease in harvest levels does not put people out of work.

Response: Fisheries have the potential to overfish Pacific mackerel if unregulated. NMFS does not anticipate that this action will have a significant adverse economic impact on fishermen in this fishery.

Comment 2: The commenter did not comment on the proposed action specifically, but discussed the management of commercial forage fish off the West Coast generally, specifically referencing concern over the status of Pacific sardine and northern anchovy stocks.

Response: NMFS notes that Pacific mackerel is not overfished, that overfishing is not occurring, and that the best available science was used in the determination of these catch levels. NMFS agrees that the consideration of ecosystem interactions, such as the role of forage species and ecological conditions, along with social and economic factors are critical when making fishery management decisions.

As such, NMFS has been working to better understand diet linkages between forage fish species and higher order predators to enhance the ecosystem science used in our fisheries management.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the Assistant Administrator, NMFS, has determined that this final rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law.

These specifications are exempt from review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

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

Dated: February 12, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016–03610 Filed 2–22–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 140918791–4999–02]

RIN 0648–XE457

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Pot Gear in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2016 Pacific cod total allowable catch apportioned to vessels using pot gear in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), February 19, 2016, through 1200 hours, A.l.t., June 10, 2016.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of the 2016 Pacific cod total allowable catch (TAC) apportioned to vessels using pot gear in the Western Regulatory Area of the GOA is 5,417 metric tons (mt), as established by the final 2015 and 2016 harvest specifications for groundfish of the GOA (80 FR 10250, February 25, 2015) and inseason adjustment (81 FR 188, January 5, 2016).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2016 Pacific cod TAC apportioned to vessels using pot gear in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 5,407 mt and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the Western Regulatory Area of the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod for vessels using pot gear in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 17, 2016.

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

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

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

Dated: February 18, 2016.

Alan D. Risenhoover,

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

[FR Doc. 2016–03732 Filed 2–18–16; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
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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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1218

[Document No. AMS–SC–15–0076]

Blueberry Promotion, Research and Information Order; Continuance Referendum

AGENCY: Agricultural Marketing Service USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible producers and importers of highbush blueberries to determine whether they favor continuance of the Blueberry Promotion, Research and Information Order (Order).

DATES: The referendum will be conducted by mail ballot from July 5 through July 28, 2016. To be eligible to vote, blueberry producers and importers must have produced or imported 2,000 pounds or more of highbush blueberries during the representative period of January 1 through December 31, 2015, paid assessments during that period, and must currently be producers or importers of highbush blueberries subject to assessment under the Order. Ballots must be received by the referendum agents no later than the close of business on July 28, 2016, to be counted.

ADDRESSES: Copies of the Order may be obtained from: Referendum Agent, Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Room 1406–S, Stop 0244, Washington, DC 20250–0244, telephone: (202) 720–9915; facsimile: (202) 205–2800; or contact Maureen Pello at (503) 632–8848 or via electronic mail: *Maureen.Pello@ams.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Maureen Pello, Marketing Specialist, PED, SC, AMS, USDA, 1400 Independence Avenue SW., Room 1406–S, Stop 0244, Washington, DC 20250–0244; telephone: (202) 720–9915, (503) 632–8848 (direct line); facsimile: (202) 205–2800; or electronic mail: *Maureen.Pello@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Commodity Promotion, Research and Information Act of 1996 (7 U.S.C. 7411–7425) (Act), it is hereby directed that a referendum be conducted to ascertain whether continuance of the Order (7 CFR part 1218) is favored by eligible producers and importers of highbush blueberries. The Order is authorized under the Act.

The representative period for establishing voter eligibility for the referendum shall be the period from January 1 through December 31, 2015. Persons who produced or imported 2,000 pounds or more of highbush blueberries during the representative period, paid assessments during that period, and are currently highbush blueberry producers or importers subject to assessment under the Order are eligible to vote. Persons who received an exemption from assessments for the entire representative period are ineligible to vote. The referendum will be conducted by mail ballot from July 5 through July 28, 2016.

Section 518 of the Act authorizes continuance referenda. Under § 1218.71(b) of the Order, the U.S. Department of Agriculture (USDA) must conduct a referendum every 5 years to determine whether persons subject to assessment favor continuance of the Order. The last referendum was held in 2011. USDA would continue the Order if continuance is favored by a majority of the producers and importers voting in the referendum, who also represent a majority of the volume of blueberries represented in the referendum.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the referendum ballot has been approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0093. It has been estimated that there are approximately 1,860 producers and 180 importers who will be eligible to vote in the referendum. It will take an average of 15 minutes for each voter to read the voting instructions and complete the referendum ballot.

Referendum Order

Maureen Pello, Marketing Specialist, and Heather Pichelman, Director, PED, SC, AMS, USDA, Stop 0244, Room 1406–S, 1400 Independence Avenue SW., Washington, DC 20250–0244, are designated as the referendum agents to conduct this referendum. The referendum procedures at 7 CFR 1218.100 through 1218.107, which were issued pursuant to the Act, shall be used to conduct the referendum.

The referendum agent will mail the ballots to be cast in the referendum and voting instructions to all known, eligible highbush blueberry producers and importers prior to the first day of the voting period. Persons who produced or imported 2,000 more pounds of highbush blueberries during the representative period, paid assessments during that period, and are currently highbush blueberry producer or importers subject to assessment under the Order are eligible to vote. Persons who received an exemption from assessments during the entire representative period are ineligible to vote. Any eligible producer or importer who does not receive a ballot should contact the referendum agent no later than one week before the end of the voting period. Ballots must be received by the referendum agent by 4:30 p.m. Eastern time, July 28, 2016, in order to be counted.

List of Subjects in 7 CFR Part 1218

Administrative practice and procedure, Advertising, Blueberry promotion, Consumer information, Marketing agreements, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

Dated: February 18, 2016.

Erin Morris,

Associate Administrator.

[FR Doc. 2016–03806 Filed 2–22–16; 8:45 am]

BILLING CODE 3410–02–P

FARM CREDIT ADMINISTRATION

12 CFR Part 652

RIN 3052–AC86

Organization; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Farmer Mac Investment Eligibility

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, Agency, us, our, or we) proposes to amend our regulations governing the eligibility of non-program investments held by the Federal Agricultural Mortgage Corporation (Farmer Mac). We propose to revise these regulations to comply with section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or DFA) by removing references to, and requirements relating to, credit ratings. We are also proposing a delayed compliance date for the rule.

DATES: You may send us comments by April 25, 2016.

ADDRESSES: We offer a variety of methods for you to submit comments on this proposed rule. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through the Agency's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send us an email at *reg-comm@fca.gov.*
- *FCA Web site: http://www.fca.gov.* Select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Submitting a Comment.''
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Laurie A Rea, Director, Office of Secondary Market Oversight, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of all comments we receive at our office in McLean, Virginia, or on our Web site at *http://www.fca.gov.* Once you are in the Web site, select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Reading Submitted Public Comments.'' We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

Joseph T. Connor, Associate Director for Policy and Analysis, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4364, TTY (703) 883–4056;

or

Laura McFarland, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION:

I. Objective

The purpose of this proposed rule is to replace references to credit rating agencies in existing Farmer Mac investment regulations with other appropriate standards to determine the creditworthiness of investments and to revise exposure limits for investments involving one obligor. Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or DFA) requires agencies to remove references to, and requirements relating to, credit ratings. This proposal would substitute other appropriate standards of creditworthiness. The proposed rule would also replace the table in existing regulations that sets forth criteria for non-program investment eligibility with standards that place a greater emphasis on management's due diligence responsibility in ascertaining credit quality of non-program investments so that only high quality investments are purchased and held. The proposed rule would also clarify how other non-program investments are treated and revise exposure limits for investments involving one obligor. We are also proposing a delayed compliance date for the rule.

II. Background

Farmer Mac is an institution of the Farm Credit System, regulated by FCA through the FCA Office of Secondary Market Oversight (OSMO). Farmer Mac was established and chartered by Congress to create a secondary market for agricultural real estate mortgage loans, rural housing mortgage loans, and rural utilities loans, and it is a stockholder-owned instrumentality of the United States. Title VIII of the Farm Credit Act of 1971, as amended, (Act) governs Farmer Mac.[1]

On July 21, 2010, the Dodd-Frank Act was enacted, and section 939A of the Dodd-Frank Act requires Federal agencies to review all regulatory references to nationally recognized statistical ratings organizations (NRSRO or credit rating agency) and replace those references with other appropriate standards for determining creditworthiness.[2] The Dodd-Frank Act further provides that, to the extent feasible, agencies should adopt a uniform standard of creditworthiness for use in regulations, taking into account the entities regulated and the purposes for which such regulated entities would rely on the creditworthiness standard.

The existing rules on non-program investments for Farmer Mac are contained in 12 CFR part 652, subpart A, and rely, in part, on NRSRO credit ratings to characterize relative credit quality of various instruments. On June 16, 2011, we issued an Advance Notice of Proposed Rulemaking (ANPRM) soliciting comments on suitable alternatives to NRSRO credit ratings.[3] On November 18, 2011, as part of another rulemaking, we again requested comment on potential sources of market-derived information that could be used to replace NRSRO credit ratings in part 652 of our rules.[4] In developing this proposed rule, we considered all suggestions from comments received and incorporated those we believed best addressed the objective of this rulemaking. In addition to these comments, we also considered the creditworthiness standards we proposed in a separate rulemaking for Farm Credit banks and associations [5] in compliance with provisions in the Dodd-Frank Act directing agencies, to the extent feasible, to adopt a uniform standard of creditworthiness among regulated entities.

III. Section-by-Section

The proposed rule would revise portfolio diversification requirements and revise the credit quality standards for eligible non-program investments that Farmer Mac may hold by replacing the reliance on NRSRO credit ratings and clarifying terminology.

A. Definitions [Existing § 652.5]

In § 652.5, we propose removing existing terminology, adding new terms, and revising existing definitions. We propose removing as obsolete several terms from the list of definitions in § 652.5. We also propose removing terms from § 652.5 because they do not require a separate definition. The specific terms we propose removing are:

- ''Contingency Funding Plan (CFP)'',
- ''Eurodollar time deposit'',

[1] Public Law 92–181, 85 Stat. 583, 12 U.S.C. 2001 *et seq.*

[2] Public Law 111–203, 124 Stat. 1376, (H.R. 4173), July 21, 2010.

[3] 76 FR 35138, June 16, 2011.

[4] *Refer to* Proposed rule, ''Federal Agricultural Mortgage Corporation Funding and Fiscal Affairs; Farmer Mac Investments and Liquidity Management'' (76 FR 71798, Nov. 18, 2011).

[5] 79 FR 43301, July 25, 2014.

- ''Final maturity'',
- ''General obligations'',
- ''Liability Maturity Management Plan (LMMP)'',
- ''Liquid investments'',
- ''Liquidity reserve'',
- ''Nationally Recognized Statistical Rating Organization (NRSRO)'',
- ''Revenue bond'', and
- ''Weighted average life (WAL).''

We propose making conforming changes to § 652.20 to remove these terms where they appear.

We next propose adding two new terms to the list of definitions to address other proposed changes in this rulemaking: ''Diversified investment fund'' and ''Obligor.'' We propose to define a ''diversified investment fund'' (DIF) as an investment company registered under section 8 of the Investment Company Act of 1940, 15 U.S.C. 80a–8. We selected this definition based on our current use of it in § 615.5140(a)(8) of our investment rules for Farm Credit banks and associations. We propose to define the term ''obligor'' because our current regulations use this term but do not define it. We propose defining ''obligor'' as an issuer, guarantor, or other person or entity who has an obligation to pay a debt, including interest due, by a specified date or when payment is demanded. This definition would include the debtor or immediate party that is obligated to pay a debt, as well as a guarantor of the debt. The proposed definition would also clarify that both a DIF and the entity or entities obligated to pay the underlying debt are treated as a single obligor. This clarification is intended to ensure DIF investments do not become an excessively concentrated part of the investment portfolio.

Lastly, we propose changing three existing terms and their definitions to improve clarity: ''Government agency'', ''Government-sponsored agency'', and ''mortgage securities.'' We propose replacing the existing term ''Government-sponsored agency'' with ''Government-sponsored enterprise (GSE)'' and defining a GSE as an entity established or chartered by the U.S. Government to serve public purposes specified by the U.S. Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. Government. We also propose replacing ''Government agency'' with ''U.S. Government agency.'' The proposed definition for U.S. Government agency would explain that it means an instrumentality of the United States Government whose obligations are fully guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. Government. Finally, we propose replacing the term ''mortgage securities'' with ''mortgage-backed securities (MBS)'' as this term is more widely used in the financial sector. We propose applying the existing definition for ''mortgage securities'' to the new MBS term. We propose a conforming change to the definition of ''asset-backed securities'', which uses ''mortgage securities'' in its definition.

B. Concentration Risk [New § 652.10(c)(5)]

We propose revising existing § 652.10 to address concentration risk through portfolio diversification and obligor limits in new paragraph (c)(5). Portfolio diversification is crucial to safe and sound investment management and is achieved by the appropriate distribution of risk exposures across reasonably uncorrelated industries and obligors. When a portfolio is properly diversified, a crisis within one industry sector or the sudden weakening or default of one obligor should not significantly destabilize the financial condition of the investor. In new § 652.10(c)(5), we propose specifying that Farmer Mac's investment policies address concentration risk by setting diversification standards. We propose that the diversification calculation used when setting these standards be based on the carrying value of the investment on Farmer Mac's balance sheet. By carrying value, we mean the amount an investment contributes to the asset section of Farmer Mac's balance sheet under GAAP, net of any impairment estimate or valuation allowance. We believe the carrying value would, when applied for this purpose, appropriately capture the value of capital at risk for an investment at any given time. We also propose the following parameters for Farmer Mac's establishment of these standards:

- Basing calculation of an investment's compliance with diversification requirements on the investment's carrying value;
- Limiting investments in one obligor to no more than 10 percent of regulatory capital, unless the investments are obligations backed by U.S. Government agencies or GSEs; and
- Limiting the percentage of GSE-issued mortgage-backed securities that may comprise Farmer Mac's entire investment portfolio to 50 percent.

We believe these parameters will not require changes in the current investment portfolio held by Farmer Mac and discuss them more fully below.

We believe by placing specific diversification limits within the section that generally requires Farmer Mac to set diversification limits will improve the organization of the rule.

We also propose removing the reference to geographic areas in existing § 652.10(c)(1)(i). Farmer Mac should consider diversification by geographic location of issuer as appropriate based on the nature of its investment portfolio. For example, in the case of investments in municipal securities, geographic location might be an important consideration. However, we propose removing this specific category in the regulation to avoid misinterpretation. For example, we do not see the need to restrict obligors solely on the basis of where they happen to be headquartered or the location of an issuer's operations. The proposed change in the level of the single obligor limit is discussed below in section III.B.1.

1. Obligor Limit

We propose to move the obligor limit from § 652.20(d)(1) and reduce the current limit to 10 percent of regulatory capital. The proposed 10-percent obligor limit in new § 652.10(c)(5)(i) would enhance Farmer Mac's long-term safety and soundness by ensuring that if an obligor were to default, only a modest portion of capital would be at risk. Currently, the proposed 10-percent obligor limit equates to an amount that is less than Farmer Mac's capital surplus and well within its risk-bearing capacity based on its current level of regulatory capital. Whereas, the current 25-percent obligor limit could expose Farmer Mac to financial challenges if it experienced an event of multiple defaults in its liquidity portfolio during a short time period (*e.g.,* such as during the 2008 financial crisis), given the historical relationship between Farmer Mac's capital surplus over the minimum requirement and the dollar value of the 25-percent limit. Thus, we expect that the proposed 10-percent maximum will provide reasonable assurance that a single default will not significantly increase the risk of Farmer Mac's being unable to comply with the minimum capital requirement.

This proposed obligor limit would recognize that the credit performance of a single obligor (unlike, for example, a single industry sector) is binary in nature, (*i.e.,* the investment is either performing or it is in default) with potentially very low recovery rates. For that reason, we believe a cautious approach is warranted regarding the management of exposure concentrations in an individual obligor. We also believe the proposed obligor limit retains sufficient flexibility for Farmer Mac to manage its investment portfolio and still

maintain adequate diversification. While the proposed obligor limit would be a regulatory maximum, Farmer Mac should consider establishing lower obligor limits to fit its overall risk profile and risk-bearing capacity, including earnings capacity, as well as the risks in individual types and classes of investments.

We seek specific comments and suggestions on how FCA might modify or adjust the obligor limit to make it more risk sensitive while achieving the overarching objectives of the limit for example, by scaling or risk-weighting assets based on internal or standardized models or other criteria such as the magnitude of Farmer Mac's surplus over the minimum capital requirement.

The proposed § 652.10(c)(5) would retain the existing exemption from the obligor limit, currently located in § 652.20(d)(1), for investments that are backed by a U.S. Government agency or GSEs.

2. Asset Class Limits

Existing § 652.20(a) contains a table identifying nine asset classes with different investment portfolio limits. These nine asset classes are:

- Obligations of the United States,
- Obligations of GSEs,
- Municipal Securities,
- International and Multilateral Development Bank Obligations,
- Money Market Instruments,
- Mortgage Securities,
- Asset-Backed Securities,
- Corporate Debt Securities, and
- DIFs.

Of these, some asset classes have investment portfolio limits of 15 percent, 20 percent, 25 percent, and 50 percent.

a. GSE-Issued Mortgage-Backed Securities Limit

We propose moving to new § 652.10(c)(5)(ii) the current § 652.20(a)(6) 50-percent limit on the volume of GSE-issued mortgage-backed securities that may be held in Farmer Mac's investment portfolio. We believe the risk posed by GSE-backed MBS is significantly lower than other asset classes both in terms of default risk and liquidity risk, which supports retaining this relatively high limit. We also believe this limit is better situated within our rules with other risk tolerance provisions.

b. Other Asset Class Limits

In section III.C.1 of this preamble, we discuss the proposed removal of the investment table at § 652.20(a), while retaining some of its requirements. We have not proposed retaining any of the asset class portfolio limits contained in the table except the previously discussed 50-percent portfolio limit for GSE-issued securities. This is because existing § 652.10(c)(1)(i) already requires Farmer Mac to establish within its investment policy concentration limits for ''asset classes or obligations with similar characteristics.'' We expect that Farmer Mac will review their investment policy limits at least annually and make adjustments based on their current risk profile and risk-bearing capacity, which may suggest lower limits than the current regulatory parameters. Nonetheless, we recognize there may be value in maintaining regulatory limits and, therefore, invite specific comment on whether the following existing asset class limitations should be retained in full or part:

- Municipal Securities: Revenue bonds limit of 15 percent,
- Money Market Instruments: Non-callable term Federal funds and Eurodollar time deposits limit of 20 percent,
- Money Market Instruments: Master notes limit of 20 percent,
- Mortgage Securities: Non-Government agency or Government-sponsored agency securities that comply with 15 U.S.C. 77d(5) or 15 U.S.C. 78c(a)(41) and Commercial mortgage-backed securities combined 15-percent limit,
- Asset-Backed Securities limit of 25 percent, and
- Corporate Debt Securities limit of 25 percent.

We are also interested in whether any of these limits should be changed and, if so, to what degree. We ask that your comment on this issue include the rationale for your suggestion(s).

C. Non-Program Investments [Existing §§ 652.20 and 652.25; New § 652.23]

1. Eligible Non-Program Investments [§ 652.20]

We propose replacing the existing § 652.20, including removing the ''Non-Program Investment Eligibility Criteria Table,'' with investment eligibility requirements that place greater responsibility on Farmer Mac management. The replacement of this section will result in removal of all references to NRSRO credit ratings from § 652.20.

a. Eligible Non-Program Investment Categories [§ 652.20(a)]

Our existing regulation at § 652.20(a) contains a detailed listing of eligible investment asset classes and types of investments within each asset class. The existing regulation imposes final maturity limits, investment portfolio limits, and other requirements for many of these investments, including credit rating requirements that are based on NRSRO credit ratings. To replace this provision, we propose general categories of eligible non-program investments that Farmer Mac may purchase and hold. The proposed general categories are:

- Non-convertible senior debt securities,
- Certain money market instruments,
- Certain ABS/MBS backed by a U.S. Government-agency or GSE guarantee,
- Certain senior position mortgage related securities,
- Obligations of development banks where the United States is a voting member of the bank, and
- Certain diversified investment funds.

As proposed in new § 652.20(a)(1), non-convertible senior debt securities (*e.g.,* investments in senior debt securities that cannot be converted to any other type of securities) would be eligible under the proposed provision. This investment category would include non-convertible U.S. Government agency senior debt securities, including U.S. Treasury securities, and senior non-convertible GSE bonds. Senior debt securities could be secured by a specific pool of collateral or may be unsecured with priority of claims over other types of debt securities of the issuer, but would not include those that are convertible into a non-senior security or an equity security.

In proposed new paragraph (a)(3) and (a)(4), fully government-guaranteed ABS or MBS that are guaranteed as to the payment of principal and interest by a U.S. Government agency or GSE would be eligible securities because of their high credit quality. Farmer Mac would have to verify that securities labeled ''government guaranteed'' are fully guaranteed as to the payment of principal and interest. Similarly, a GSE ''wrap'' (guarantee) would not make a security eligible under this proposed provision unless it is a guarantee of all principal and interest of the security. While partial guarantees would not satisfy this proposed requirement, they could be eligible under other criteria.

We propose in new paragraph (a)(5) permitting investments in ABS and MBS that are not fully guaranteed, but only the senior-most position of such instruments. By senior-most position, we mean the tranche of a structured instrument that is last to experience losses in the event of default and that such losses be shared on a pro rata basis by investors in that tranche. In addition, we propose that for a position in an

MBS to be eligible, the MBS must satisfy the securities law definition of ''mortgage related security''.[6] Collateralized debt obligations (CDOs), which are re-securitizations that have evolved for the MBS market, would be eligible under this criterion if their underlying collateral is comprised only of the senior-most positions of other securitizations. The underlying collateral of most CDOs consists of lower-rated tranches from other securitizations, and these CDOs would not be eligible under this criterion. Further, private placements may be eligible under this proposed criterion, as long as they satisfy all of the proposed investment eligibility requirements.[7] We note, however, that private placements are generally not liquid and would therefore need to be acquired for an authorized purpose unrelated to liquidity.

We also propose in new paragraph (a)(7) that shares of a DIF would be eligible if the DIF's portfolio consists solely of securities that are eligible under these eligibility criteria. While the proposal for DIF eligibility is unchanged from the existing regulation, we are proposing more restrictive portfolio diversification limits on DIF investments than currently exist.

b. Investment Quality [§ 652.20(b)]

We want to retain high creditworthiness standards for Farmer Mac eligible non-program investments.[8] Accordingly, we propose in § 652.20(b)(1) requiring that obligors (whether debtor or guarantor) have strong capacity to meet the financial commitment for the expected life of the investment. This standard would apply to all investments, including those that are currently not subject to a NRSRO credit rating requirement. In general, we would view an investment as having met this standard if the expected average cumulative default rate of issuers of similar credit quality is low based on historical default data.[9] We would expect Farmer Mac to document the source of its historical data and basis for investment criteria.

In addition to imposing standards on obligors, we also propose in § 652.20(b)(2) requiring an eligible investment to exhibit low credit risk and other risk characteristics consistent with the purposes for which it is held. We are not proposing to require that other risks in the investment be low in all cases. Instead, the risk characteristics in the investment must be consistent with the purposes for which the investment is held. For instance, if an investment is held for the purpose of liquidity, it would have to be readily marketable[10] and would generally have to have low price volatility. On the other hand, an investment that is high quality but has high price volatility and questionable marketability may not be appropriate for a liquidity investment. Instead, it might be used effectively to manage interest rate risk. Finally, we propose moving to paragraph (b)(3) the existing requirement that the denomination of all investments must be in U.S. dollars.

2. Other Non-Program Investments [New § 652.23]

We propose moving the existing § 652.20(e) provisions on seeking FCA approval for non-program investments that are not already identified in the regulation as an ''eligible non-program investment'' to new § 652.23. The proposed new § 652.23 explains the minimum considerations we give to such requests and reiterates our authority to impose in writing and enforce conditions of approval. We also add clarifying language that these investments, once approved, will be considered ''eligible non-program investments'' for purposes of applying the provisions in subpart A of part 652. We believe moving this aspect of the rule to its own section will make the provision easier to find and, along with the proposed clarifications, will facilitate the process by which such requests are submitted and reviewed.

3. Ineligible Investments [Existing § 652.25]

We are proposing revisions to existing § 652.25 to conform with other proposed changes in this rulemaking and to add clarity. We propose adding language to clarify that this section applies to both those eligible non-program investments identified in the rule and to individual non-program investments that we approved on request. We also propose clarifying that those investments that were ineligible when purchased may not be used for liquidity purposes, but must still be included as part of the investment portfolio limit until their divestiture. We further propose removing the quarterly reporting requirements for investments that lose their eligibility after purchase.

4. Reservation of FCA Authority [Existing § 652.25(d); New § 652.27]

We propose moving the existing § 652.25(d) provisions addressing FCA-required divestiture of an investment to new § 652.27. We believe moving this aspect of the rule to its own section will make the provision easier to find and reduce confusion on its applicability. In addition, we propose to make explicit our authority, on a case-by-case basis, to determine that a particular investment imposes inappropriate risk, notwithstanding that it satisfies the investment eligibility criteria. The proposal also provides that FCA will notify Farmer Mac as to the proper treatment of any such investment. We also propose conforming changes due to other proposed changes in this rulemaking to clarify that FCA-required divestiture may be based on a failure to comply with applicable regulations or written conditions of approval issued in connection with individual non-program investments that we approved on request.

D. Liquidity Reserve Requirements [Table to § 652.40(c)]

We propose to make conforming changes in the Table to § 652.40(c). These changes would incorporate the proposed terminology changes of § 652.5. In addition, we propose changes to clarify that MBS must be fully guaranteed by a U.S. Government agency to qualify for Level 2 liquidity and fully guaranteed by a GSE to qualify for Level 3 liquidity.

IV. Compliance Date

In order to provide Farmer Mac with sufficient time to bring itself into compliance with these new requirements, we are proposing a 6-month compliance transition period. We invite your specific comments on this compliance timeframe.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. Farmer Mac

[6] 15 U.S.C. 78c(a)(41).

[7] Private placement refers to the sale of securities to a relatively small number of sophisticated investors without registration with the Securities and Exchange Commission and, in many cases, without the disclosure of detailed financial information or a prospectus.

[8] Our existing regulations governing Farmer Mac require that certain eligible investments meet the highest or the second highest whole-letter NRSRO rating (*e.g.,* ''AAA'' or ''AA'' for Standard & Poors ratings, without regard to ''+'' or ''−'' levels within individual whole-letter ratings).

[9] One potential source of historical data for this purpose is the publicly available report entitled ''Annual Default Study: Corporate Bond Default and Recovery Rates'' which includes data since 1920 and is published by Moody's Investors Service. However, other sources including internally modeled forecasts could be used.

[10] Under § 652.40(b), investments used to satisfy the liquidity reserve requirement must be ''readily marketable,'' as defined by that provision.

has assets and annual income in excess of the amounts that would qualify it as a small entity. Therefore, Farmer Mac is not a ''small entity'' as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 652

Agriculture, Banks, Banking, Capital, Investments, Rural areas.

For the reasons stated in the preamble, part 652 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 652—FEDERAL AGRICULTURAL MORTGAGE CORPORATION FUNDING AND FISCAL AFFAIRS

■ 1. The authority citation for part 652 is revised to read as follows:

Authority: Secs. 4.12, 5.9, 5.17, 8.11, 8.31, 8.32, 8.33, 8.34, 8.35, 8.36, 8.37, 8.41 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2252, 2279aa–11, 2279bb, 2279bb–1, 2279bb–2, 2279bb–3, 2279bb–4, 2279bb–5, 2279bb–6, 2279cc); sec. 514 of Pub. L. 102–552, 106 Stat. 4102; sec. 118 of Pub. L. 104–105, 110 Stat. 168; sec. 939A of Pub. L. 111–203, 124 Stat. 1326, 1887 (15 U.S.C. 78o–7 note) (July 21, 2010).

■ 2. Amend § 652.5 by:

■ a. Removing the definitions for ''Contingency Funding Plan (CFP)'', ''Eurodollar time deposit'', ''Final maturity'', ''General obligations'', ''Government agency'', ''Government-sponsored agency'', ''Liability Maturity Management Plan (LMMP)'', ''Liquid investments'', ''Liquidity reserve'', ''Mortgage securities'', ''Nationally recognized statistical rating organization (NRSRO)'', ''Revenue bond'', and ''Weighted average life (WAL)'';

■ b. Revising the last sentence to the definition for ''Asset-backed securities (ABS)''; and

■ c. Adding alphabetically five definitions to read as follows:

§ 652.5 Definitions.

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

* * * * *

Asset-backed securities (ABS) * * * For the purpose of this subpart, ABS excludes mortgage-backed securities that are defined below.

* * * * *

Diversified investment fund (DIF) means an investment company registered under section 8 of the Investment Company Act of 1940.

* * * * *

Government-sponsored enterprise (GSE) means an entity established or chartered by the United States Government to serve public purposes specified by the United States Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States Government.

* * * * *

Mortgage-backed securities (MBS) means securities that are either:

(1) Pass-through securities or participation certificates that represent ownership of a fractional undivided interest in a specified pool of residential (excluding home equity loans), multifamily or commercial mortgages, or

(2) A multiclass security (including collateralized mortgage obligations and real estate mortgage investment conduits) that is backed by a pool of residential, multifamily or commercial real estate mortgages, pass through MBS, or other multiclass MBS.

(3) This definition does not include agricultural mortgage-backed securities guaranteed by Farmer Mac itself.

* * * * *

Obligor means an issuer, guarantor, or other person or entity who has an obligation to pay a debt, including interest due, by a specified date or when payment is demanded. For a DIF, both the DIF itself and the entities obligated to pay the underlying debt are considered a single obligor.

* * * * *

U.S. Government agency means an instrumentality of the U.S. Government whose obligations are fully guaranteed as to the payment of principal and interest by the full faith and credit of the U.S. Government.

■ 3. Amend § 652.10 by:

■ a. Removing the word ''four'' in the last sentence of the paragraph (c) introductory text;

■ b. Removing the phrase ''geographical areas,'' in paragraph (c)(1)(i); and

■ c. Adding a new paragraph (c)(5) to read as follows:

§ 652.10 Investment management.

* * * * *

(c) * * *

(5) *Concentration risk.* Your investment policies must set risk diversification standards. Diversification parameters must be based on the carrying value of investments.

(i) The Corporation's maximum allowable investments in any one obligor may not exceed 10 percent of Regulatory Capital. Only investments in obligations backed by U.S. Government agencies or GSEs may exceed the 10-percent single obligor limit.

(ii) Not more than 50 percent of the Corporation's entire investment portfolio may be comprised of GSE-issued MBS.

* * * * *

■ 4. Section 652.20 is revised to read as follows:

§ 652.20 Eligible non-program investments.

(a) Eligible investments consist of:

(1) A non-convertible senior debt security.

(2) A money market instrument with a maturity of 1 year or less.

(3) A portion of an ABS or MBS that is fully guaranteed by a U.S. Government agency.

(4) A portion of an ABS or MBS that is fully and explicitly guaranteed as to the timely payment of principal and interest by a GSE.

(5) The senior-most position of an ABS or MBS that is not fully guaranteed by a U.S. Government agency or fully and explicitly guaranteed as to the timely payment of principal and interest by a GSE, provided that the MBS satisfies the definition of ''mortgage related security'' in 15 U.S.C. 78c(a)(41).

(6) An obligation of an international or multilateral development bank in which the U.S. is a voting member.

(7) Shares of a diversified investment fund, if its portfolio consists solely of securities that satisfy investments listed in paragraphs (b)(1) through (b)(4) of this section.

(b) Farmer Mac may only purchase those eligible investments satisfying all of the following:

(1) The obligor(s) of the investment have strong capacity to meet financial commitments for the life of the investment. A strong capacity to meet financial commitments exits if the risk of default by the obligor(s) is very low. Investments whose obligors are located outside the U.S., and whose obligor capacity to meet financial commitments is being relied upon to satisfy this requirement, must also be fully guaranteed by a U.S. Government agency.

(2) The investment must exhibit low credit risk and other risk characteristics consistent with the purpose or purposes for which it is held. At a minimum, obligors must have strong capacity to meet financial commitments and generally have a very low probability of default throughout the term of the investment even under severely adverse, stressful conditions in the obligors' business environment.

(3) The investment must be denominated in U.S. dollars.

■ 5. Add a new § 652.23 to read as follows:

§ 652.23 Other non-program investments.

(a) Farmer Mac may make a written request for our approval to purchase and hold other non-program investments that do not satisfy the requirements of § 652.20. Your request for our approval to purchase and hold other non-program investments at a minimum must:

(1) Describe the investment structure;

(2) Explain the purpose and objectives for making the investment; and

(3) Discuss the risk characteristics of the investment, including an analysis of the investment's impact to capital.

(b) We may impose written conditions in conjunction with our approval of your request to invest in other non-program investments.

(c) For purposes of applying the provisions of this subpart, except § 652.20, investments approved under this section are treated the same as eligible non-program investments unless our conditions of approval state otherwise.

■ 6. Section 652.25 is revised to read as follows:

§ 652.25 Ineligible investments.

(a) *Investments ineligible when purchased.* Non-program investments that do not satisfy the eligibility criteria set forth in § 652.20(a) or have not been approved by the FCA pursuant to § 652.23 at the time of purchase are ineligible. You must not purchase ineligible investments. If you determine that you have purchased an ineligible investment, you must notify us within 15 calendar days after such determination. You must divest of the investment no later than 60 calendar days after you determine that the investment is ineligible unless we approve, in writing, a plan that authorizes you to divest the investment over a longer period of time. Until you divest of the investment, it may not be used to satisfy your liquidity requirement(s) under § 652.40, but must continue to be included in the § 652.15(b) investment portfolio limit calculation.

(b) *Investments that no longer satisfy eligibility criteria.* If you determine that a non-program investment no longer satisfies the criteria set forth in § 652.20 or no longer satisfies the conditions of approval issued under § 652.23, you must notify us within 15 calendar days after such determination. If approved by the FCA in writing, you may continue to hold the investment, subject to the following and any other conditions we impose:

(1) You may not use the investment to satisfy your § 652.40 liquidity requirement(s);

(2) The investment must continue to be included in your § 652.15 investment portfolio limit calculation; and

(3) You must develop a plan to reduce the investment's risk to you.

■ 7. Add a new § 652.27 to read as follows:

§ 652.27 Reservation of authority for investment activities.

FCA retains the authority to require you to divest of any investment at any time for failure to comply with applicable regulations, for safety and soundness reasons, or failure to comply with written conditions of approval. The timeframe set by FCA for such required divestiture will consider the expected loss on the transaction (or transactions) and the effect on your financial condition and performance. FCA may also, on a case-by-case basis, determine that a particular non-program investment poses inappropriate risk, notwithstanding that it satisfies the investment eligibility criteria or received prior approval from us. If so, we will notify you as to the proper treatment of the investment.

■ 8. Amend § 652.40 by revising the table in paragraph (c) to read as follows:

§ 652.40 Liquidity reserve requirement and supplemental liquidity.

* * * * *

TABLE TO § 652.40(C)

Liquidity level	Instruments	Discount (multiply market value by)
Level 1	• Cash, including cash due from traded but not yet settled debt	100 percent.
	• Overnight money market instruments, including repurchase agreements secured exclusively by Level 1 investments.	100 percent.
	• Obligations of U.S. Government agencies with a final remaining maturity of 3 years or less.	97 percent.
	• GSE senior debt securities that mature within 60 days, excluding securities issued by the Farm Credit System.	95 percent.
	• Diversified investment funds comprised exclusively of Level 1 instruments.	95 percent.
Level 2	• Additional Level 1 investments	Discount for each Level 1 investment applies.
	• Obligations of U.S. Government agencies with a final remaining maturity of more than 3 years.	97 percent.
	• MBS that are fully guaranteed by a U.S. Government agency	95 percent.
	• Diversified investment funds comprised exclusively of Level 1 and 2 instruments.	95 percent.
Level 3	• Additional Level 1 or Level 2 investments	Discount for each Level 1 or Level 2 investment applies.
	• GSE senior debt securities with maturities exceeding 60 days, excluding senior debt securities of the Farm Credit System.	93 percent for all instruments in Level 3.
	• MBS that are fully guaranteed by a GSE as to the timely repayment of principal and interest.	
	• Money market instruments maturing within 90 days.	
	• Diversified investment funds comprised exclusively of Levels 1, 2, and 3 instruments.	
	• Qualifying securities backed by Farmer Mac program assets (loans) guaranteed by the United States Department of Agriculture (excluding the portion that would be necessary to satisfy obligations to creditors and equity holders in Farmer Mac II LLC).	

TABLE TO § 652.40(C)—Continued

Liquidity level	Instruments	Discount (multiply market value by)
Supplemental Liquidity	• Eligible investments under § 652.20 and those approved under § 652.23.	90 percent except discounts for Level 1, 2 or 3 investments apply to such investments held as supplemental liquidity.

Dated: February 12, 2016.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2016–03626 Filed 2–22–16; 8:45 am]

BILLING CODE 6705–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–77172; File No. S7–27–15]

RIN 3235–AL55

Transfer Agent Regulations; Extension of Comment Period

AGENCY: Securities and Exchange Commission.

ACTION: Advance notice of proposed rulemaking; Concept release; Request for comment; extension of comment period.

SUMMARY: The Securities and Exchange Commission (''Commission'') is extending the comment period for the Advance Notice of Proposed Rulemaking, Concept Release and Request for Comment with respect to transfer agent regulations. The original comment period is scheduled to end on February 29, 2016. The Commission is extending the time period in which to provide the Commission with comments by 45 days, until April 14, 2016. This action will allow interested persons additional time to analyze the issues and prepare their comments.

DATES: Comments on the document published December 31, 2015 (80 FR 81948) must be in writing and received by April 14, 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: Brent J. Fields, 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, 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: The Commission has requested comment in its Advance Notice of Proposed Rulemaking, Concept Release and Request for Comment (''Release'') with respect to transfer agent regulations.[1] The Release identifies and seeks comment in various areas, including registration and reporting requirements, safeguarding of funds and securities, standards for restrictive legends, and cybersecurity. Additionally, the Release generally seeks comment on a broad range of topics in the transfer agent space, including the processing of book entry securities, recordkeeping for beneficial owners, administration of issuer plans, and the role of transfer agents to mutual funds and crowdfunding. The Release originally provided that comments must be received by February 29, 2016. The Commission has received requests to extend the comment period.[2] The Commission believes that extending the comment period would be appropriate in order to provide the public additional time to consider and comment on the issues addressed in the Release. Therefore, the Commission is extending the public comment period for 45 days, until April 14, 2016.

By the Commission.

Dated: February 18, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–03733 Filed 2–22–16; 8:45 am]

BILLING CODE 8011–01–P

[1] Securities Exchange Act Release No. 76743 (December 22, 2015), 80 FR 81948 (December 31, 2015).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. FDA–2015–F–4317]

Center for Science in the Public Interest, Natural Resources Defense Council, Center for Food Safety, Consumers Union, Improving Kids' Environment, Center for Environmental Health, Environmental Working Group, Environmental Defense Fund, and James Huff; Filing of Food Additive Petition; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification; extension of comment period.

[2] *See* letters from Todd May, President, Securities Transfer Association, dated January 7, 2016; Martin McHale, President, U.S. Equity Services, Computershare, dated January 15, 2016; Cristeena G. Naser, Vice President and Senior Counsel, Center for Securities, Trust & Investment of the American Bankers Association, dated January 22, 2015; Alvin Santiago, President, Shareholder Services Association, dated January 27, 2016; Thomas F. Price, Manager Director, Securities Industry and Financial Markets Association, dated February 2, 2016.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the comment period for the notice of filing that appeared in the **Federal Register** of January 4, 2016. In the notice, FDA requested comments on a filed food additive petition (FAP 5A4810), submitted by the Center for Science in the Public Interest, Natural Resources Defense Council, Center for Food Safety, Consumers Union, Improving Kids' Environment, Center for Environmental Health, Environmental Working Group, Environmental Defense Fund, and James Huff, proposing that the food additive regulations be amended to no longer authorize the use of seven listed synthetic flavoring food additives and to establish zero tolerances for the additives. We are taking this action in response to a request for an extension to allow interested persons additional time to submit comments.

DATES: We are extending the comment period on the notice of filing of a food additive petition published on January 4, 2016 (81 FR 42). Submit either electronic or written comments by May 3, 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–F–4317 for ''Center for Science in the Public Interest, Natural Resources Defense Council, Center for Food Safety, Consumers Union, Improving Kids' Environment, Center for Environmental Health, Environmental Working Group, Environmental Defense Fund, and James Huff, Filing of Food Additive Petition.'' 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.

FOR FURTHER INFORMATION CONTACT: Judith Kidwell, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1071.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 4, 2016 (81 FR 42), we published a notice of filing of a food additive petition (FAP 5A4810) submitted by the Center for Science in the Public Interest, Natural Resources Defense Council, Center for Food Safety, Consumers Union, Improving Kids' Environment, Center for Environmental Health, Environmental Working Group, Environmental Defense Fund, and James Huff, c/o Mr. Thomas Neltner, 1875 Connecticut Ave. NW., Suite 600, Washington, DC 20009. The notice also invited comments on the petition. The petition proposes to amend 21 CFR 172.515, *Synthetic flavoring substances and adjuvants,* to no longer provide for the use of seven listed synthetic flavoring food additives and to establish zero tolerances for these additives. Specifically, the petitioners contend that new data establish that these substances are carcinogenic and are, therefore, not safe for use in food pursuant to the Delaney Clause (section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(3)(A))), which provides that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal, or if it is found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal.

The seven food additives which are the subject of the petition are:

- Benzophenone (also known as diphenylketone) (CAS No. 119–61–9);
- Ethyl acrylate (CAS No. 140–88–5);
- Eugenyl methyl ether (also known as 4-allylveratrole or methyl eugenol) (CAS No. 93–15–2);
- Myrcene (also known as 7-methyl-3-methylene-1,6-octadiene) (CAS No. 123–35–3);
- Pulegone (also known as *p*-menth-4(8)-en-3-one) (CAS No. 89–82–7);
- Pyridine (CAS No. 110–86–1); and

• Styrene (CAS No. 100–42–5).

We have received a request for a 60-day extension of the comment period for the petition. The request conveyed concern that the current 60-day comment period does not allow sufficient time to collect and provide data and information and develop a meaningful and thoughtful response to the assertions set forth in the petition.

We have considered the request and are extending the comment period for the petition for an additional 60 days, until May 3, 2016. We believe that a 60-day extension allows adequate time for interested persons to submit comments without significantly delaying rulemaking on these important issues.

Dated: February 18, 2016.

Dennis M. Keefe,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 2016–03708 Filed 2–22–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. FDA–2014–N–1021]

Food Labeling; Gluten-Free Labeling of Fermented or Hydrolyzed Foods; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: In the **Federal Register** of November 18, 2015, the Food and Drug Administration (FDA) published a proposed rule entitled ''Food Labeling; Gluten-Free Labeling of Fermented or Hydrolyzed Foods.'' The proposed rule would establish requirements concerning ''gluten-free'' labeling for foods that are fermented or hydrolyzed or that contain fermented or hydrolyzed ingredients. We are taking this action to reopen the comment period in response to requests to allow interested persons additional time to submit comments.

DATES: FDA is reopening the comment period on the proposed rule published November 18, 2015 (80 FR 71990). Submit either electronic or written comments by April 25, 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–2014–N–1021 for ''Food Labeling; Gluten-Free Labeling of Fermented or Hydrolyzed Foods.'' 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.

FOR FURTHER INFORMATION CONTACT: Carol D'Lima, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2371, FAX: 301–436–2636.

SUPPLEMENTARY INFORMATION: The proposed rule would establish requirements concerning ''gluten-free'' labeling for foods that are fermented or hydrolyzed or that contain fermented or hydrolyzed ingredients. These additional requirements for the ''gluten-free'' labeling rule are needed to help ensure that individuals with celiac disease are not misled and receive truthful and accurate information with respect to fermented or hydrolyzed foods labeled as ''gluten-free.'' We provided a 90-day comment period for the proposed rule.

We received multiple requests for a 60-day extension of the comment period and one request for a 90-day extension of the comment period for the proposed rule. Each request conveyed concern that the original 90-day comment period does not allow sufficient time to develop a meaningful or thoughtful response to the proposed rule. We have considered the requests and are reopening the comment period for the

proposed rule until April 25, 2016. We believe that an additional 60-day period allows adequate time for interested persons to submit comments without significantly delaying rulemaking on these important issues. The period for comments regarding information collection issues under the Paperwork Reduction Act of 1995 remains unchanged, where comments were to be submitted until February 22, 2016 (see 81 FR 3751, January 22, 2016).

Dated: February 18, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–03716 Filed 2–22–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–129067–15]

RIN 1545–BM99

Definition of Political Subdivision

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that provide guidance regarding the definition of political subdivision for purposes of tax-exempt bonds. The proposed regulations are necessary to specify the elements of a political subdivision. The proposed regulations will affect State and local governments that issue tax-exempt bonds and users of property financed with tax-exempt bonds. Under certain transition rules, however, the proposed definition of political subdivision will not apply for determining whether outstanding bonds are obligations of a political subdivision and will not apply to existing entities for a transition period. This document also provides a notice of a public hearing for these proposed regulations.

DATES: Written or electronic comments must be received by May 23, 2016. Request to speak and outlines of topics to be discussed at the public hearing scheduled for June 6, 2016, at 10:00 a.m., must be received by May 23, 2016.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–129067–15), Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered to: CC:PA:LPD:PR Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–129067–15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (REG–129067–15). The public hearing will be held at the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Spence Hanemann at (202) 317–6980; concerning submissions of comments and the hearing, Oluwafunmilayo (Funmi) Taylor at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 under section 103 of the Internal Revenue Code (Code). Section 103 generally provides that, with certain exceptions, gross income does not include interest on any obligation of a State or political subdivision thereof. Section 1.103–1 of the Income Tax Regulations (the Existing Regulations) defines political subdivision as ''any division of any State or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit.''

On a few occasions, Federal courts have ruled on whether an entity qualifies as a political subdivision. *E.g., Philadelphia Nat'l Bank* v. *United States,* 666 F.2d 834 (3d Cir. 1981); *Comm'r of Internal Revenue* v. *White's Estate,* 144 F.2d 1019 (2d Cir. 1944). The IRS has also addressed this issue in revenue rulings, most recently in 1983. *E.g.,* Rev. Rul. 83–131 (1983–2 CB 184); Rev. Rul. 78–138 (1978–1 CB 314). Because the results in these revenue rulings generally turn on the unique facts and circumstances of the individual cases, numerous entities have sought and received letter rulings on whether they are political subdivisions. Letter rulings, however, are limited to their particular facts, may not be relied upon by taxpayers other than the taxpayer that received the ruling, and are not a substitute for published guidance. *See* 26 U.S.C. 6110(k)(3) (2015) (providing generally that a ruling, determination letter, or technical advice memorandum may not be used or cited as precedent).

Commenters have requested additional published guidance, to be applied prospectively, on which facts and circumstances are germane to an entity's status as a political subdivision. The Treasury Department and IRS recognize the need to clarify the definition of political subdivision to provide greater certainty to prospective issuers and to promote greater consistency in how the definition is applied across a wide range of factual situations. These proposed regulations (the Proposed Regulations) would provide a new definition of political subdivision for purposes of tax-exempt bonds and would update and streamline other portions of the Existing Regulations. The definition of political subdivision in the Proposed Regulations does not apply in determining whether an entity is treated as a political subdivision of a State for purposes of section 414(d) of the Code.

Explanation of Provisions

1. Definition of Political Subdivision

The Proposed Regulations clarify and further develop the eligibility requirements for a political subdivision. To qualify as a political subdivision under the Proposed Regulations, an entity must meet three requirements, taking into account all of the facts and circumstances: sovereign powers, governmental purpose, and governmental control. The Proposed Regulations also authorize the Commissioner to set forth in future guidance to be published in the Internal Revenue Bulletin additional circumstances in which an entity qualifies as a political subdivision.

A. Sovereign Powers

The Proposed Regulations continue, without substantive change, the longstanding requirement that a political subdivision be empowered to exercise at least one of the generally recognized sovereign powers. The three sovereign powers recognized for this purpose are eminent domain, police power, and taxing power. *See Comm'r of Internal Revenue* v. *Shamberg's Estate,* 144 F.2d 998 (2d Cir. 1944). The entity must be able to exercise a substantial amount of at least one of these powers. *See, e.g.,* Rev. Rul. 77–164 (1977–1 CB 20); Rev. Rul. 77–165 (1977–1 CB 21).

B. Governmental Purpose

In determining whether an entity is a political subdivision, the case law and administrative guidance interpreting the definition of political subdivision in the Existing Regulations commonly consider whether the entity serves a public purpose. Historically, the determination of whether an entity serves a public purpose has focused on the purpose for which the entity was

created, usually as set forth in the legislation authorizing creation of the entity, rather than on the entity's conduct after its creation. *See, e.g., Shamberg's Estate,* 144 F.2d at 1004. The Proposed Regulations require that a political subdivision serve a governmental purpose. A governmental purpose requires, among other things, that the purpose for which the entity was created, as set out in its enabling legislation, be a public purpose and that the entity actually serve that purpose. It also requires that the entity operate in a manner that provides a significant public benefit with no more than incidental benefit to private persons. *Cf.,* Rev. Rul. 90–74 (1990–2 CB 34) (applying an ''incidental private benefit'' standard for purposes of determining whether income is included in gross income under section 115(1)).

C. Governmental Control

The Proposed Regulations provide that a political subdivision must be governmentally controlled. The Proposed Regulations provide rules for determining both what constitutes control and which parties must possess that control.

i. Definition of Control

The Proposed Regulations define control to mean ongoing rights or powers to direct significant actions of the entity. Rights or powers to direct the entity's actions only at a particular point in time are not ongoing and, therefore, do not constitute control. For example, the right to approve an entity's plan of operation as a condition of the entity's formation is not an ongoing right. To constitute control, a collection of rights and powers must enable its holder to direct the significant actions of the entity.

The Proposed Regulations provide three non-exclusive benchmarks of rights or powers that constitute control: (1) The right or power both to approve and to remove a majority of an entity's governing body; (2) the right or power to elect a majority of the governing body of the entity in periodic elections of reasonable frequency; or (3) the right or power to approve or direct the significant uses of funds or assets of the entity in advance of that use. Aside from these three arrangements, the determination of whether a collection of rights and powers constitutes control will depend on the facts and circumstances. Neither the right to dissolve an entity nor procedures designed to ensure the integrity of the entity but not to direct significant actions of the entity are control. *Cf.,* Rev. Rul. 69–453 (1969–2 CB 182) (addressing procedures that do not constitute control in the context of instrumentalities).

ii. Control Vested in a State or Local Governmental Unit or an Electorate

Control by a small faction of private individuals, business corporations, trusts, partnerships, or other persons is fundamentally not governmental control. Therefore, the Proposed Regulations generally require that control be vested in either a general purpose State or local governmental unit or in an electorate established under an applicable State or local law of general application. If, however, a small faction of private persons controls an electorate, that electorate's control of the entity does not constitute governmental control of the entity. Accordingly, the Proposed Regulations provide that an entity controlled by an electorate is not governmentally controlled when the outcome of the exercise of control is determined solely by the votes of an unreasonably small number of private persons.

The determination of whether the number of private persons controlling an electorate is unreasonably small generally depends on all of the facts and circumstances. To provide certainty, the Proposed Regulations limit application of this facts and circumstances test to situations that fall between two quantitative measures of concentration in voting power. The number of private persons controlling an electorate is always unreasonably small if the combined votes of the three voters with the largest shares of votes in the electorate will determine the outcome of the relevant election, regardless of how the other voters vote. The number of private persons controlling an electorate is never unreasonably small if determining the outcome of the relevant election requires the combined votes of more voters than the 10 voters with the largest shares of votes in the electorate. For example, control can always be vested in any electorate comprised of 20 or more voters that each have the right to cast one vote in the relevant election without giving rise to a private faction. For purposes of applying these measures of concentration in voting power, related parties are treated as a single voter and the votes of the related parties are aggregated.

iii. Possible Relief for Development Districts

Some observers have suggested that, despite private control, development districts should be political subdivisions during an initial development period in which one or two private developers elect the district's governing body and no other governmental control exists. The Treasury Department and IRS recognize that the governmental control requirement may present challenges for such development districts. In these circumstances, the Treasury Department and IRS are concerned about the potential for excessive private control by individual developers, the attendant impact of excessive issuance of tax-exempt bonds, and inappropriate private benefits from this Federal subsidy. The Treasury Department and IRS seek public comment on whether it is necessary or appropriate to permit such districts to be political subdivisions during an initial development period; how such relief might be structured; what specific safeguards might be included in the recommended relief to protect against potential abuse; and whether the proposed prospective effective dates and transition periods in § 1.103–1(d) of the Proposed Regulations provide sufficient relief.

2. Streamlining Amendments

In addition to amending the definition of political subdivision, paragraphs (a) and (b) of the Proposed Regulations update the references in the general provisions of the Existing Regulations to reflect changes to the Code made in the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085, and other laws and regulations since the promulgation of the longstanding Existing Regulations. The Proposed Regulations also streamline these provisions. In general, the Treasury Department and the IRS intend that these proposed amendments not change the meaning of the Existing Regulations. The last sentence of § 1.103–1(a) of the Proposed Regulations, however, clarifies that the continued tax-exemption of an issue of bonds depends on its issuer's continued status as a qualifying issuer of tax-exempt bonds. The Treasury Department and IRS seek comments on the need for remedial action provisions in the event the entity ceases to qualify as a political subdivision and on the substance of any such provisions.

3. Applicability Dates and Reliance on Proposed Regulations

Subject to certain transition rules, the Proposed Regulations generally would apply to all entities for all purposes of the tax-exempt bond provisions of sections 103 and 141 to 150 beginning 90 days after the Proposed Regulations are finalized. In order to ease hardship that may arise from the new definition

of political subdivision, under proposed transition rules, that definition would not apply for purposes of determining whether outstanding bonds and refunding bonds in which the weighted average maturity is not extended continue to be obligations of a political subdivision. While these transition rules for outstanding bonds and refunding bonds would apply for the purpose of determining whether these bonds continue to be obligations of a political subdivision, the new proposed definition of political subdivision would apply for other purposes under sections 103 and 141 to 150, such as whether a new entity that subsequently became a user of a project financed with such bonds qualified as a State or local governmental unit for purposes of section 141. Furthermore, under another proposed transition rule that would apply to entities in existence prior to 30 days after the Proposed Regulations are published, the proposed definition of political subdivision would not apply for any purpose until three years and ninety days after the Proposed Regulations are finalized. This three-year transition period provides existing entities an opportunity to restructure as necessary to satisfy the new definition of political subdivision and allows existing entities to continue to issue new bonds during the transition period. To enhance certainty, an issuer also may choose to apply the definition of political subdivision in § 1.103–1(c) in the final regulations in circumstances in which that definition otherwise would not apply under the transition rules.

In addition, prior to the applicability date of the final regulations, issuers may elect to apply the definition of political subdivision in § 1.103–1(c) of the Proposed Regulations in whole, but not in part, for any purpose of sections 103 and 141 through 150, provided such use is applied consistently for all purposes of sections 103 and 141 through 150 to any given entity.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small entities.

Comments and Public Hearing

Before these Proposed Regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the ''Addresses'' heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at *www.regulations.gov* or upon request.

A public hearing has been scheduled for June 6, 2016, at 10:00 a.m., in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For more information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by May 23, 2016. Submit a signed paper or electronic copy of the outline as prescribed in this preamble under the ''Addresses'' heading. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Spence Hanemann and Timothy Jones, Office of Associate Chief Counsel (Financial Institutions and Products), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

Availability of IRS Documents

IRS revenue rulings cited in this notice of proposed rulemaking are made available by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.103–1 is revised to read as follows:

§ 1.103–1 Interest on State or local bonds.

(a) *Interest on State or local bonds.* Under section 103(a), except as otherwise provided in section 103(b), gross income does not include interest on any State or local bond. Under section 103(c), the term *State or local bond* means any obligation (as defined in § 1.150–1(b)) of a State (including for this purpose the District of Columbia or any possession of the United States) or a political subdivision thereof (a State or local governmental unit). Obligations issued by or on behalf of any State or local governmental unit by a constituted authority empowered to issue such obligations are the obligations of such a unit. An obligation qualifies as a State or local bond so long as the issuer of that obligation remains a State or local governmental unit or a constituted authority.

(b) *Certain limitations on interest exclusion.* Under section 103(b), the interest exclusion in section 103(a) is inapplicable to a private activity bond under section 141(a) (unless the bond is a qualified bond under section 141(e)), an arbitrage bond under section 148, or a bond which does not meet the applicable requirements of section 149.

(c) *Definition of political subdivision*—(1) *In general.* The term *political subdivision* means an entity that meets each of the requirements of paragraphs (c)(2) (sovereign powers), (c)(3) (governmental purpose), and (c)(4) (governmental control) of this section, taking into account all of the facts and circumstances, or that is described in published guidance issued pursuant to paragraph (c)(5) of this section. Entities that may qualify as political subdivisions include, among others, general purpose governmental entities, such as cities and counties (whether or not incorporated as municipal corporations), and special purpose governmental entities, such as special assessment districts that provide for

roads, water, sewer, gas, light, reclamation, drainage, irrigation, levee, school, harbor, port improvements, and other governmental purposes for a State or local governmental unit.

(2) *Sovereign powers.* Pursuant to a State or local law of general application, the entity has a delegated right to exercise a substantial amount of at least one of the following recognized sovereign powers of a State or local governmental unit: The power of taxation, the power of eminent domain, and police power.

(3) *Governmental purpose.* The entity serves a governmental purpose. The determination of whether an entity serves a governmental purpose is based on, among other things, whether the entity carries out the public purposes that are set forth in the entity's enabling legislation and whether the entity operates in a manner that provides a significant public benefit with no more than incidental private benefit.

(4) *Governmental control.* A State or local governmental unit exercises control over the entity. For this purpose, control is defined in paragraph (c)(4)(i) of this section and a State or local governmental unit exercises such control only if the control is vested in persons described in paragraph (c)(4)(ii) of this section.

(i) *Definition of control. Control* means an ongoing right or power to direct significant actions of the entity. Rights or powers may establish control either individually or in the aggregate. Among rights or powers that may establish control, an ongoing ability to exercise one or more of the following significant rights or powers, on a discretionary and non-ministerial basis, constitutes control: the right or power both to approve and to remove a majority of the governing body of the entity; the right or power to elect a majority of the governing body of the entity in periodic elections of reasonable frequency; or the right or power to approve or direct the significant uses of funds or assets of the entity in advance of that use. Procedures designed to ensure the integrity of the entity but not to direct significant actions of the entity are insufficient to constitute control of an entity. Examples of such procedures include requirements for submission of audited financial statements of the entity to a higher level State or local governmental unit, open meeting requirements, and conflicts of interest limitations.

(ii) *Control vested in a State or local governmental unit or an electorate.* Control is vested in persons described in paragraphs (c)(4)(ii)(A) or (c)(4)(ii)(B) of this section or a combination thereof:

(A) A State or local governmental unit possessing a substantial amount of each of the sovereign powers and acting through its governing body or through its duly authorized elected or appointed officials in their official capacities; or

(B) An electorate established under applicable State or local law of general application, provided the electorate is not a private faction (as defined in paragraph (c)(4)(iii) of this section).

(iii) *Definition of private faction*—(A) *In general.* A *private faction* is any electorate if the outcome of the exercise of control described in paragraph (c)(4)(i) of this section is determined solely by the votes of an unreasonably small number of private persons. The determination of whether a number of such private persons is unreasonably small depends on all of the facts and circumstances, including, without limitation, the entity's governmental purpose, the number of members in the electorate, the relationships of the members of the electorate to one another, the manner of apportionment of votes within the electorate, and the extent to which the members of the electorate adequately represent the interests of persons reasonably affected by the entity's actions. For purposes of this definition, the special rules in paragraphs (c)(4)(iii)(B) through (D) of this section apply.

(B) *Treatment of certain limited electorates as private factions.* An electorate is a private faction if any three private persons that are members of the electorate possess, in the aggregate, a majority of the votes necessary to determine the outcome of the relevant exercise of control.

(C) *Safe harbor—voting power dispersed among more than 10 persons.* An electorate is not a private faction if the smallest number of private persons who can combine votes to establish a majority of the votes necessary to determine the outcome of the relevant exercise of control is greater than 10 persons. For example, if an electorate consists of 20 private persons with equal, five-percent shares of the total votes, that electorate is not a private faction because a minimum of 11 members of that electorate is necessary to have a majority of the votes. By contrast, for example, if an electorate consists of 20 private persons with unequal voting shares in which some combination of 10 or fewer members has a majority of the votes, then that electorate does not qualify for the safe harbor from treatment as a private faction under this paragraph (c)(4)(iii)(C).

(D) *Operating rules.* The following rules apply for purposes of determining numbers of voters and voting control in paragraphs (c)(4)(iii)(B) and (C) of this section:

(*1*) Related parties (as defined in § 1.150–1(b)) are treated as a single person; and

(*2*) In computing the number of votes necessary to determine the outcome of the relevant exercise of control, all voters entitled to vote in an election are assumed to cast all votes to which they are entitled.

(5) *Authority of the Commissioner.* In guidance published in the Internal Revenue Bulletin, the Commissioner may set forth additional circumstances in which an entity qualifies as a political subdivision of a State or local governmental unit. See § 601.601(d)(2)(ii) of this chapter.

(d) *Applicability dates*—(1) *In general.* Except as otherwise provided in paragraphs (d)(2) through (4) of this section, this section applies to all entities for all purposes of sections 103 and 141 through 150 beginning on the date 90 days after the publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

(2) *Applicability date of the definition of political subdivision for outstanding bonds.* For purposes of determining whether outstanding bonds of an entity are obligations of a political subdivision under section 103, the definition of political subdivision in paragraph (c) of this section does not apply to that entity with respect to its outstanding bonds that are issued before the general applicability date under paragraph (d)(1) of this section.

(3) *Applicability date of the definition of political subdivision for refunding bonds.* For purposes of determining whether refunding bonds of an entity are obligations of a political subdivision under section 103, the definition of political subdivision in paragraph (c) of this section does not apply to that entity with respect to its refunding bonds that are issued on or after the general applicability date under paragraph (d)(1) of this section to refund bonds with respect to which paragraph (c) of this section otherwise does not apply, provided that the weighted average maturity of the refunding bonds is no longer than the remaining weighted average maturity of the refunded bonds.

(4) *Applicability date of the definition of political subdivision for existing entities.* For existing entities that are created or organized before March 24, 2016, the definition of political subdivision in paragraph (c) of this section does not apply for any purpose of sections 103 and 141 to 150 during the three-year period beginning on the

general applicability date under paragraph (d)(1) of this section.

(5) *Elective application of definition of political subdivision.* An issuer may choose to apply the definition of political subdivision in paragraph (c) of this section to an issue of bonds in circumstances in which that section otherwise would not apply to that issue under paragraph (d)(2) or (3) of this section, provided that choice is applied consistently to the issue. An entity may choose to apply the definition of political subdivision in paragraph (c) of this section to an entity in circumstances in which that section otherwise would not apply to that entity under paragraph (d)(4) of this section, provided that choice is applied consistently to the entity.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 160105011–6011–01]

RIN 0648–XE390

Endangered and Threatened Wildlife; 90-Day Finding on a Petition To List Three Manta Rays as Threatened or Endangered Under the Endangered Species Act

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

ACTION: 90-day petition finding; request for information.

SUMMARY: We, NMFS, announce a 90-day finding on a petition to list three manta rays, identified as the giant manta ray (*Manta birostris*), reef manta ray (*M. alfredi*), and Caribbean manta ray (*M. c.f. birostris*), range-wide or, in the alternative, any identified distinct population segments (DPSs), as threatened or endangered under the Endangered Species Act (ESA), and to designate critical habitat concurrently with the listing. We find that the petition and information in our files present substantial scientific or commercial information indicating that the petitioned action may be warranted for the giant manta ray and the reef manta ray. We will conduct a status review of these species to determine if the petitioned action is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information pertaining to these two species from any interested party. We also find that the petition and information in our files does not present substantial scientific or commercial information indicating that the Caribbean manta ray is a taxonomically valid species or subspecies for listing, and, therefore, it does not warrant listing at this time.

DATES: Information and comments on the subject action must be received by April 25, 2016.

ADDRESSES: You may submit comments, information, or data on this document, identified by the code NOAA–NMFS–2016–0014, by either any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0014.* Click the ''Comment Now'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Maggie Miller, NMFS Office of Protected Resources (F/PR3), 1315 East-West Highway, Silver Spring, MD 20910, USA.

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

Copies of the petition and related materials are available on our Web site at *http://www.fisheries.noaa.gov/pr/species/fish/manta-ray.html.*

FOR FURTHER INFORMATION CONTACT: Maggie Miller, Office of Protected Resources, 301–427–8403.

SUPPLEMENTARY INFORMATION:

Background

On November 10, 2015, we received a petition from Defenders of Wildlife to list the giant manta ray (*M. birostris*), reef manta ray (*M. alfredi*) and Caribbean manta ray (*M. c.f. birostris*) as threatened or endangered under the ESA throughout their respective ranges, or, as an alternative, to list any identified DPSs as threatened or endangered. The petition also states that if the Caribbean manta ray is determined to be a subspecies of the giant manta ray and not a distinct species, then we should consider listing the subspecies under the ESA. However, if we determine that the Caribbean manta ray is neither a species nor a subspecies, then the petition requests that we list the giant manta ray, including all specimens in the Caribbean, Gulf of Mexico and southeastern United States, under the ESA. The petition requests that critical habitat be designated concurrently with listing under the ESA. Copies of the petition are available upon request (see **ADDRESSES**).

ESA Statutory, Regulatory, and Policy Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When it is found that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted (a ''positive 90-day finding''), we are required to promptly commence a review of the status of the species concerned during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, we conclude the review with a finding as to whether, in fact, the petitioned action is warranted within 12 months of receipt of the petition. Because the finding at the 12-month stage is based on a more thorough review of the available information, as compared to the narrow scope of review at the 90-day stage, a ''may be warranted'' finding does not prejudge the outcome of the status review.

Under the ESA, a listing determination may address a species, which is defined to also include subspecies and, for any vertebrate species, any DPS that interbreeds when mature (16 U.S.C. 1532(16)). A joint NMFS-U.S. Fish and Wildlife Service (USFWS) (jointly, ''the Services'') policy clarifies the agencies' interpretation of the phrase ''distinct population segment'' for the purposes of listing,

delisting, and reclassifying a species under the ESA (61 FR 4722; February 7, 1996). A species, subspecies, or DPS is ''endangered'' if it is in danger of extinction throughout all or a significant portion of its range, and ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, we determine whether species are threatened or endangered based on any one or a combination of the following five section 4(a)(1) factors: The present or threatened destruction, modification, or curtailment of habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; inadequacy of existing regulatory mechanisms; and any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

ESA-implementing regulations issued jointly by NMFS and USFWS (50 CFR 424.14(b)) define ''substantial information'' in the context of reviewing a petition to list, delist, or reclassify a species as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating whether substantial information is contained in a petition, the Secretary must consider whether the petition: (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

At the 90-day finding stage, we evaluate the petitioners' request based upon the information in the petition including its references and the information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioners' sources and characterizations of the information presented if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude it supports the petitioners' assertions. In other words, conclusive information indicating the species may meet the ESA's requirements for listing is not required to make a positive 90-day finding. We will not conclude that a lack of specific information alone negates a positive 90-day finding if a reasonable person would conclude that the unknown information itself suggests an extinction risk of concern for the species at issue.

To make a 90-day finding on a petition to list a species, we evaluate whether the petition presents substantial scientific or commercial information indicating the subject species may be either threatened or endangered, as defined by the ESA. First, we evaluate whether the information presented in the petition, along with the information readily available in our files, indicates that the petitioned entity constitutes a ''species'' eligible for listing under the ESA. Next, we evaluate whether the information indicates that the species faces an extinction risk that is cause for concern; this may be indicated in information expressly discussing the species' status and trends, or in information describing impacts and threats to the species. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species (*e.g.,* population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate the potential links between these demographic risks and the causative impacts and threats identified in section 4(a)(1).

Information presented on impacts or threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act or have acted on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information indicating that listing may be warranted. We look for information indicating that not only is the particular species exposed to a factor, but that the species may be responding in a negative fashion; then we assess the potential significance of that negative response.

Many petitions identify risk classifications made by nongovernmental organizations, such as the International Union on the Conservation of Nature (IUCN), the American Fisheries Society, or NatureServe, as evidence of extinction risk for a species. Risk classifications by other organizations or made under other Federal or state statutes may be informative, but such classification alone may not provide the rationale for a positive 90-day finding under the ESA. For example, as explained by NatureServe, their assessments of a species' conservation status do ''not constitute a recommendation by NatureServe for listing under the U.S. Endangered Species Act'' because NatureServe assessments ''have different criteria, evidence requirements, purposes and taxonomic coverage than government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide'' (*http://www.natureserve.org/prodServices/pdf/NatureServeStatusAssessmentsListing-Dec%202008.pdf*). Additionally, species classifications under IUCN and the ESA are not equivalent; data standards, criteria used to evaluate species, and treatment of uncertainty are also not necessarily the same. Thus, when a petition cites such classifications, we will evaluate the source of information that the classification is based upon in light of the standards on extinction risk and impacts or threats discussed above.

Taxonomy of the Petitioned Manta Rays

The petition identifies three manta ray ''species'' as eligible for listing under the ESA: The giant manta ray (*M. birostris*), reef manta ray (*M. alfredi*), and Caribbean manta ray (*M. c.f. birostris*). *Manta* is one of two genera under the family *Mobulidae,* the second being *Mobula* (commonly referred to as ''devil rays''). Collectively, manta and devil rays are referred to as mobulid rays and are often confused with one another. Until recently, all manta rays were considered to be a single species known as *Manta birostris* (Walbaum 1792). However, in 2009, Marshall et al. (2009) provided substantial evidence to support splitting the monospecific *Manta* genus into two distinct species. Based on new morphological and meristic data, the authors confirmed the presence of two visually distinct

species: *Manta birostris* and *Manta alfredi* (Krefft 1868). *Manta birostris* is the more widely distributed and oceanic of the two species, found in tropical to temperate waters worldwide and common along productive coastlines, particularly off seamounts and pinnacles (Marshall et al. 2009; CITES 2013). *Manta alfredi* is more commonly observed inshore in tropical waters, found near coral and rocky reefs and also along productive coastlines. It primarily occurs throughout the Indian Ocean and in the eastern and south Pacific, with only a few reports of the species in Atlantic waters (off the Canary Islands, Cape Verde Islands and Senegal).While both species are wide-ranging, and are even sympatric in some locations, Marshall et al. (2009) provides a visual key to differentiate these two species based on coloration, dentition, denticle and spine morphology, size at maturity, and maximum disc width. For example, in terms of coloration, *M. birostris* can be distinguished by its large, white, triangular shoulder patches that run down the middle of its dorsal surface, in a straight line parallel to the edge of the upper jaw. The species also has dark (black to charcoal grey) mouth coloration, medium to large black spots that occur below its fifth gill slits, and a grey V-shaped colored margin along the posterior edges of its pectoral fins (Marshall et al. 2009). In contrast, *M. alfredi* has pale to white shoulder patches where the anterior margin spreads posteriorly from the spiracle before curving medially, a white to light grey mouth, small dark spots that are typically located in the middle of the abdomen, in between the five gill slits, and dark colored bands on the posterior edges of the pectoral fins that only stretch mid-way down to the fin tip (Marshall et al. 2009). The separation of these two manta species appears to be widely accepted by both taxonomists (with Marshall et al. (2009) published in the international animal taxonomist journal, *Zootaxa*) and international scientific bodies (Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and Food and Agriculture Organization of the United Nations (FAO); see CITES (2013) and FAO (2013)), and, as such, we consider both *M. birostris* and *M. alfredi* to be taxonomically distinct species eligible for listing under the ESA.

The petitioners identify a third manta ray species, which they refer to as *M. cf. birostris,* or the ''Caribbean manta ray,'' based on their interpretation of data from Clark (2001). Clark (2001) is a Master's thesis that examined the population structure of *M. birostris* from the Pacific and Atlantic Oceans. This study was conducted prior to the splitting of the monospecific *Manta* genus, and, as such, all of the manta rays identified in the study are referred to as *M. birostris.* However, the petitioners argue that the genetic differences between populations discussed in Clark (2001) provide support for the differentiation of the Caribbean manta ray from *M. birostris.* Clark (2001) examined sequences of mitochondrial DNA (mtDNA) from 18 manta ray individuals and calculated the genetic divergence among haplotypes. Based on these estimates, Clark (2001) divided the 18 individuals into three operational taxonomic units: A Western Pacific unit (which included samples from Hawaii, French Frigate Shoals, Yap, and Fiji; n=5), a Baja unit (which included samples from two individuals from the Gulf of Mexico; n=10), and a Gulf of Mexico unit (n=3). The results showed low genetic divergence among samples from the Western Pacific (0.038–0.076 percent sequence divergence), hence their taxonomic grouping. Based on findings and distribution maps from Marshall et al. (2009), these samples were all likely taken from *M. alfredi* individuals. Similarly, the Baja samples were likely all from *M. birostris* individuals. Clark (2001) notes that the mtDNA haplotypes from the five individuals collected in the Gulf of Mexico formed two groups with percent sequence divergence values that were similar in magnitude to estimates obtained from geographically distinct samples. In other words, the mtDNA haplotypes from three of the Gulf of Mexico individuals were as distant genetically from the other two Gulf of Mexico individuals (0.724–0.80 percent sequence divergence) as samples from the Western Pacific unit were compared to the Baja unit (0.609–0.762 percent). Furthermore, the two Gulf of Mexico samples, which had identical sequences, were similar genetically to haplotype samples from Baja (0.076–0.228 percent sequence divergence), with phylogenetic analysis strongly supporting the pooling of these samples with the Baja taxonomic unit. The other Gulf of Mexico group (n=3) showed percent sequence divergence values ranging from 0.647–0.838 percent when compared to the Baja taxonomic unit and to the Western Pacific unit. The most parsimonious tree representing the phylogenic relationship among the mtDNA haplotypes had three well-supported clades that differed from one another by at least 14 nucleotide substitutions: A clade consisting of clustered western Pacific samples, the three Gulf of Mexico samples as another clade, and the third clade represented by the samples from Baja and the two genetically similar Gulf of Mexico samples.

The petitioners argue that the Gulf of Mexico clade, noted above, represents a third, distinct species of manta ray, which they identify as *Manta c.f. birostris.* While the genetic divergence between the Gulf of Mexico population and the Baja population (assumed to be *M. birostris*) was high relative to the intrapopulation values, this analysis was based on an extremely low sample size, with only three samples from the Gulf of Mexico, and thus cannot be reasonably relied upon to support the identification of a new species of manta ray. It is also important to note that this study analyzed only mtDNA. At best, this mtDNA evidence suggests that *M. birostris* females in the Gulf of Mexico may be philopatric (*i.e.,* returning or remaining near its home area); however, mtDNA does not alone describe population structure. Because mtDNA is maternally inherited, differences in mtDNA haplotypes between populations do not necessarily mean that the populations are substantially reproductively isolated from each other because they do not provide any information on males. As demonstrated in previous findings, in species where female and male movement patterns differ (such as philopatric females but wide-ranging males), analysis of mtDNA may indicate discrete populations, but analysis of nuclear (or bi-parentally inherited) DNA could show homogenous populations as a result of male-mediated gene flow (see *e.g.,* loggerhead sea turtle, 68 FR 53947, September 15, 2003, and sperm whale, 78 FR 68032, November 13, 2013). Although very little is known about the reproductive behavior of the species, the available information suggests that *M. birostris* is highly migratory, with males potentially capable of reproducing with females in different populations. *Manta birostris* is a cosmopolitan species, and in the western Atlantic has been documented as far north as Rhode Island and as far south as Uruguay. Marshall et al. (2009) note that the available information indicates that *M. birostris* is more oceanic than *M. alfredi,* and undergoes significant seasonal migrations. In a tracking study of six *M. birostris* individuals from off Mexico's Yucatan peninsula, Graham et al. (2012) calculated a maximum distance travelled of 1,151 km (based on cumulative straight line distance

between locations), further confirming that the species is capable of fairly long-distance migrations. As such, it does not seem unreasonable to suggest that males from one *M. birostris* population may breed with females from other populations. We highlight the fact that all of the Gulf of Mexico samples from the Clark (2001) study were taken from the same area, the Flower Garden Banks National Marine Sanctuary, indicating significant overlap and potential for interchange of individuals between *M. birostris* populations, at least in the western Atlantic. In other words, without nuclear DNA analyses, or additional information on the mating and reproductive behavior of the species, we cannot confidently make conclusions regarding the genetic discreteness or reproductive isolation of the *M. birostris* populations in the western Atlantic. Therefore, at this time, we do not find that the petition's interpretation of the Clark (2001) results is substantial scientific or commercial information to indicate that *M. c.f. birostris* is a distinct species under the ESA. Furthermore, based on the conclusions from the widely accepted recent manta ray taxonomy publication (Marshall et al. 2009), to which we defer as the authority and best available scientific information on this topic, there is not enough information at this time to conclude that *M. c.f. birostris* is a distinct manta ray species. While Marshall et al. (2009) noted the possibility of this third, putative species, the authors were similarly limited by sample size. The authors examined only one physical specimen (an immature male killed in 1949) and concluded that ''further examination of specimens is necessary to clarify the taxonomic status of this variant manta ray.'' The authors proceed to state:

> At present there is not enough empirical evidence to warrant the separation of a third species of *Manta.* At minimum, additional examination of dead specimens of *Manta* sp. *cf. birostris* are necessary to clarify the taxonomic status of this variant manta ray. Further examinations of the distribution of *Manta* sp. *cf. birostris,* as well as, studies of its ecology and behaviour within the Atlantic and Caribbean are also recommended (Marshall et al. 2009).

We would also like to note that Clark (2001) was cited by Marshall et al. (2009), and, as such, we assume the authors reviewed this paper prior to their conclusions regarding the taxonomy of the manta ray species. Given the above information and analysis, we do not find that information contained in our files or provided by the petitioner presents substantial scientific or commercial information indicating that *M. c.f. birostris,* referred to as the ''Caribbean manta ray'' in the petition, is a valid manta ray species for listing under the ESA. As such, we will consider the information presented in the petition for the Caribbean manta ray as pertaining to the species *M. birostris,* as requested by the petitioner. We, therefore, proceed with our evaluation of the information in the petition to determine if this information indicates that *M. birostris* (referred henceforth as the giant manta ray) and *M. alfredi* (referred henceforth as the reef manta ray) may be warranted for listing throughout all or a significant portion of their respective ranges under the ESA.

Range, Distribution and Life History

Manta birostris

The giant manta ray is a circumglobal species found in temperate to tropical waters (Marshall et al. 2009). In the Atlantic, it ranges from Rhode Island to Uruguay in the west and from the Azores Islands to Angola in the east. The species is also found throughout the Indian Ocean, including off South Africa, within the Red Sea, around India and Indonesia, and off western Australia. In the Pacific, the species is found as far north as Mutsu Bay, Aomori, Japan, south to the eastern coast of Australia and the North Island of New Zealand (Marshall et al. 2011a; Couturier et al. 2015). It has also been documented off French Polynesia and Hawaii, and in the eastern Pacific, its range extends from southern California south to Peru (Marshall et al. 2009; Mourier 2012; CITES 2013).

The species is thought to spend the majority of its time in deep water, but migrates seasonally to productive coastal areas, oceanic island groups, pinnacles and seamounts (Marshall et al. 2009; CITES 2013). Giant manta rays have been observed visiting cleaning stations on shallow reefs (*i.e.,* locations where manta rays will solicit cleaner fish, such as wrasses, shrimp, and gobies, to remove parasitic copepods and other unwanted materials from their body) and are occasionally observed in sandy bottom areas and seagrass beds (Marshall et al. 2011a). While generally known as a solitary species, the giant manta ray has been sighted in large aggregations for feeding, mating, or cleaning purposes (Marshall et al. 2011a). In parts of the Atlantic and Caribbean, there is evidence that some *M. birostris* populations may exhibit differences in fine-scale and seasonal habitat use (Marshall et al. 2009).

The general life history characteristics of the giant manta ray are that of a long-lived and slow-growing species, with extremely low reproductive output (Marshall et al. 2011a; CITES 2013). The giant manta ray can grow to over 7 meters (measured by wingspan, or disc width (DW)) with anecdotal reports of the species reaching sizes of up to 9 m DW, and longevity estimated to be at least 40 years old (Marshall et al. 2009; Marshall et al. 2011a). Size at maturity for *M. birostris* varies slightly throughout its range, with males estimated to mature around 3.8–4 m DW and females at around 4.1–4.7 m DW (White et al. 2006; Marshall et al. 2009). Generally, maturity appears to occur at around 8–10 years (Marshall et al. 2011a; CITES 2013). The giant manta ray is viviparous (*i.e.,* gives birth to live young), with a gestation period of 10–14 months. Manta rays have among the lowest fecundity of all elasmobranchs, typically giving birth to only one pup on average every 2–3 years, which translates to around 5–15 pups total over the course of a female manta ray's lifetime (Couturier et al. 2012; CITES 2013).

Manta rays are filter-feeders that feed almost entirely on plankton. In a tracking study of *M. birostris,* Graham et al. (2012) noted that the species exhibited plasticity in its diet, with the ability to switch between habitat and prey types, and fed on three major prey types: Copepods (occurring in eutrophic waters), chaetognaths (predatory marine worms that feed on copepods), and fish eggs (occurring in oligotrophic waters). Because manta rays are large filter-feeders that feed low in the food chain, they can potentially be used as indicator species that reflect the overall health of the ecosystem (CITES 2013).

Manta alfredi

The reef manta ray is primarily observed in tropical and subtropical waters. It is widespread throughout the Indian Ocean, from South Africa to the Red Sea, and off Thailand and Indonesia to Western Australia. In the western Pacific, its range extends from the Yaeyama Islands, Japan in the north to the Solitary Islands, Australia in the south, and as far east as French Polynesia and the Hawaiian Islands (Marshall et al. 2009; Mourier 2012). Reef manta rays have not been found in the eastern Pacific, and are rarely observed in the Atlantic, with only a few historical reports or photographs of *M. alfredi* from off the Canary Islands, Cape Verde Islands, and Senegal (Marshall et al. 2009).

In contrast to the giant manta ray, *M. alfredi* is thought to be more of a resident species, commonly observed inshore, around coral and rocky reefs,

productive coastlines, tropical island groups, atolls, and bays (Marshall et al. 2009). According to Marshall et al. (2009), the species tends to exhibit smaller home ranges, philopatry, and shorter seasonal migrations compared to *M. birostris.* However, recent tracking studies, while showing evidence of site fidelity (Couturier et al. 2011; Deakos et al. 2011), also indicate that *M. alfredi* travels greater distances than previously thought (*e.g.,* >700 km), with distances similar to those exhibited by *M. birostris* (Convention on Migratory Species (CMS) 2014). Braun et al. (2014) also observed diel behavior in *M. alfredi* whereby the manta rays occupy shallower waters (such as reef cleaning stations and feeding grounds; <10 m depths) during daylight hours and move toward deeper, offshore pelagic habitats throughout the night. It is thought that this behavior, which has also been reported for *M. birostris* (CMS 2014), is associated with feeding, with mantas exploiting emergent reef and pelagic plankton that move into the photic zone at night (Braun et al. 2014). The authors also confirmed the capability of *M. alfredi* to conduct deep-water dives (up to 432 m), the purpose of which has not yet been understood.

The reef manta ray has a similar life history to that of the giant manta ray; however, *M. alfredi* grows to a smaller size than *M. birostris.* Based on observations from southern Mozambique, reef manta rays can grow to slightly over 5 m DW (Marshall et al. 2009). Maturity estimates range from around 2.5–3.0 m DW for males, and 3.0–3.9 m DW for females, which corresponds to around 8–10 years of age (Marshall et al. 2009; Deakos 2010; Marshall and Bennett 2010; Marshall et al. 2011b). Longevity is unknown but is thought to be at least 40 years (Marshall et al. 2011b). The reef manta ray is also viviparous, with a gestation period of around 12 months, and typically gives birth to only one pup on average every 2 years; however, there are reports of individuals reproducing annually in both the wild and captivity (Marshall and Bennett 2010).

Using estimates of known life history parameters for both giant and reef manta rays, and plausible range estimates for the unknown life history parameters, Dulvy et al. (2014) calculated a maximum population growth rate of *Manta* spp. and found it to be one of the lowest values when compared to 106 other shark and ray species. Specifically, the median maximum population growth rate (R_{max}) was estimated to be 0.116, which is among the lowest calculated for chondrichthyan species and is actually more similar to those estimates calculated for marine mammal species (Croll et al. 2015). Productivity (r) was calculated to be 0.029 (Dulvy et al. 2014). When compared to the productivity parameters and criteria in Musick (1999), manta rays can be characterized as having ''very low'' productivity (<0.05). Overall, given their life history traits and productivity estimates, manta ray populations (discussed in more detail below) are extremely susceptible to depletion and vulnerable to extirpations (CITES 2013).

Analysis of Petition and Information Readily Available in NMFS Files

The petition contains information on the two manta ray species, including their taxonomy, description, geographic distribution, habitat, population status and trends, and factors contributing to the species' declines. According to the petition, all five causal factors in section 4(a)(1) of the ESA are adversely affecting the continued existence of both the giant and reef manta ray: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors.

In the following sections, we summarize and evaluate the information presented in the petition and in our files on the status of *M. birostris* and *M. alfredi* and the ESA section 4(a)(1) factors that may be affecting these species' risks of global extinction. Based on this evaluation, we determine whether a reasonable person would conclude that an endangered or threatened listing may be warranted for these two manta ray species.

Status and Population Trends

The global abundance of either manta species is unknown, with no available historical baseline population data. Worldwide, only 10 subpopulations of *M. birostris* and 14 subpopulations of *M. alfredi* have been identified and studied, and in most cases are comprised of fewer than 1,000 individuals (see Annex V; CITES 2013). An additional 25 more subpopulations are known to exist, and although species-level information is unavailable, these subpopulations are also assumed to consist of very small aggregations. Given this information, it can be inferred that global population numbers of both *M. birostris* and *M. alfredi* are likely to be small (CITES 2013).

For *M. birostris,* the small subpopulations are thought to be sparsely distributed. In the 10 studied subpopulations mentioned above, the number of recorded individuals ranges from 60 to around 650 (Annex V; CITES 2013). The only subpopulation estimate available is from the aggregation site off southern Mozambique, where 5 years of mark and recapture data (2003–2008) were used to estimate a local subpopulation of 600 individuals (CITES 2013 citing Marshall 2009).

Reef manta ray subpopulations are also thought to be small and geographically fragmented. The number of individuals recorded from the monitored aggregation sites mentioned above range from 35 to 2,410 (Annex V; CITES 2013). Estimates of subpopulations are available from five aggregation sites, ranging from around 100 individuals in Yap, Micronesia to 5,000 in the Republic of Maldives, which, presently, is the largest known aggregation of manta rays (CITES 2013). Based on mark-recapture data, subpopulations in southern Mozambique and western Australia are estimated to be on the order of around 890 and 1,200–1,500 individuals, respectively, and the subpopulation found off Maui, Hawaii is estimated to comprise around 350 individuals (Annex V; CITES 2013).

Given the small, sparsely distributed, and highly fragmented nature of these subpopulations, even a small number of mortalities could potentially have significant negative population-level effects that may lead to regional extirpations (CITES 2013; CMS 2014), increasing these species' risks of global extinction. In fact, information from known aggregation sites suggests global abundance may already be declining, with significant subpopulation reductions (as high as 56–86 percent) for both *Manta* species observed in a number of regions (see Annex VI; CITES 2013). [Note: As the *Manta* genus was split in 2009, information prior to this year is lumped for both species. Where possible (*i.e.,* in locations where the two species are allopatric or where species is described or assumed), we identify the likely species to which the dataset applies.] For example, based on annual landings data from Lamakera, Indonesia, *Manta* spp. landings fell from 1,500 individuals in 2001 to only 648 in 2010, a decline of 57 percent in 9 years. Fishing effort was also noted to have increased over those years, from 30 boats in 2001 to 40 boats in 2011, with no other change to gear or fishing practices (CITES 2013), indicating that the observed decline in *Manta* spp. could likely be attributed to a decrease in abundance of the subpopulation. Similarly, a 57 percent decline in *Manta*

spp. landings in Lombok, Indonesia over the course of 6–7 years was also observed, based on market surveys and fishermen and dealer interviews conducted between 2001–2005 and 2007–2011. In the Philippines, artisanal fishermen indicate declines of up to 50 percent in *Manta* spp. landings over the course of 30 years.

Anecdotal reports and professional diver observational data also suggest substantial declines from historical numbers, with significantly fewer diver sightings and overall sporadic observations of manta rays in areas where they were once common (CITES 2013). For example, off southern Mozambique, scuba divers reported an average of 6.8 mantas (likely *M. alfredi*) per dive, but by 2011, this figure had dropped to less than 1, a decline of 86 percent (CITES 2013 citing Rohner et al. *in press*). Off the Similan-Surin Islands in Thailand, sightings of manta rays (likely *M. birostris*) fell from 59 in 2006–2007 to only 14 in 2011–2012, a decline of 76 percent in only 5 years (CITES 2013). Declines were also observed off Japan, with manta ray numbers (likely *M. alfredi*) sighted by divers dropping from 50 in 1980 to 30 in 1990 (CITES 2013 citing Homma et al. 1999). In Cocos Island National Park, a Marine Protected Area (MPA), White et al. (2015) used diver sighting data to estimate a decline of 89 percent in *M. birostris* relative abundance, although the authors noted that giant manta rays were observed ''only occasionally'' in the area over the course of the study. Additionally, in the Sea of Cortez, the subpopulation (of likely *M. birostris*) is thought to have completely collapsed, with manta rays rarely seen despite being present on every major reef and frequently observed during dives back in the early 1980s (CITES 2013). Anecdotal reports from Madagascar, India, and the Philippines reflect similar situations, with scuba divers and fishermen noting the large declines in the manta ray populations over the past decade and present rarity of the species (CITES 2013).

Not all subpopulations are declining, though, with information to suggest that those manta ray aggregations not subject to fishing or located within protected areas are presently stable. These include the manta ray aggregations found off Micronesia, Palau, Hawaii, and currently the largest known aggregation off the Maldives (CITES 2013). However, given these species' sensitive life history traits and demographic risks, including small, sparsely distributed, and highly fragmented subpopulations (which inhibit recruitment and recovery following declines), we find that the declining and unknown statuses of the remaining 43 subpopulations to be a concern, especially as it relates to the global extinction risk of these two manta ray species, and thus, further investigation is warranted.

Analysis of ESA Section 4(a)(1) Factors

While the petition presents information on each of the ESA Section 4(a)(1) factors, we find that the information presented, including information within our files, regarding the overutilization of these two species for commercial purposes is substantial enough to make a determination that a reasonable person would conclude that these species may warrant listing as endangered or threatened based on this factor alone. As such, we focus our below discussion on the evidence of overutilization for commercial purposes and present our evaluation of the information regarding this factor and its impact on the extinction risk of the two manta ray species.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information from the petition and in our files suggests that the primary threat to both *M. birostris* and *M. alfredi* is overutilization by fisheries. Because both species exhibit affinities for coastal habitats and aggregate in predictable locations, they are especially vulnerable to being caught in numerous types of fishing gear and are both targeted and taken as bycatch in various commercial and artisanal fisheries (CITES 2013; Croll et al. 2015). They have historically been a component of subsistence fishing for decades, primarily fished with simple fishing gear (CITES 2013); however, international demand for manta ray gill rakers (sometimes referred to as ''gill plates''—thin, cartilage filaments used to filter plankton out of the water) has led to a significant increase in fishing pressure on both species. The gill rakers are used in Asian medicine and are thought to have healing properties, from curing chicken pox to cancer, with claims that they also boost the immune system, purify the body, enhance blood circulation, remedy throat and skin ailments, cure male kidney issues, and help with fertility problems (Heinrichs et al. 2011). The use of gill rakers as a remedy, which was widespread in Southern China many years ago, has recently gained renewed popularity over the past decade as traders have increased efforts to market its healing and immune boosting properties directly to consumers (Heinrichs et al. 2011). As a result, demand has significantly increased, incentivizing fishermen who once avoided capture of manta rays to directly target these species (Heinrichs et al. 2011; CITES 2013). According to Heinrichs et al. (2011), it is primarily the older population in Southern China as well as Macau, Singapore, and Hong Kong, that ascribe to the belief of the healing properties of the gill rakers; however, the gill rakers are not considered ''traditional'' or ''prestigious'' items (*i.e.,* shark fins) and many consumers and sellers are not even aware that gill rakers come from manta or mobula rays (devil rays). Meat, cartilage, and skin of manta rays are also utilized, but valued at significantly less than the gill rakers, and usually enter local trade or are kept for domestic consumption (Heinrichs et al. 2011; CITES 2013).

In terms of the market and trade of gill rakers, Guangzhou, Guangdong Province in Southern China is considered to be the ''epicenter'' for trade and consumption, comprising as much as 99 percent of the global gill raker market (Heinrichs et al. 2011). Gill rakers specifically from giant manta rays comprise a large proportion of this trade. Based on market investigations (see Annex VIII; CITES 2013), around 30 percent of the gill raker stock in stores consisted of ''large'' gill rakers attributed to *M. birostris,* and had an average sale price in Guangzhou of $251/kg (with some selling for up to $500/kg). Small gill rakers attributed to *Manta* spp. (including juvenile *M. birostris*) comprised 4 percent of the stock but sold for the fairly high average price of $177/kg. In total, about 61,000 kg of gill rakers (from both mobula and manta rays) are traded annually. While *Manta* spp. made up about a third of this total, in terms of total market value, they comprised almost half (45 percent; around $5 million) of the total value of the trade. This indicates the higher value placed on manta ray gill rakers compared to mobula ray gill rakers (Annex VIII; CITES 2013). While this trade does not significantly contribute to the Chinese dried seafood or Traditional Chinese Medicine industries (and amounting to less than 3 percent of the value of the shark fin trade), the numbers of manta rays traded annually, estimated at 4,653 individuals (average), are around three times higher than the vast majority of known subpopulation and aggregation estimates for these two species (CITES 2013). In other words, the amount of manta rays killed every year for the gill raker trade is equivalent to removing multiple subpopulations of these species, and given their demographic risks of extremely low

productivity, evidence of declining population abundances, and low spatial structure and connectivity, we conclude that this level of utilization for the gill raker trade is a threat that may be significantly contributing to the extinction risk of *M. birostris* and *M. alfredi* and requires further investigation.

The three countries presently responsible for the largest documented fishing and exporting of *Manta* spp. are Indonesia, Sri Lanka, and India. These countries account for an estimated 90 percent of the world's *Manta* spp. catch, yet, prior to 2013, when the species complex was added to Appendix II of CITES, lacked any sort of landings restrictions or regulations pertaining to manta rays (CITES 2013). Furthermore, the fact that there is no documented domestic use of gill rakers within these countries, with reports that income from directed fisheries for *Manta* spp. is unlikely to even cover the cost of fuel without the gill raker trade, further points to the significant and lucrative incentives of the gill raker trade as the primary driver of directed manta ray fisheries (CITES 2013). In fact, prior to the rapid growth of the gill raker trade, fishermen in Sri Lanka would avoid setting nets in known *Manta* spp. aggregation areas, and release any incidentally caught manta rays alive (Heinrichs et al. 2011). However, with the increase in the international demand and high value for gill rakers, fishermen are now landing all *Manta* spp. and CITES (2013) warns that directed and opportunistic fisheries may develop elsewhere.

In the Pacific, directed fisheries for manta rays already exist (or existed) in many areas, including China, Tonga, Peru, and Mexico. In Zhejiang, China, Heinrichs et al. (2011) (citing Hilton 2011) estimate that fisheries currently targeting manta rays land around 100 individuals per year (species not identified). While subpopulation estimates in this area are unknown, it is likely that this level of fishing mortality is contributing to local population declines as evidenced by the fact that sightings of manta rays (likely *M. alfredi*) at nearby Okinawa Island, Japan, have fallen by over 70 percent since the 1980s (CITES 2013). Directed fisheries in the eastern Pacific may also likely be contributing to the overexploitation of manta ray subpopulations. Heinrichs et al. (2011), citing to a rapid assessment of the mobulid fisheries in the Tumbes and Piura regions of Peru, reported estimated annual landings of *M. birostris* on the order of 100–220 rays. The petition asserts that this estimate is based on limited data and interviews and, as such, should be viewed as an absolute minimum for the region. Of concern, in terms of risk of extirpations and extinction of *M. birostris,* is the fact that this assumed minimum level of take is equivalent to about one third of the estimate of the closest known, largest, but also protected aggregation of giant manta rays off the Isla de la Plata, Ecuador. While the manta rays targeted by the Peruvian fishermen may comprise a separate subpopulation, given the seasonal migratory behavior of *M. birostris,* it is also possible that the take consists of animals from the protected aggregation as they migrate south (Heinrichs et al. 2011). Regardless, given the very small estimated sizes of *M. birostris* aggregations (range 60–650 individuals) coupled with the species' sensitive life history traits, even low levels of fishing mortality can quickly lead to depletion of subpopulations and drive overall population levels down to functional extinction. In fact, evidence of the rapid decline of *M. birostris* from directed fishing efforts in the eastern Pacific is most apparent in the Sea of Cortez, Mexico. Prior to the start of targeted fishing (which began in the 1980s), the giant manta ray was reportedly common on every major reef in the area. In 1981, a filmmaker reported seeing three to four manta rays during every dive while filming; however, in a follow-up project, conducted only 10 years later, not a single giant manta ray was observed (CITES 2013). Within a decade of the start of directed manta ray fishing, the *M. birostris* population in the Sea of Cortez had collapsed, and reportedly still has not recovered (CITES 2013), despite a 2007 regulation prohibiting the capture and retention of the species in Mexican waters (NOM–029–PESC–2006).

Manta rays may also be at risk of extinction in the Indo-Pacific region, where the number of fisheries directly targeting manta species has substantially increased over the past decade, concurrent with the rise in the gill raker trade. This targeted fishing has already led to substantial declines in the numbers and size of *Manta* populations, particularly off Indonesia. Many shark fishermen have also turned to manta ray targeted fishing following the collapse of shark populations throughout the region (CITES 2013 citing Donnelly et al. 2003). As recently as 2012, *Manta* spp. fisheries were noted in Lamalera, Tanjung Luar (Lombok), Cilacap (Central Java), Kedonganan (Bali), and the Wayag and Sayan Islands in Raja Ampat, Indonesia (Heinrichs et al. 2011; CITES 2013). In Lamakera, as technology improved and fishermen replaced their traditional dugout canoes with motorized boats, catch rates of *Manta* spp. increased by an order of magnitude above historical levels (CITES 2013 citing Dewar 2002). This intense fishing pressure on a species that is biologically sensitive to depletion subsequently led to noticeable declines in populations. In Lombok, for example, a survey of fishermen and local processing facilities indicated that manta ray catches have declined in recent years (around 57 percent), with the average size of a manta ray now less than half of what it was historically, a strong indication of overutilization of the species (Heinrichs et al. 2011). Based on data from 2001–2012, Indonesian landings were estimated to be around 1,026 per year, the largest for any country, and attributed to *M. birostris,* although *M. alfredi* are also present in this region (Annex VII; CITES 2013). Given the observed declines in both size and catch of manta rays throughout the region, in relatively short periods of time (over 9 years in Lamakera; 6–7 years in Tanjung Luar, Lombok) that are notably less than one generation (~25 years) for either species, we find that the available information indicates that overutilization of manta rays in this region may be a significant threat to both species and is cause for concern.

Similarly, in the Philippines, recent exploitation of manta rays through targeted fishing efforts has also contributed to significant and concerning declines. Artisanal fishermen note that directed fishing on *Manta* species (likely *M. birostris*) in the Bohol Sea started in the 1960s, but really ramped up in the early 1990s and consequently led to population declines of up to 50 percent by the mid-1990s (CITES 2013 citing Alava et al. 2002). Similar declines were observed for the local population of manta rays (species not identified; although petition refers to them as *M. alfredi*) in the Sulu Sea off Palawan Island, with estimates of between 50 and 67 percent over the course of 7 years (from the 1980s to 1996) (CITES 2013). Although there is presently a ban on catching and selling manta rays in the Philippines, Heinrichs et al. (2011) reports that enforcement varies, with locals continuing to eat manta ray meat in line with their cultural practices. Furthermore, in 2011, Hong Kong traders identified the Philippines as a supplier of dried gill rakers, indicating that fishermen may still be actively targeting the species for trade (Heinrichs et al. 2011). Manta rays

are now considered rare throughout the Philippines (CITES 2013), and, as such, any additional mortality on these species, either through incidental fishing or illegally directed fishing, may have significant negative effects on the viability of giant and reef manta ray populations.

In the Indian Ocean, directed fisheries for manta rays exist in Sri Lanka, India, Thailand, and are known from several areas in Africa, including Tanzania and Mozambique. As mentioned previously, Sri Lanka is one of the top three nations in terms of manta ray landings, with estimates totaling around 1,055 *M. birostris* individuals per year (Heinrichs et al. 2011; CITES 2013), the second highest amount behind Indonesia. Historically, fishermen in Sri Lanka would catch manta rays primarily as bycatch or avoid them altogether; however, as the gill raker market took shape and demand increased (with reports of gill rakers selling for as much as 250 times the price of meat), fishermen gained incentive to actively target mobulids (both manta and devil rays) (Heinrichs et al. 2011). As direct targeting of manta rays increased, a corresponding decrease in catches was reported by fishermen, particularly over the past 3–5 years (Heinrichs et al. 2011). Of concern, as it relates to the extinction risk of particularly the giant manta ray, is the fact that a large proportion of the identified *M. birostris* landings are reportedly immature. Based on available data from Negombo and Mirissa fish market surveys, at least 87 percent (possibly up to 95 percent; CITES 2013) of the *M. birostris* sold in the markets are juveniles and sub-adults (Heinrichs et al. 2011). Although the proportion of these fish markets to total Sri Lankan manta ray landings is not provided, the direct targeting and removal of immature manta rays can have negative impacts on the recruitment of individuals to the populations, and may likely explain the decrease in catches observed by Sri Lankan fishermen in recent years. Furthermore, these data also suggest that fishermen in Sri Lanka are potentially exploiting a ''nursery'' ground for manta rays, which, if found to be true, would be the first identified juvenile aggregation site in the world (Heinrichs et al. 2011). In fact, aggregations consisting of primarily immature individuals are extremely rare, with only one other subpopulation identified (off Egypt's Sinai Peninsula) where observations of immature manta rays outnumber adults (CITES 2013). Given the predominance of immature manta rays and recent decreases in catches, we find that present utilization levels and the impacts of this potential nursery ground exploitation, particularly on the manta ray populations in this area (especially *M. birostr*is populations, although *M. alfredi* is also noted in this region but not identified in the available information), are threats contributing to a risk of extinction that is cause for concern.

In India, which has the second largest elasmobranch fishery in the world, Heinrichs et al. (2011) report manta ray landings of around 690 individuals per year (based on data from 2003–2004). However, the authors also caution that these landings data from the Indian trawl and gillnet fleets targeting sharks, skates, and rays, are likely largely underreported given the limited oversight of these fisheries. Although the exact extent of utilization of manta ray species in Indian waters is unknown, decreases in overall mobulid catches have been observed in several regions, including Kerala, along the Chennai and Tuticorin coasts, and Mumbai (CITES 2013). These declines are despite increases in fishing effort, suggesting that abundance of mobulids has likely decreased in these areas as a result of heavy fishing pressure and associated levels of fishery-related mortality (CITES 2013).

Harpoon fisheries that target *Manta* spp. also exist on both coasts of India, but landings data are largely unavailable. Despite the lack of data, anecdotal reports suggest that the level of utilization by these fisheries may also be contributing to the decline of these species within the region. For example, prior to 1998, landings of manta rays (thought to be *M. alfredi*) were reportedly abundant in a directed harpoon fishery operating at Kalpeni, off Lakshadweep Islands; however, based on personal communication from a local dive operator, this harpoon fishery no longer operates because manta ray sightings around the Lakshadweep Islands are now a rare occurrence. Similarly, dive operators in Thailand have observed increased fishing for *Manta* spp. off the Similan Islands, including within Thai National Marine Parks, with corresponding significant declines in sightings (Heinrichs et al. 2011). Specifically, during the 2006–2007 season, professional dive operators sighted 59 *Manta* individuals; however, 5 years later, sightings had fallen by 76 percent, with only 14 *Manta* individuals spotted during the 2011–2012 season (CITES 2013).

Across the Indian Ocean, manta rays are also likely at risk of overutilization; however, data are severely lacking. Off Mozambique, Marshall et al. (2011b) estimate that subsistence fishermen, alone, catch around 20–50 *M. alfredi* annually in a 100 km area/length of coast. This area corresponds to less than five percent of the coastline; however, fisheries in this region are widespread and, therefore, the actual landings of manta rays are likely significantly more (Marshall et al. 2011b). In fact, based on a study on the abundance of manta rays in southern Mozambique, Rohner et al. (2013) (cited by Croll et al. (2015)) provides evidence of the impact of the current level of utilization on manta ray species. From their findings, the authors report declines of up to 88 percent in the abundance of the heavily fished *M. alfredi* over the past 8 years (Heinrichs et al. 2011; CITES 2013; Croll et al. 2015), but a relatively stable abundance trend in the un-targeted *M. birostris.* These data further confirm the extreme vulnerability of the manta ray species to depletion from fisheries-related mortality in relatively short periods of time, and raise significant cause for concern for the species' viability in areas where they are being directly targeted or landed as bycatch.

In the Atlantic, the only known directed fishing of *Manta* spp. occurs seasonally off Dixcove, Ghana, where the meat is consumed locally, but manta rays have also been reported as targets of the mesh drift gillnet fishery that operates year-round in this area (Heinrichs et al. 2011; CITES 2013). *Manta* spp. are also reportedly illegally caught off Mexico's Yucatan peninsula (Graham et al. 2012; CITES 2013), but without additional information, the extent of utilization of the species in this region is unknown.

In addition to the threat from directed fisheries, manta rays are susceptible to being caught as bycatch in many of the international fisheries operating throughout the world, with present utilization levels contributing to their extinction risk that may be cause for concern. According to Croll et al. (2015), mobulids (manta and devil rays) have been reported as bycatch in 21 small-scale fisheries in 15 countries and 9 large-scale fisheries in 11 countries. In terms of the estimated impact of bycatch rates on extinction risk, the commercial tuna purse seine fisheries are thought to pose one of the most significant threats to mobulids, given the high spatial distribution overlap of tunas and mobulids coupled with the global distribution and significant fishing effort by the tuna purse seine fisheries (Williams and Terawasi 2011; Croll et al. 2015). Based on extrapolations of observer data, Croll et al. (2015) estimated an average annual capture of

2,774 mobulids in the Eastern Pacific, 7,817 in the Western and Central Pacific, 1,936 mobulids in the Indian Ocean, and 558 in the Atlantic Ocean.

While the above data are lumped for all mobulids, specific observer data on manta rays suggest that present bycatch levels may have potentially serious negative population-level impacts on both manta ray species. In the Atlantic Ocean, for example, observer data from 2003–2007 showed manta rays (presumably *M. birostris*) represented 17.8 percent of the total ray bycatch in the European purse seine tuna fishery operating between 10° S. and 15° N. latitude off the African coast (Amandè et al. 2010). While only 11 total giant manta rays were observed caught over the study period, observer coverage averaged a mere 2.9 percent (Amandè et al. 2010), suggesting the true extent of *M. birostris* catch may be significantly greater. In fact, within the Mauritanian exclusive economic zone (EEZ) alone, Zeeberg et al. (2006) estimated an annual removal rate of between 120 and 620 mature manta rays by large foreign trawlers operating off the western coast of Africa, which the authors deemed likely to be an unsustainable rate. This removal rate is especially troubling in terms of its impact on the extinction risk of both species, given that the only known populations of *M. alfredi* in the Atlantic Ocean occur within this region (off Senegal, Cape Verde and Canary Islands), and that this level of take is equivalent to the subpopulation sizes of *M. birostris* (estimates of 100–1000) and *M. alfredi* (100–1500, with the exception of 5,000 in Maldives) found throughout the world. As such, utilization of manta ray species at this level may likely be contributing to population declines in this region for giant manta rays and could easily lead to the extirpation of reef manta rays from the Atlantic Ocean, if this has not already occurred. (Based on information in the petition and in our files, we could not verify the year of the most recent observations of *M. alfredi* off Cape Verde or the Canary Islands. The evidence of *M. alfredi* off Senegal is based on historical reports and photos from 1958; (Marshall et al. (2009) citing Cadenat (1958))).

In the Indian Ocean, manta rays are reportedly taken in large numbers as bycatch in the Pakistani, Indian, and Sri Lankan gillnet fisheries where their meat is used for shark bait or human consumption and their gill rakers are sold in the Asian market. Manta rays have also been identified in U.S. bycatch data from fisheries operating primarily in the Central and Western Pacific Ocean, including the U.S. tuna purse seine fisheries (likely *M. birostris;* estimates of 1.14 mt in 1999) (Marshall et al. 2011a citing Coan et al. 2000) and the Hawaii-based deep-set and shallow-set longline fisheries for tuna (with 2010 bycatch estimates of 8,510 lbs (3,860 kg) of *M. birostris* and 2,601 lbs (1,180 kg) of unidentified Mobulidae) (NMFS 2013). While manta rays may have a fairly high survival rate after release (based on 1.4 percent hooking mortality rate in longline gear (Coelho et al. 2012) and 33.7 percent mortality rate in protective shark nets (Marshall et al. (2011a) citing Young 2001)), significant debilitating injuries from entanglements in fishing gear (*e.g.,* gillnets and longlines) have been noted (Heinrichs et al. 2011). The likelihood of bycatch mortality significantly increases when fishing pressure is concentrated in known manta ray aggregation areas. For example, in a major *M. birostris* aggregation site off Ecuador, researchers have observed large numbers of manta rays with life-threatening injuries as a result of incidental capture in illegal wahoo (*Acanthocybium solandri*) trawl fisheries operating within Machalillia National Park (Heinrichs et al. 2011; Marshall et al. 2011a). Similarly, off Thailand, a significantly higher proportion of manta rays show net and line injuries compared to anywhere else in the world, with the aforementioned exception off Ecuador (Heinrichs et al. 2011). Off Papua New Guinea, manta rays (presumably *M. alfredi*) are reported as bycatch in purse seines, and from 1994 to 2006 comprised an estimated 1.8 percent of the annual purse seine bycatch. While the condition of the manta rays in these purse seines was not described, by 2005/2006, a sharp decline in the catches of manta rays was observed in these waters, suggesting the population may have been unable to withstand the prior bycatch mortality rates (Marshall et al. 2011b). For the most part, though, manta rays are almost never recorded down to species in bycatch reports, and more often than not tend to be lumped into broader categories such as ''Other,'' ''Rays,'' and ''Batoids.'' As such, the true extent of global manta ray bycatch and associated mortality remains largely unknown.

Although there are a number of both national and international regulations aimed at protecting manta rays from the above threat of overutilization by fisheries, the petition asserts that these existing regulatory measures, both species-specific and otherwise, do not adequately protect the manta rays. In fact, as of 2013, neither India nor Sri Lanka, two of the top manta ray fishing countries, had implemented any landings restrictions or population monitoring programs for manta ray species (CITES 2013). In terms of national protections, the petition states that due to the recent splitting of the genus, many of the pre-2009 national laws define ''manta ray'' as a single species, *M. birostris,* and, therefore, those associated protections fail to protect the newly identified reef manta ray. Furthermore, even where protections exist, there are noted enforcement difficulties in many areas, with the lucrative trade in manta gill rakers driving the illegal fishing of the species. For example, although Indonesia prohibited fishing for manta rays throughout its entire EEZ in 2014, only 2 years prior, it was ranked as likely the most aggressive fishing nation for manta rays (based on landing estimates; see CITES 2013). Based on evidence of enforcement difficulties of prior regulations (particularly relating to manta rays), and citing to examples of illegal fishing in Indonesian waters, the petitioners note that the financial incentive of targeting manta rays will continue to drive their exploitation. In a study on the movement of manta rays between manta ray sanctuaries in Indonesia, Germanov and Marshall (2014) also recognized the inadequacy of existing regulatory measures, noting that although the prohibition was implemented in 2014, ''[I]n reality, however, it may be a long time before all manta ray fisheries in Indonesia are completely shut down.'' Illegal fishing, landings and trade of manta rays have also been reported from the Philippines, Ecuador, Mexico, and Thailand (Heinrichs et al. 2011; Graham et al. 2012; CITES 2013); however, the true extent of the global illegal trade in manta species is not known (CITES 2013).

In terms of regulations pertaining to the legal international trade in the species, all manta ray species (*Manta* spp.) were listed in Appendix II of CITES (with listing effective on September 14, 2014). CITES is an international agreement between governments that regulates international trade in wild animals and plants. It encourages governments to take a proactive approach and the species covered by CITES are listed in appendices according to the degree of endangerment and the level of protection provided. For example, Appendix I includes species threatened with extinction; trade in specimens of these species is permitted only in exceptional circumstances. Appendix II includes species not necessarily threatened with extinction, but for

which trade must be controlled to avoid exploitation rates incompatible with species survival. Appendix III contains species that are protected in at least one country that has asked other CITES Parties (*i.e.,* those countries that have ''joined'' CITES) for assistance in controlling the trade.

The listing of manta rays on Appendix II of CITES provides increased protection for both species, but still allows legal and sustainable trade. Export of any part of a manta ray requires permits that ensure the products were legally acquired and that the CITES Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species. This is achieved through the issuing of a ''Non-Detriment Finding'' or ''NDF.'' The petition argues, however, that there are no clear standards for making this CITES NDF. Furthermore, the petition states that given the limited population information for the manta ray species, it will be difficult to even determine sustainable harvest, and coupled with the lack of adequate scientific capacity in many CITES member countries, the determinations with respect to manta ray exports will be inconsistent and unreliable. Ward-Paige et al. (2013) remark that despite these efforts by CITES, no international management plans have been put in place to ''ensure the future of mobulid populations,'' and with manta ray species only recently subject to the management of only one Regional Fishery Management Organization (RFMO) (the Inter-American Tropical Tuna Commission; Resolution C–15–04), as Mundy-Taylor and Crook (2013) state, ''it is expected that it will be particularly challenging for countries and/or territories that harvest *M. birostris* [and potentially also *M. alfredi*] on the high seas to carry out NDFs for such specimens.'' Based on the information provided in the petition and in our files, we are presently unable to speak to the current effectiveness of the CITES Appendix II listing in protecting manta ray species from levels of trade that may contribute to the overutilization of both species. Overall, we find that further evaluation of existing regulatory measures is needed to determine if these regulations are inadequate to protect the giant and reef manta ray from threats that are significantly contributing to their extinction risks.

While the petition identifies numerous other threats to the two species, including habitat destruction and modification from coral reef loss, climate change, and plastic marine debris, recreational overutilization by the manta ray tourism industry, and predation from shark and orca attacks, we find that the petition and information in our files suggests that overutilization for commercial purposes, in and of itself, may be a threat impacting the giant and reef manta ray to such a degree that raises concern that these two species may be at risk of extinction throughout all or a significant portion of their respective ranges. We note that the information in our files and provided by the petitioner does indicate that a few identified subpopulations of reef manta rays appear to be stable, particularly those which receive at least some protection from fisheries, including: Subpopulations in Hawaii (Maui subpopulation estimate = 350; CITES 2013 citing personal communication), where harvest and trade of manta rays are prohibited (H.B. 366); the Maldives (subpopulation estimate = 5,000; CITES 2013 citing personal communication), where export of all ray species has been banned since 1995, where most types of net fishing are prohibited, and where two MPAs have been created to protect critical habitat for the Maldives populations (Anderson et al. 2011; CMS 2014); Yap (subpopulation estimate = ~100), with a designated Manta Ray Sanctuary that covers 8,234 square miles (21,326 square km) (CMS 2014); and Palau (estimate = 170 recorded individuals). With the passage of Micronesia's Public Law 18–108 in early 2015 (which created a shark sanctuary in the Federated States of Micronesia EEZ, encompassing nearly 3 million square kilometers in the western Pacific Ocean), a Micronesia Regional Shark Sanctuary now exists that prohibits the commercial fishing and trade of sharks and rays and their parts within the waters of the Republic of Marshall Islands, Republic of Palau, Guam, Commonwealth of the Northern Mariana Islands, and the Federated States of Micronesia and its four member states, Yap, Chuuk, Pohnpei, and Kosrae. However, these protections cover only a small portion of the migratory giant and reef manta ray ranges. Additionally, manta rays are not confined by national boundaries and, for example, may lose certain protections as they conduct seasonal migrations (or even as they move around to feed; Graham et al. (2012)) if they cross particular national jurisdictional boundaries (*e.g.,* between the Maldives and Sri Lanka or India), move outside of established MPAs, or enter into high seas.

Overall, when we consider the number of manta ray subpopulations throughout the world where, based on the available information in the petition and in our files, their statuses are either unknown or in rapid decline, and yet both species appear to continue to face heavy fishing pressure (due to the high value of gill rakers in trade) and have significant biological vulnerabilities and demographic risks (*i.e.,* extremely low productivity; declining abundance; small, fragmented, and isolated subpopulations), we find that the information in the petition and in our files would lead a reasonable person to conclude that both *M. birostris* and *M. alfredi* may warrant listing as threatened or endangered species throughout all or a significant portion of their ranges.

Petition Finding

After reviewing the information contained in the petition, as well as information readily available in our files, and based on the above analysis, we conclude the petition presents substantial scientific information indicating the petitioned action of listing the giant manta ray and the reef manta ray as threatened or endangered species may be warranted. Therefore, in accordance with section 4(b)(3)(B) of the ESA and NMFS' implementing regulations (50 CFR 424.14(b)(3)), we will commence a status review of these two species. We also find that the petition did not present substantial scientific information to indicate that the Caribbean manta ray (identified as *Manta c.f. birostris*) is a taxonomically valid species eligible for listing under the ESA. However, if during the course of the status review of the giant and reef manta ray we find new information to suggest otherwise, we will self-initiate a status review of the Caribbean manta ray, announcing our intention in the **Federal Register**.

During the status review, we will determine whether the particular manta ray species is in danger of extinction (endangered) or likely to become so (threatened) throughout all or a significant portion of its range. We now initiate this review, and thus, both *M. birostris* and *M. alfredi* are considered to be candidate species (69 FR 19975; April 15, 2004). Within 12 months of the receipt of the petition (November 10, 2016), we will make a finding as to whether listing the giant manta ray and the reef manta ray as endangered or threatened species is warranted as required by section 4(b)(3)(B) of the ESA. If listing is found to be warranted, we will publish a proposed rule and solicit public comments before developing and publishing a final rule.

Information Solicited

To ensure that the status review is based on the best available scientific and commercial data, we are soliciting information on whether the giant manta ray and reef manta ray are endangered or threatened. Specifically, we are soliciting information in the following areas: (1) Historical and current distribution and abundance of these species throughout their respective ranges; (2) historical and current population trends; (3) life history in marine environments, including identified nursery grounds; (4) historical and current data on manta ray catch, bycatch and retention in industrial, commercial, artisanal, and recreational fisheries worldwide; (5) historical and current data on manta ray discards in global fisheries; (6) data on the trade of manta ray products, including gill rakers, meat, and skin; (7) any current or planned activities that may adversely impact either of these species; (8) any impacts of the manta ray tourism industry on manta ray behavior; (9) ongoing or planned efforts to protect and restore these species and their habitats; (10) population structure information, such as genetics data; and (11) management, regulatory, and enforcement information. We request that all information be accompanied by: (1) Supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents.

References Cited

A complete list of references is available upon request to the Office of Protected Resources (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 16, 2016.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 150715616–6097–01]

RIN 0648–XE062

Pacific Island Fisheries; 2015–16 Annual Catch Limit and Accountability Measures; Main Hawaiian Islands Deep 7 Bottomfish

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

ACTION: Proposed specifications; request for comments.

SUMMARY: NMFS proposes to specify an annual catch limit (ACL) of 326,000 lb for Deep 7 bottomfish in the main Hawaiian Islands (MHI) for the 2015–16 fishing year, which began on September 1, 2015, and ends on August 31, 2016. If the ACL is projected to be reached, as an accountability measure (AM), NMFS would close the commercial and non-commercial fisheries for MHI Deep 7 bottomfish for the remainder of the fishing year. The proposed ACL and AM support the long-term sustainability of Hawaii bottomfish.

DATES: NMFS must receive comments by March 9, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2015–0090, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0090,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd. Bldg. 176, Honolulu, HI 96818.

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

FOR FURTHER INFORMATION CONTACT: Matt Dunlap, NMFS PIR Sustainable Fisheries, 808–725–5177.

SUPPLEMENTARY INFORMATION: The bottomfish fishery in Federal waters around Hawaii is managed under the Fishery Ecosystem Plan for the Hawaiian Archipelago (Hawaii FEP), developed by the Western Pacific Fishery Management Council (Council) and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The regulations at Title 50, Code of Federal Regulations, Part 665 (50 CFR 665.4) require NMFS to specify an ACL for MHI Deep 7 bottomfish each fishing year, based on a recommendation from the Council. The Deep 7 bottomfish are onaga (*Etelis coruscans*), ehu (*E. carbunculus*), gindai (*Pristipomoides zonatus*), kalekale (*P. sieboldii*), opakapaka (*P. filamentosus*), lehi (*Aphareus rutilans*), and hapuupuu (*Hyporthodus quernus*).

NMFS proposes to specify an ACL of 326,000 lb of Deep 7 bottomfish in the MHI for the 2015–16 fishing year. The Council recommended the ACL at its 163rd meeting held in June 2015. The proposed specification is 20,000 lb less than the ACL that NMFS specified for the past four consecutive fishing years (*i.e.,* 2011–12, 2012–13, 2013–14, and 2014–15). NMFS monitors Deep 7 bottomfish catches based on data provided by commercial fishermen to the State of Hawaii. If NMFS projects the fishery will reach this limit, NMFS would close the commercial and non-commercial fisheries for MHI Deep 7 bottomfish for the remainder of the fishing year, as an accountability measure (AM). In addition, if NMFS and the Council determine that the final 2015–16 Deep 7 bottomfish catch exceeds the ACL, NMFS would reduce the Deep 7 bottomfish ACL for the 2015–16 fishing year by the amount of the overage. The fishery did not attain the specified ACL in fishing years from September 2011 to August 2015, and NMFS does not anticipate the fishery will attain the limit in the current fishing year, which began on September 1, 2015, and ends on August 31, 2016.

The Council recommended the ACL and AMs based on a 2011 NMFS bottomfish stock assessment updated with three additional years of data, and in consideration of the risk of overfishing, past fishery performance, the acceptable biological catch (ABC) recommendation from its Scientific and

Statistical Committee (SSC), and input from the public. The 2011 NMFS bottomfish stock assessment updated with three additional years of data estimates the overfishing limit (OFL) for the MHI Deep 7 bottomfish stock complex to be 352,000 lb. The proposed ACL of 326,000 lb is equal to the SSC's ABC recommendation, and is associated with a 44-percent probability of overfishing. This risk level is more conservative than the 50-percent risk threshold allowed under NMFS guidelines for National Standard 1 of the Magnuson-Stevens Act.

NMFS does not expect the proposed ACL and AM specifications for 2015–16 to result in a change in fishing operations or other changes to the conduct of the fishery that would result in significant environmental impacts. After considering public comments on the proposed ACL and AMs, NMFS will publish the final specifications.

To be considered, NMFS must receive any comments on these proposed specifications by March 9, 2016, not postmarked or otherwise transmitted by that date.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator for Fisheries has determined that this proposed specification is consistent with the Hawaii FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This action is exempt from review under Executive Order 12866.

Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed specifications, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the action, why it is being considered, and the legal basis for it are contained in the preamble to these proposed specifications.

NMFS proposes to specify an annual catch limit (ACL) of 326,000 lb for Main Hawaiian Islands (MHI) Deep 7 bottomfish for the 2015–16 fishing year, as recommended by the Western Pacific Fishery Management Council (Council). NMFS monitors MHI Deep 7 bottomfish catches based on data provided by commercial fishermen to the State of Hawaii. If and when the fishery is projected to reach this limit, NMFS, as an accountability measure (AM), would close the commercial and non-commercial fisheries for MHI Deep 7 bottomfish for the remainder of the fishing year. The proposed ACL is 20,000 lb less than those that NMFS implemented for the previous four fishing years, while the AM will remain the same. Over the past four fishing seasons, the highest reported annual landings, 309,485 lb, occurred during the 2013–2014 fishing year. NMFS does not expect the fishery to reach the proposed ACL in the 2015–16 fishing year, which began on September 1, 2015, and will end on August 31, 2016.

This rule would affect participants in the commercial and non-commercial fisheries for MHI Deep 7 bottomfish. During the 2014–15 fishing year, 405 fishermen reported landing 303,738 lb of Deep 7 bottomfish (*http://www.wpcouncil.org/wp-content/uploads/2013/04/MHI201500904_1415_Sum.pdf,* accessed September 11, 2015). Based on available information, NMFS has determined that all vessels in the commercial and non-commercial fisheries for MHI Deep 7 bottomfish are small entities under the Small Business Administration's definition of a small entity. That is, they are engaged in the business of fish harvesting, independently owned or operated, not dominant in their field of operation, and have annual gross receipts not in excess of $20.5 million, the small business size standard for finfish fishing (NAICS Code: 114111). Therefore, there would be no disproportionate economic impacts between large and small entities. Furthermore, there are would be no disproportionate economic impacts among the universe of vessels based on gear, home port, or vessel length.

As for revenues earned by fishermen from Deep 7 bottomfish, State of Hawaii records report 341 of the 405 fishermen sold their Deep 7 bottomfish catch. These 341 individuals sold a combined total of 267,997 lb (88.2% of reported catch) at a value of $1,815,332. Based on these revenues, the average price for MHI Deep 7 bottomfish in 2014–15 was approximately $6.77/lb. NMFS assumes the remaining 64 commercial fishermen either sold no Deep 7 bottomfish or that the State of Hawaii reporting program did not capture their sales.

Assuming the fishery attains the ACL of 326,000 in 2015–16, using the 2014–15 average price of $6.77/lb, the potential fleet wide revenue during 2015–16 is expected to be $2,207,020 ($1,946,592 under the assumption that 88.2% of catch is sold). If the same number of fishermen sell MHI Deep 7 bottomfish in 2015–16 as in 2014–15, each of these 341 commercial fishermen could potentially sell an average of 956 lb of Deep 7 bottomfish valued at $6,472, if all Deep 7 bottomfish caught were sold. If 88.2% of all Deep 7 bottomfish that had been caught had been sold, then these 341 commercial fishermen could potentially sell an average of 843 lb of Deep 7 bottomfish valued at $5,708.

In general, the relative importance of MHI bottomfish to commercial participants as a percentage of overall fishing or household income is unknown, as the total suite of fishing and other income-generating activities by individual operations across the year has not been examined.

In terms of scenarios immediately beyond the 2015–16 fishing year, three possible outcomes may occur. First, in the event that 2015–16 catch does not reach 326,000 lb, the ACL will decrease by 8,000 lb for the 2016–2017 fishing year, as set by the multi-year specification. Second, if the fishery exceeds the ACL for the 2015–16 fishing year, NMFS would reduce the Deep 7 bottomfish ACL for the 2016–17 fishing year by the amount of the overage, in addition to the 8,000 lb reduction for the 2016–17 fishing year. The last possible scenario is one where NMFS would prepare a new stock assessment or update that NMFS and the Council would use to set a new 2016–2017 ACL (without inclusion of any overage, even if catch exceeds ACL for the 2015–16 fishing year), although this is unlikely, because NMFS plans to undertake the next stock assessment in 2018.

Even though this proposed specification would apply to a substantial number of vessels, *i.e.,* 100 percent of the bottomfish fleet, NMFS does not expect the rule will have a significantly adverse economic impact to individual vessels. Landings information from the past four fishing years, suggest that Deep 7 bottomfish landings are not likely to exceed the ACL proposed for 2015–16.

Therefore, pursuant to the Regulatory Flexibility Act, this proposed action would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

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

Dated: February 12, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016–03673 Filed 2–22–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 679 and 680

[Docket No. 151020969–6095–01]

RIN 0648–BF46

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program

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

ACTION: Proposed rule.

SUMMARY: NMFS issues a proposed rule that would modify regulations governing the Crab Rationalization (CR) Program. This proposed rule is comprised of three actions. Under the first action, this proposed rule would modify regulations to create an exemption for participants in the Western Aleutian Islands golden king crab (WAG) fishery from the prohibition against resuming fishing before all CR Program crab have been fully offloaded from a vessel. This action is intended to allow participants in the WAG fishery to offload live crab to remote ports near the fishing grounds to supply live crab markets. Under the second action, this proposed rule would amend CR Program regulations to clarify current document submission requirements for persons applying to receive captain and crew crab quota share, called C shares, by transfer. Under the third action, this proposed rule would amend License Limitation Program (LLP) regulations to remove the requirement for endorsements on crab LLP licenses for specific crab fisheries in the Bering Sea and Aleutian Islands that are no longer managed under the LLP. This proposed rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs, and other applicable laws.

DATES: Submit comments on or before March 24, 2016.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2015–0136, 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-2015-0136,* 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 personally 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 Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) (collectively referred to as the ''Analysis'') and the Categorical Exclusion prepared for this proposed rule may be obtained from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Keeley Kent, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Authority for Action

The king and Tanner crab fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) 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 North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) as amended by the Consolidated Appropriations Act of 2004 (Pub. L. 108–199, section 801). Regulations implementing most provisions of the Crab FMP, including the CR Program, are located at 50 CFR part 680. Regulations implementing specific provisions of the Crab FMP that pertain to the LLP Program are located at 50 CFR part 679.

Background

The Crab FMP was approved by the Secretary of Commerce on June 2, 1989. The Crab FMP establishes a State/Federal cooperative management regime that defers crab management to the State of Alaska with Federal oversight. State regulations are subject to the provisions of the FMP, including its goals and objectives, the Magnuson-Stevens Act national standards, and other applicable Federal laws. The Crab FMP has been amended several times since its implementation.

NMFS published the final rule to implement the CR Program on March 2, 2005 (70 FR 10174). Fishing under the CR Program started with the 2005/2006 crab fishing year. The CR Program is a catch share program for nine BSAI crab fisheries that allocates those resources among harvesters, processors, and coastal communities. Under the CR Program, NMFS originally issued QS to eligible harvesters as determined by eligibility criteria and participation in the CR Program fisheries during qualifying years. A harvester's allocation of QS for a fishery was based on the landings made by his or her vessel in that fishery. Specifically, each allocation was the harvester's average annual portion of the total qualified catch in a crab fishery during a specific qualifying period. NMFS issued four types of QS: Catcher vessel owner (CVO) QS was assigned to holders of LLP licenses who delivered their catch onshore or to stationary floating crab processors; catcher/processor vessel owner (CPO) QS was assigned to LLP holders that harvested and processed their catch at sea; captains and crew onboard catcher/processor vessels were issued catcher/processor crew (CPC) QS; and captains and crew onboard catcher vessels were issued catcher vessel crew (CVC) QS. CVC and CPC QS are also known as ''crew shares'' or ''C shares.'' Each year, a person who holds QS may receive IFQ, which is an exclusive harvest privilege for a portion of the annual total allowable catch (TAC). Under the CR Program, QS holders can form cooperatives to pool the harvest of the IFQ on fewer vessels to minimize operational costs and to provide additional flexibility in harvesting operations.

NMFS also issued processor quota share (PQS) under the CR Program. Each year, PQS yields an exclusive privilege to receive (for processing) a portion of the IFQ in each of the nine CR Program crab fisheries. This annual exclusive processing privilege is called IPQ. IFQ

derived from CVO QS is subject to annual designation as either Class A IFQ or Class B IFQ. Ninety percent of the IFQ derived from CVO QS for a fishery is designated as Class A IFQ, and the remaining 10 percent of the IFQ is designated as Class B IFQ. Class A IFQ must be matched and delivered to a processor with IPQ. Each year there is a one-to-one match of the total pounds of Class A IFQ with the total pounds of IPQ issued in each crab fishery and region. Class B IFQ is not required to be delivered to a processor with IPQ.

This proposed rule includes three actions: The first action would exempt the WAG fishery from the CR Program prohibition against a vessel resuming fishing before the vessel has offloaded all CR Program crab from the vessel; the second action would amend CR Program regulations to clarify document submission requirements for individuals submitting an application to receive C shares by transfer; and the third action would amend LLP regulations to remove four BSAI crab species that are no longer managed under the LLP.

Action 1: Exempt the WAG Fishery From Full Offload Requirements

WAG Fishery Delivery Requirements

The WAG fishery is a relatively small but lengthy fishery prosecuted in extremely remote waters in the western Aleutian Islands. Historically, the community of Adak has been an active processing port for the WAG fishery. To recognize this history and to ensure that Adak continues to receive socioeconomic benefits from crab deliveries, the CR Program allocates 10 percent of the WAG fishery TAC to the community of Adak as the Adak Community Allocation (§ 680.40(a)(1)). The CR Program also imposes a regional delivery requirement for the WAG fishery to support processing facilities operating in the remote western Aleutian Islands region. In addition to processor share landing requirements, Class A IFQ (along with IPQ) are subject to regional landing requirements, under which harvests from those shares must be landed in specified geographic regions.

For the WAG fishery, § 680.40(c)(4) specifies that 50 percent of the Class A IFQ and a corresponding amount of IPQ in the WAG fishery are designated for delivery to any processor in the West region, which includes all locations west of 174° W. longitude. The West region includes the communities of Adak and Atka. The other 50 percent of the Class A IFQ and IPQ are not subject to a regional designation and can be delivered to any processor with corresponding IPQ. Class B, CVC, CPO, CPC IFQ, and the Adak Community Allocation are also not subject to the regional delivery requirements. Crab harvested with West designated Class A IFQ must be delivered to a processor located in the West region with West designated IPQ (§ 680.42(b)(5)). Class A IFQ and IPQ crab without a West region designation is considered undesignated and may be delivered anywhere within the State of Alaska (§ 680.40(b)(2)(ii)(B)).

Regional designations were applied to harvester QS during the initial allocation, based on landings histories, but adjustments were necessary as substantially less than 50 percent of the historical landings were made in the West region. The West designation was intended primarily to aid the development of processing in the community of Adak. Adak had little historical processing prior to the end of the qualifying period, as the community was occupied exclusively by the U.S. military during the development of the AI commercial fisheries. With the departure of the military in the late 1980s, the community has worked to develop civilian industries, including fish processing. Atka is recognized as a second potential beneficiary of the region designation. That community has also begun to develop fish processing capacity in recent years, but has yet to develop significant crab processing capability.

Since implementation of the Program, the only shore-based processing plant in the West region has been located in the community of Adak. However, the crab processing capacity in Adak has been inconsistent or absent in some years since implementation of the CR Program due to a variety of operational challenges (see Section 3.5.5 of the Analysis). If processing capacity is not available in the West region, the West regional delivery requirement is not viable and would result in unutilized TAC in the WAG fishery.

In response to the potential lack of processing capacity in the West region in some years, the Council recommended, and NMFS implemented, Amendment 37 to the Crab FMP on June 20, 2011 (76 FR 35781). Amendment 37 created an annual application process for eligible contract signatories to request that NMFS exempt holders of West-designated IFQ and IPQ in the WAG fishery from the West regional delivery requirement (§ 680.4(o)). The eligible contract signatories are WAG fishery QS holders, PQS holders, and the cities of Adak and Atka.

Upon approval of a completed application, NMFS exempts all West-designated Class A IFQ and IPQ from the West regional delivery requirement for the remainder of the crab fishing year. This exemption allows all West-designated Class A IFQ and IPQ holders to deliver and receive WAG crab at processing facilities outside the West region (§ 680.7(a)(2) and (a)(4)). The eligible contract signatories have applied for, and NMFS has granted, an exemption for all crab fishing years from 2011/2012 through 2015/2016 (*http://alaskafisheries.noaa.gov/fisheries-data-reports?tid=289*).

WAG Fishery

The WAG fishery has a relatively small annual total allowable catch compared to other BSAI crab fisheries, such as the Bristol Bay red king crab or snow crab fisheries. The TAC for the 2015/2016 crab fishing year in the WAG fishery is 2.98 million pounds. The WAG QS holders have formed a harvest cooperative to ensure the efficient harvest of this remote fishery. In recent years the fleet has been comprised of only two to three catcher vessels and a single catcher/processor. Section 3.5.1 of the Analysis provides additional detail on historical and recent participation in the WAG fishery.

Currently, the WAG fishing season starts on August 1 and ends on April 30. Since implementation of the CR program, harvesters have extended their fishing time over most of the crab season; the first deliveries typically occur in September and the last deliveries generally occur during March of the following calendar year. A trip for a vessel in the WAG fishery generally lasts one to four weeks, with an average trip lasting 2.5 weeks. There are relatively few fishing trips in the WAG fisheries compared to other BSAI crab fisheries. In the two most recent crab fishing years (2012/2013 and 2014/2015), vessels made a total of 9 landings of West region IFQ and 10 to 11 landings of undesignated IFQ.

Crab harvesting vessels have several tanks to hold live crab until it is processed. The average tank capacity of the catcher vessels that participate in the WAG fishery is between 120,000 and 150,000 pounds (see Section 3.5.3 of the Analysis). Any crab that arrives at the processor dead are weighed by the processor, reported as deadloss, and debited from the QS holder's IFQ account. Therefore, vessels have an incentive to keep crab alive, regardless of the market opportunities they are pursuing.

Full Landing (Offload) Requirement

The CR Program regulations prohibit a vessel from resuming fishing for CR

Program crab or taking CR Program crab on board a vessel once a landing (offload) has commenced and until all CR Program crab are offloaded (see § 680.7(b)(3)). Under the CR Program regulations, a catcher vessel may offload portions of CR Program crab on the vessel at multiple processors, but the vessel is prohibited from fishing for CR Program crab between the offloads.

NMFS implemented the prohibition against resuming fishing after a CR Program landing has commenced (hereafter called the full offload requirement) to facilitate enforcement of CR Program requirements for catch monitoring and full catch accounting. Under the CR Program, harvesting and processing activity is monitored to provide accurate and reliable accounting of the total catch and landings to manage quota share accounts, prevent overages of IFQ and IPQ, and ensure compliance with regional delivery requirements. Total fishery removals are estimated by monitoring measures that include collection of data on landed catch weight and crab species composition, bycatch, and deadloss.

Under current CR Program regulations, vessels may offload portions of CR Program crab at multiple processors but are prohibited from resuming fishing or taking CR Program crab on board the vessel once a landing has commenced and until all CR crab are landed. Under § 680.7(b)(3), NOAA fisheries intended that this prohibition would prevent persons from, for example, discarding barnacled or deadloss CR crab at sea prior to debiting this crab from the QS holder's IFQ account and subsequently high grading with CR crab harvested after the partial offload. The prohibition was intended to ensure that all fishery removals are monitored and reported in the CR Program catch accounting system. See the final rule to implement the CR Program for a description of the monitoring and catch accounting provisions in the BSAI crab fisheries (70 FR 10174, March 2, 2005).

Catch Monitoring

The CR Program delegates a significant portion of monitoring in the BSAI crab fishery to the State of Alaska. Under the Crab FMP, the Council and Secretary deferred to the Alaska Department of Fish and Game (ADF&G) the authority and responsibility for deploying observers on board any vessel participating in the BSAI crab fisheries under State of Alaska regulations (5 AAC 39.645). ADF&G has implemented specific monitoring requirements in the WAG fishery.

ADF&G requires catcher/processors in the WAG fishery to carry an observer onboard the vessel for 100 percent of the vessel's trips. Catcher vessels in the WAG fishery are required to carry an observer on board for the harvest of at least 50 percent of their total harvest weight for each 3-month period of the overall 9-month season. The portion of actual observed harvest for catcher vessels in the WAG fishery has ranged from 57 percent to 70 percent annually. See Section 3.6.2 of the Analysis for additional information on the ADF&G catch monitoring and observer requirements for the WAG fishery.

ADF&G also utilizes dockside samplers to sample and monitor deliveries of crab from unobserved vessels to shoreside processors in the WAG fishery. At the time of landing, either the observer or dockside sampler collects the average weight of retained crab, conducts biological samples, and summarizes fishing effort data and landing data. The observer or dockside sampling data are used to debit the appropriate IFQ account under which the crab was harvested and the IPQ account under which the crab was received for processing in the CR Program online catch accounting system.

ADF&G observer sampling protocol specifies that a trip commences when an observer boards the vessel and ends when there is a complete offload of all crab from the vessel. If a vessel makes a partial landing, the trip is not considered to have ended until the final landing is made and all crab is offloaded from the vessel. If an observer is not deployed on a vessel in the CR Program crab fisheries, dockside samplers sample and monitor the landing of crab to a shoreside processor.

ADF&G also requires operators of vessels in the BSAI crab fisheries to complete a daily fishing log, which is issued by NMFS. Data from the daily fishing log are used to verify landings and to ensure accurate accounting for all fishery removals. Section 3.6.2 of the Analysis provides additional information on ADF&G's catch sampling and monitoring protocols for the CR Program crab fisheries.

Need for Action

In 2014, the processing facility in Adak began taking deliveries of WAG crab from catcher vessels to supply the live crab market. The crab are offloaded from the vessel and held at the processing facility until packed for transport on a commercial airline flight from Adak for delivery to domestic and international markets. The amount of crab offloaded at Adak and delivered to the live market is limited by the amount of aircraft hold space that is available to ship crab on bi-weekly flights from Adak. Aircraft capacity is approximately 8,000 to 14,000 pounds of crab per flight, depending on the type of aircraft. Vessels operating in the WAG fishery make crab deliveries opportunistically to the processing facility when live markets are available. Harvesters receive a higher price per pound for the live market than for crab delivered and processed to supply the traditional market for cooked and frozen crab sections (see Sections 3.5.4 and 3.5.5.1 of the Analysis for more information about deliveries to the live crab market from Adak).

The processing facility in Adak is currently able to receive only limited amounts of deliveries of crab for the live market, approximately 400,000 pounds for the 2015/2016 crab fishing year. As described in Section 3.5.5 of the Analysis, the processing facility in Adak has encountered a number of operational challenges since it was established in 1999 and is not currently able to receive and process a full offload of crab, which can be up to 150,000 pounds in the WAG fishery. Since the 2014/2015 crab fishing year, catcher vessels delivering crab for the live market have made partial landings at the Adak processing facility and transited several hundred miles from the fishing grounds to Dutch Harbor and Akutan to deliver the remaining crab onboard the vessel to a processor that can accept a larger vessel load of crab from the vessels.

In February 2015, the Council received requests from representatives for WAG fishery participants and representatives of the community of Adak to exempt the WAG fishery from the CR Program prohibition against a person's resuming fishing before all crab have been offloaded from a vessel. At its October 2015 meeting, the Council reviewed an analysis of the WAG fishery and the potential effects of the proposed exemption. After reviewing the Analysis and receiving public testimony, the Council recommended a regulatory amendment to exempt participants in the WAG fishery from the prohibition at § 680.7(b)(3) against a person's resuming fishing before all CR Program crab have been offloaded from the vessel.

The Council recommended this proposed regulatory amendment to reduce inefficiencies and costs associated with requiring crab harvesting vessels to travel significant distances to land a partial load of WAG. This proposed rule would allow vessels harvesting WAG to make partial

landings for delivery to the live market and continue harvesting crab before fully offloading at a processor that can receive a larger vessel load of crab.

This Proposed Rule and the Anticipated Effects

Action 1: Exempt the WAG Fishery From Full Offload Requirements

Under Action 1, this proposed rule would create an exemption for the WAG fishery from the prohibition at § 680.7(b)(3) that precludes a person from resuming fishing before all crab has been offloaded from a vessel. This proposed rule would not alter current landing, reporting, and enforcement requirements in CR Program regulations.

This proposed rule would relieve a restriction on fishing activity in the WAG fishery and could increase operational efficiencies and revenues for participants in the WAG fishery. The Council determined that this proposed rule is necessary for the WAG fishery due to the remote and economically challenging characteristic of the fishery as well as the possibility of mutual benefits to harvesters, processors located in the western Aleutians, and any communities that develop a live market opportunity. As described below, the Council determined, and NMFS agrees, that this proposed rule is not likely to have negative impacts on the management of the WAG fishery or on the catch monitoring and accounting requirements established by the CR Program.

The Council considered whether this proposed rule could increase the amount of unreported discards of crab. After reviewing the Analysis, the Council and NMFS determined that crab discards are appropriately monitored and accounted for under the CR Program and this proposed rule would not likely create additional incentive for participants in the WAG fishery to discard crab. Section 3.6.1 of the Analysis describes that experience with the CR Program has shown that unreported discards of crab are unlikely due to a number of practices that occur at sea and when crab are delivered to a processor.

First, it is common practice in the crab fisheries for vessel crews to sort catches at sea and to discard crab that are less than the legal size or that are damaged or diseased before placing the crab in the vessel's holding tank. The CR Program does not require full retention of legal-sized crab on the fishing grounds because it would require a vessel to keep damaged and diseased crab in a holding tank with healthy crab. Because crab can be discarded prior to being placed in the vessel tank, crew have an incentive to retain only healthy crab of legal size and to discard all dead, damaged, or diseased crab during sorting rather than retaining the crab onboard and discarding it prior to or after arrival at a processor. The impact of crab that are discarded during sorting on crab stocks is accounted for because observers collect information on at-sea discards in all crab fisheries, and this information is used to estimate discard mortality for all vessels in the fishery and is incorporated into crab stock assessments (see Section 3.6.2 of the Analysis).

Second, vessels are unlikely to discard unreported crab at sea due to quota overages because the CR Program cooperative structure, online quota transfers, and post-delivery quota transfers give fishery participants several options to coordinate harvests and obtain additional IFQ to cover any overages. In addition, the CR Program regulations specify that crab cooperative members are jointly and severally liable for violations, which provides a strong incentive for vessel operators to comply with CR Program regulations.

Third, attempts by vessels to illegally discard crab at sea rather than weighing and deducting them from quota after delivering to a processor would likely be noticed by the vessel observer, port samplers, plant personnel, or local enforcement agents. If a vessel operator were to depart the processor with crab onboard, the crab that was not delivered and accounted for would likely be noticed by one or more of the above personnel who would likely notify an enforcement agent.

Finally, Section 3.6.1 of the Analysis describes that while catcher vessels in the WAG fishery are required to carry an observer on board for 50 percent of their harvest, in practice, between 57 and 70 percent of the WAG fishery harvest had observer coverage in recent years (see Section 3.6.2.1 of the Analysis). The presence of an observer on board further reduces the likelihood of unreported discards.

The Council considered the impacts of this proposed rule on Federal management of the WAG fishery. Section 3.7.4 of the Analysis describes that this proposed rule would not change the current CR Program landing and reporting requirements, or catch accounting system. Under this proposed rule, all retained crab catch must be weighed, reported, and debited from the appropriate IFQ account under which the crab was harvested, and from the IPQ account under which the catch was processed.

Section 3.7.5 of the Analysis describes the impacts of this proposed rule on the State of Alaska management of the WAG fishery. The Crab FMP delegates much of the management of the BSAI crab fisheries to the State of Alaska using the following three categories of management measures: (1) Those that are fixed in the FMP and require an FMP amendment to change; (2) those that are framework-type measures that the State can change following criteria set out in the FMP; and (3) those measures that are neither rigidly specified nor require a framework adjustment in the FMP. State observer and observer sampling requirements are category three management measures under the Crab FMP and may be adopted under State laws subject to the appeals process provided for in the Crab FMP.

NMFS expects that if the proposed rule is approved and implemented, ADF&G would make minor modifications to its sampling and observer coverage protocols for WAG fishery vessels that deliver crab to Adak for supply to the live market. ADF&G will likely request that vessel operators participating in the WAG fishery and intending to make a partial offload before resuming fishing in the WAG fishery do the following: (1) Keep those crab intended for delivery to the live market in a separate tank from crab intended for delivery to the traditional processing market, and (2) record the fishing activity (pot strings) for harvest of these crabs separately in the daily fishing log. This would ensure that ADF&G can continue to collect biological information for all crab harvested prior to and after the partial offload. Under these protocols, ADF&G would be able to link logbook and offload data to ensure that status quo sampling and accurate accounting of effort can occur under this proposed rule. If the proposed rule is implemented, NMFS anticipates ADF&G would continue to coordinate with vessels in the WAG fishery to ensure that accurate biological data and catch accounting needs are met with minimal impacts on State of Alaska management of the WAG fishery consistent with requirements of the Magnuson-Stevens Act, the Crab FMP, and ADF&G regulations.

NMFS does not expect that the anticipated revisions to the ADF&G observer protocols will negatively impact participants in the WAG fishery for reasons described in Section 3.7.5 of the Analysis. First, vessels delivering crab for supply to the live market already keep those crab in separate tanks from crab delivered for supply to

the traditional market. This practice facilitates the offload process for live crab and reduces the likelihood of deadloss. Vessel operators have an incentive to continue this practice under the status quo and under this proposed rule. If all crab were kept in one tank and sorted by market at the time of offload, the vessel operator would have to remove water from the tank in order to offload the crab to supply the live market, refill the tank with water for the remaining crab to supply the traditional market, and transit back to the fishing grounds with these crab onboard before delivery for traditional processing. This process could increase the likelihood of deadloss among the crab remaining on the vessel. Second, the request for vessel operators to record pot strings pulled prior to the partial offload separately from pot strings pulled after the offload does not significantly increase the reporting burden for vessel operators or significantly change data processing or analytical protocols for ADF&G.

Section 3.7.2 of the Analysis describes that this action could result in a reduction in quality for crab destined for the traditional crab market. Crab destined for the live crab market are chosen for survivability, and vessels carefully select large, clean, undamaged crab for delivery to the live market. If the proposed rule results in an increased portion of WAG crab delivered for supply to the live market, processors that do not participate in the live crab market may receive a relatively larger portion of lower quality crab (*e.g.,* smaller or with barnacles) that were not selected for the live market. That Analysis notes that vessels in the WAG fishery currently land crab in Adak destined for the live crab market, and so it is likely that a slight reduction in quality for WAG crab destined for the traditional crab market is occurring under the current CR Program regulations.

If vessels make more deliveries of WAG crab for the live market, there could be an additional reduction in the quality of crab delivered to processors that supply the traditional markets as a larger portion of the WAG fishery TAC is supplied to the live market. However, NMFS determined that the amount of high quality WAG crab supplied to the live market is unlikely to increase significantly in the future. The Adak processing facility is limited by its ability to ship approximately 14,000 pounds of crab out by air freight bi-weekly, and this capacity limitation is unlikely to change under this proposed rule (see the Appendix to the Analysis). Therefore, NMFS does not expect this action to affect the current quality of WAG crab landings to processors that supply the traditional market.

Section 3.7.2 of the Analysis describes the impacts of this proposed rule on processors and communities that participate in the WAG fishery. This action could have a positive impact on western Aleutian Islands processors because it would allow for increased fishery activity. Increased fishery activity would benefit communities in the western Aleutian Islands by providing benefits through fuel sales and secondary services from vessels landing in a community. Additionally, increased fishery activity would promote increased local labor opportunities. This action, if approved, could also benefit communities in the western Aleutian Islands by providing increased revenue from raw fish taxes and State of Alaska fisheries business tax revenue, which is shared by the State of Alaska with the cities or boroughs where fish are landed (see Section 3.7.2 of the Analysis).

This action may adversely impact processors located in Dutch Harbor and Akutan by redistributing some WAG fishery landings to the western Aleutian Islands to supply the live market. NMFS does not expect these impacts to be significant because partial offloads of WAG crab are currently occurring at the processing facility in Adak to supply the live market. This proposed rule would likely facilitate a small increase in the amount of the WAG fishery TAC delivered for the live crab market relative to the much larger amount of crab that would continue to be delivered and processed to supply the traditional markets.

Sections 3.7.1 and 3.7.2 of the Analysis describe that this action would support the WAG fishery harvesters, processors, and communities that seek to diversify into the live crab market. The vessels currently participating in the WAG fishery could receive additional WAG fishery revenues under this proposed rule due to the increased price they receive for crab in the live market. In addition, these WAG fishery harvesters could potentially reduce operating costs and efficiency by making small offloads of WAG crab to the western Aleutian Islands and resuming fishing to harvest a full vessel load of crab before transiting to offload the crab at a processor that can process all the vessel's crab. This may result in reduced fuel costs and time spent returning to the fishing grounds.

Action 2: Clarify Document Submission Requirements for Transfers of C Shares

The second action under this proposed rule would correct regulations governing the approval criteria for an application to receive C Shares (CPC and CVC QS) by transfer. Under the CR Program, individuals must meet specific eligibility requirements to receive C shares by transfer. Amendment 31 to the Crab FMP modified several regulations governing the acquisition, use, and retention of C share QS under the CR Program (80 FR 15891, March 26, 2015).

The eligibility requirements to receive C shares by transfer are located at § 680.41(c)(1)(vii). An applicant must meet initial eligibility criteria, which include having U.S. citizenship, at least 150 days of sea time in a U.S. commercial fishery, and recent participation as crew in at least one delivery of crab in the past year. In addition, § 680.41(c)(1)(vii) specifies that until May 1, 2019, in lieu of participation as crew in one of the CR Program fisheries in the 365 days prior to application submission, an individual may meet the crew participation requirement to receive C share QS by transfer if that person 1) received an initial allocation of CVC or CPC QS, or 2) demonstrates participation as crew in at least one delivery of crab in a CR crab fishery in any 3 of the 5 crab fishing years starting on July 1, 2000, through June 30, 2005.

The approval criteria for NMFS to approve an application to receive C shares by transfer are located at § 680.41(i). The regulations state that NMFS will not approve a transfer application unless it has determined that the applicant has met all approval criteria.

The approval criteria regulations previously included criteria for an individual to demonstrate to NMFS that he or she meets the eligibility requirements at § 680.41(c)(1)(vii) at the time of transfer. These approval criteria were removed in error by incorrect amendatory language in the final rule that implemented regulations to provide harvesting cooperatives, crab processing quota shareholders, and Western Alaska Community Development Quota groups with the option to make Web-based transfers (74 FR 51515, October 7, 2009). These approval criteria are necessary to clarify for applicants that they must meet the eligibility requirements at § 680.41(c)(1)(vii) at the time of transfer, specifically that they must meet the participation within the prior 365 days for their application for transfer to be approved. This proposed rule would add these approval criteria at

§ 680.41(i)(11) to correct the error, and to ensure that the regulations are consistent with the original intent of the CR Program.

An applicant must submit the following two applications to NMFS to demonstrate that he or she meets the eligibility requirements at § 680.41(c)(1)(vii) at the time of transfer: (1) An Application for BSAI Crab Eligibility to Receive QS/PQS by Transfer; and (2) Application for Transfer of Crab QS or PQS. The applicant may submit the Application for BSAI Crab Eligibility to Receive QS/PQS by Transfer in advance of, or concurrently with, the Application for Transfer of Crab QS or PQS.

This proposed rule would add § 680.41(i)(11) to correct the regulations and clarify that NMFS will not approve an application to receive C share QS by transfer unless the applicant submits evidence demonstrating required participation criteria specified at § 680.41(c)(1)(vii). Acceptable evidence for demonstrating required participation criteria specified at § 680.41(c)(1)(vii) is limited to an ADF&G fish ticket signed by the applicant or an affidavit from the vessel owner attesting to the applicant's fishery participation.

This proposed change would make minor clarifications to regulations governing NMFS' approval criteria for an application to receive C shares by transfer. This change would clarify document submission requirements for applicants to receive C shares by transfer. The impacts of this proposed changed are limited to a minor increase in recordkeeping and reporting requirements for applicants. The impacts are consistent with those analyzed for the final rule to provide harvesting cooperatives, crab processing quota share holders, and Western Alaska Community Development Quota groups with the option to make Web-based transfers (74 FR 51515, October 7, 2009) and for regulations implementing Amendment 31 to the Crab FMP (80 FR 15891, March 26, 2015).

Action 3: Removing Certain Crab Species From LLP Regulations

The third action under this proposed rule would amend LLP regulations for consistency with the Crab FMP to avoid public confusion about the regulatory requirements that apply to certain crab stocks. This proposed rule would modify the LLP regulations at § 679.4(k)(1)(ii) to eliminate the following four crab species: Eastern Aleutian Islands red king crab; scarlet or deep sea king crab; grooved Tanner crab; and triangle Tanner crab. These stocks were removed from the Crab FMP in 2008 and are no longer subject to Federal management.

The LLP limits access to the directed groundfish, crab, and scallop fisheries in the BSAI and the Gulf of Alaska. The LLP requires each vessel to have an LLP license on board the vessel at all times while directed fishing for license limitation species, with limited exemptions. The LLP limits the number, size, and specific operation of vessels deployed in BSAI crab fisheries managed under the Crab FMP and established several area/species endorsements for crab LLP licenses. The LLP licenses for these fisheries were initially issued in 2000 and are not reissued unless the LLP license is transferred to another person. The preamble to the final rule implementing the LLP provides a detailed explanation of the rationale for specific provisions in the LLP (63 FR 52642, October 1, 1998).

The CR Program was implemented in 2005 and removed BSAI crab fisheries that are managed under the CR Program from the LLP. With the allocation of QS and PQS, management under the LLP was no longer needed to limit fishing effort. The fisheries not included in the CR Program remained under the Crab FMP and under the governance of the LLP. Fishermen participating in those fisheries are required to have a crab LLP license with the appropriate area/species endorsement on the vessel. Although the Crab FMP establishes a State/Federal cooperative management regime that delegates crab management to the State of Alaska with Federal oversight, NMFS manages Crab FMP stocks subject to LLP requirements.

Amendment 24 to the Crab FMP was approved in 2008. Amendment 24 removed 12 BSAI crab stocks not in the CR Program from the Crab FMP and deferred management to the State of Alaska for these fisheries (73 FR 33925, June 16, 2008). These stocks were removed from the Crab FMP because the majority of catch in these fisheries occurs in State of Alaska waters or the State of Alaska had closed the directed fishery or managed only a limited incidental or exploratory fishery. Among the twelve stocks removed from the Crab FMP were Eastern Aleutian Islands red king crab, scarlet or deep sea king crab, grooved Tanner crab, and triangle Tanner crab that had been managed by NMFS under the LLP. Upon removal of these species from the Crab FMP, NMFS no longer had authority to manage those species under the LLP program. The State of Alaska currently manages these fisheries under State regulations.

Amendment 24 to the Crab FMP did not require implementing regulations. As a result, Eastern Aleutian Islands red king crab, scarlet or deep sea king crab, grooved Tanner crab, and triangle Tanner crab were not removed from LLP regulations when Amendment 24 was implemented. In order to align LLP regulations with the Crab FMP and avoid confusion about regulatory requirements, NMFS proposes to modify the LLP regulations at § 679.4(k)(1)(ii) to eliminate these species from the LLP regulations. The proposed rule would not change current management of these crab fisheries.

Currently, the LLP regulations specify that crab LLP licenses may have four area/species endorsements:

- Aleutian Islands opilio/bairdi crab;
- Eastern Aleutian Islands red king crab;
- Bering Sea Minor Species (includes Bering Sea golden king crab, scarlet or deep sea king crab, grooved Tanner crab, and triangle Tanner crab); and
- Norton Sound red and blue king crab.

Three of these four LLP license endorsements specify one fishery for which the endorsement authorizes participation when the fishery is included in the Crab FMP (*i.e.,* Aleutian Islands opilio/bairdi, Eastern Aleutian Islands red king, and Norton Sound red and blue king). The Bering Sea Minor Species endorsement is an umbrella endorsement that applies to specific area/species endorsements defined in the LLP regulations: The Bering Sea golden king crab, scarlet or deep sea king crab, grooved Tanner crab, and triangle Tanner crab fisheries. Amendment 24 removed the scarlet or deep sea king crab, grooved Tanner crab, and triangle Tanner crab fisheries from the Crab FMP, but the Bering Sea golden king crab fishery remained in the Crab FMP and subject to Federal management under the LLP.

To implement this proposed rule, NMFS would modify LLP licenses to remove the Eastern Aleutian Islands red king endorsement from LLP licenses because that fishery was removed from the Crab FMP under Amendment 24 and is no longer subject to Federal management. Current LLP license records indicate there are 30 LLP licenses with this endorsement.

NMFS does not need to reissue LLP licenses with a Bering Sea Minor Species endorsement for the removal of the scarlet or deep sea king crab, grooved Tanner crab, and triangle Tanner crab fisheries from the Crab FMP. Even though scarlet or deep sea king crab, grooved Tanner crab, and triangle Tanner crab fisheries are no longer subject to Federal management, the Bering Sea golden king crab fishery

is still included in the FMP and is subject to Federal management under the LLP. Therefore an LLP license with a Bering Sea Minor Species endorsement is still required for participation in this fishery. Because of this, NMFS does not need to remove the endorsement as a whole. The LLP regulations determine the specific area/species endorsements to which the Bering Sea Minor Species endorsement applies, so NMFS has determined that it can implement this proposed change by amending the LLP regulations, rather than reissuing the licenses carrying this endorsement. Current LLP license records indicate there are 287 LLP licenses with this endorsement.

NMFS would incur minor administrative costs to reissue LLP licenses to remove the Eastern Aleutian Islands red king endorsement. As described above, this proposed action would not change current management of the Eastern Aleutian Islands red king, Bering Sea golden king crab, scarlet or deep sea king crab, grooved Tanner crab, and triangle Tanner crab fisheries. This proposed action would not have impacts on crab stocks or on fishery participants beyond those analyzed in the analysis for Amendment 24 to the Crab FMP (73 FR 33925, June 16, 2008).

Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Crab FMP, 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 the purposes of Executive Order 12866.

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 are available from NMFS (see **ADDRESSES**).

The IRFA describes this proposed rule, why this rule 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 Regulated by This Proposed Rule

The Small Business Administration defines a small commercial shellfish fishing entity as one that has annual gross receipts, from all activities of all affiliates, of less than $5.5 million (79 FR 33647, June 12, 2014).

Under Action 1, the entities directly regulated by this proposed rule are those entities that participate in the WAG fishery: Vessel operators, QS holders, and IFQ holders. This proposed rule would not directly affect PQS holders, IPQ holders, or communities. Three vessels were active in the 2013/2014 WAG fishery. These vessels received the majority of their revenue from shellfish from 2012 through 2014. The entities directly regulated by this proposed rule are members of a cooperative that exceeds the $5.5 million revenue threshold for a shellfish entity and are not considered small entities (see Section 4.3 of the Analysis). The number of WAG fishery QS holders is listed in Table 3–3 in Section 3.5.2 of the Analysis. Gross revenue information is not available for these QS holders. Of the QS holders listed, at least 3 of the entities holding CVO QS are known to be large entities as defined by the Small Business Administration. The remaining 11 CVO QS holders and 8 CVC QS holders are assumed to be small entities. This proposed rule, if approved, would exempt these directly regulated small entities from the prohibition against resuming fishing before all CR Program crab have been offloaded. This exemption is intended to provide an opportunity for these entities to benefit from increased economic efficiencies and increased revenues in the WAG fishery. Therefore, no directly regulated small entities are expected to be adversely impacted by this proposed rule.

Under Action 2, this proposed rule would correct an error to add regulatory text that was inadvertently removed. The effect of Action 2 on directly regulated small entities is described in the IRFA prepared for a final rule implementing regulations to provide harvesting cooperatives, crab processing quota share holders, and Western Alaska Community Development Quota groups with the option to make web-based transfers (74 FR 51515, October 7, 2009) and for regulations implementing Amendment 31 to the Crab FMP (80 FR 15891, March 26, 2015). This proposed rule would not change the impacts on small entities from the impacts considered in the IFRAs prepared for these actions.

Under Action 3, this proposed rule would remove regulatory requirements for LLP licenses that are no longer applicable under the Crab FMP as described in the analysis for Amendment 24 to the Crab FMP (73 FR 33925, June 16, 2008). Action 3 would not have any impact on directly regulated entities because no entities are currently participating in these crab fisheries, and this proposed rule would not preclude them from doing so under the appropriate State of Alaska regulations. Action 3 would require the reissuance of LLP licenses to the 30 license holders with the Eastern Aleutian Islands red king crab endorsement, however, this would not require any action taken on the part of any small entities.

Recordkeeping and Reporting Requirements

Action 1 of this proposed rule would not require any modifications to the current Federal recordkeeping and reporting requirements for the CR Program. Action 2 of this proposed rule references the collection-of-information requirement for the Application for Transfer of Crab QS or PQS (OMB control number 0648–0514), however, this proposed rule would not require modifications to the application and would not increase the public reporting burden associated with it. Action 3 of this proposed rule, if approved, would not require LLP license holders to take any action relative to their LLP licenses and would not impact any public reporting burden. There was a collection-of-information requirement for the initial issuance of LLPs, OMB Control Number 0648–0334, however after initial issuance, LLPs do not expire.

Collection-of-Information Requirements

This proposed rule references collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been approved by OMB and are listed below by OMB Control Number.

OMB Control Number 0648–0334

The crab LLP is mentioned in this rule, but there would be no change in burden or cost results. NMFS would modify LLP licenses to remove the Eastern Aleutian Islands Red King Crab

endorsement. NMFS does not expect that removal of the Eastern Aleutian Islands Red King Crab endorsement area/species endorsement would impact LLP license holders.

OMB Control Number 0648–0514

The Application for Crab Rationalization (CR) Program Eligibility to Receive QS/PQS or IFQ/IPQ by Transfer and the Application for Transfer of Crab QS/PQS are mentioned in this rule, but there would be no change in burden or cost results. The fishery participation approval criteria for an individual to receive C share QS by transfer were incorrectly deleted from the regulations with a final rule published on October 7, 2009 (74 FR 51515) and would be replaced by this action.

These estimates 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 statement; ways to enhance 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 (see **ADDRESSES**), 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 penalty for failure to comply with, a collection of information subject to the requirement 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*.

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

An IRFA also requires a description of any significant alternatives to this proposed rule that would accomplish the stated objectives, are consistent with applicable statutes, and that would minimize any significant economic impact of this proposed rule on small entities. Under all actions, NMFS considered two alternatives—the no action alternative and the action alternative. During the Council's initial discussion of the problem, it also considered extending the exemption from the prohibition against resuming fishing before all CR Program crab have been landed to all CR Program fisheries. However, the Council rejected this approach because it was too broad for the stated objectives, which were specific to the WAG fishery.

Under Action 1, the no action alternative is not expected to minimize adverse economic impacts for the small entities directed regulated by this proposed rule. These entities are currently required to make partial landings at the Adak processing facility and transit several hundred miles from the fishing grounds to deliver the remaining crab on board the vessel to a processor that can accept a full offload of crab from the vessels. The no action alternative results in operating inefficiencies and additional costs from requiring vessels to travel significant distances to land a partial load of WAG. The action alternative is expected to provide positive economic impacts for small entities compared to the no action alternative because it would lift a restriction on WAG fishery participants. The action alternative could improve operating efficiencies and increase fishery revenues for WAG fishery participants by supporting the opportunity to supply crab to the live market for a premium price compared to crab delivered to traditional markets.

Under Action 2, the no action alternative would not correct an error in regulation. The action alternative corrects that error by reinstating the regulation that was incorrectly removed. This proposed rule would not change the impacts on small entities from the impacts considered in the FRFA prepared for the final rule implementing regulations to provide harvesting cooperatives, crab processing quota share holders, and Western Alaska Community Development Quota groups with the option to make Web-based transfers (74 FR 51515, October 7, 2009) and for Amendment 31 to the Crab FMP (80 FR 15891, March 26, 2015). The FRFA for the Web-based transfers rule described the impacts of the rule as beneficial to small entities because the rule would simplify the process for completing transfers. The FRFA for Amendment 31 described that under Amendment 31, the submission of documentation demonstrating active participation for C share QS holders was necessary to implement the active participation requirements, but was not expected to have a significant impact on small entities due to the need to submit the information only upon the request to receive C shares by transfer.

Under Action 3, the no action alternative would retain regulations for LLP license requirements that are no longer applicable under the Crab FMP. The action alternative would make LLP license requirements consistent with the Crab FMP and reduce potential confusion for small entities. Action 3 would require the reissuance of LLP licenses to the 30 license holders with the Eastern Aleutian Islands red king crab endorsement, however, this would require no action taken on the part of any small entities. Action 3 would not have any impact on directly regulated entities because no entities are currently participating in these crab fisheries, and this proposed rule would not preclude them from doing so under the appropriate State of Alaska regulations.

List of Subjects

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

50 CFR Part 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: February 12, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 and 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 § 679.4:

■ a. Remove paragraph (k)(1)(ii)(A);

■ b. Redesignate paragraph (k)(1)(ii)(B) as new paragraph (k)(1)(ii)(A);

■ c. Revise newly redesignated paragraph (k)(1)(ii)(A);

■ d. Redesignate paragraph (k)(1)(ii)(C) as new paragraph (k)(1)(ii)(B) and paragraph (k)(1)(ii)(D)(*1*) as new paragraph (k)(1)(ii)(C);

■ f. Revise newly redesignated paragraph (k)(1)(ii)(C); and

■ g. Remove paragraph (k)(1)(ii)(D).

The revisions read as follows:

§ 679.4 Permits.

* * * * *

(k) * * *

(1) * * *

(ii) * * *

(A) Aleutian Islands Area *C. opilio* and *C. bairdi.*

* * * * *

(C) Minor Species endorsement for Bering Sea golden king crab (*Lithodes aequispinus*).

* * * * *

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 § 680.7, revise paragraph (b)(3) to read as follows:

§ 680.7 Prohibitions.

* * * * *

(b) * * *

(3) Resume fishing for CR crab or take CR crab on board a vessel once a landing has commenced and until all CR crab are landed, unless fishing in the Western Aleutian Islands golden king crab fishery.

* * * * *

■ 5. In § 680.41, add paragraph (i)(11) to read as follows:

§ 680.41 Transfer of QS, PQS, IFQ and IPQ.

* * * * *

(i) * * *

(11) The person applying to receive the CVC QS or IFQ or CPC QS or IFQ by transfer has submitted proof of at least one delivery of a crab species in any CR crab fishery in the 365 days prior to submission to NMFS of the Application for transfer of crab QS/IFQ or PQS/IPQ, except if eligible under the eligibility requirements in paragraph (c)(1)(vii)(B) of this section. Proof of this landing is—

(i) Signature of the applicant on an ADF&G fish ticket; or

(ii) An affidavit from the vessel owner attesting to that person's participation as a member of a fish harvesting crew on board a vessel during a landing of a crab QS species within the 365 days prior to submission of an Application for transfer of crab QS/IFQ or PQS/IPQ.

* * * * *

[FR Doc. 2016–03670 Filed 2–22–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 35
Tuesday, February 23, 2016

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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2015–0011]

Recognizing European Union (EU) and EU Member State Regionalization Decisions for African Swine Fever (ASF) by Updating the APHIS List of Regions Affected With ASF

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we added European Union (EU) and EU Member State-defined regions of the EU to the Animal and Plant Health Inspection Service (APHIS) list of regions affected with African swine fever (ASF). Going forward we will recognize as affected with ASF any region of the EU that the EU or any EU Member State has placed under restriction because of detection of ASF. These regions currently include portions of Estonia, Latvia, Lithuania, and Poland, and all of Sardinia. APHIS will list the EU- and EU Member State-defined regions as a single entity. We also removed Sardinia as an individually listed region from the APHIS list of ASF affected regions. We took these actions because of the detection of ASF in Estonia, Latvia, Lithuania, and Poland.

DATES: *Effective Date:* The addition of the EU- and EU Member State-defined regions to the APHIS list of regions affected with ASF was effective August 31, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Link, Import Risk Analyst, Regionalization Evaluation Services, National Import Export Services, Veterinary Services, APHIS, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606; (919) 855–7731; *Donald.B.Link@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease, bovine spongiform encephalopathy, swine vesicular disease, classical swine fever, and African swine fever (ASF). The regulations prohibit or restrict the importation of live ruminants and swine, and products from these animals, from regions where these diseases are considered to exist.

Sections 94.8 and 94.17 of the regulations contain requirements governing the importation into the United States of pork and pork products from regions of the world where ASF exists or is reasonably believed to exist. A list of regions where ASF exists or is reasonably believed to exist is maintained on the Animal and Plant Health Inspection Service (APHIS) Web site at *http://www.aphis.usda.gov/import_export/animals/animals_disease_status.shtml.*

In a notice published in the **Federal Register** on August 31, 2015 (80 FR 52440–52441, Docket No. APHIS–2015–0011), we amended the list of regions where ASF exists or is reasonably believed to exist by adding a new entry that reads ''Any restricted zone in the European Union (EU) established by the EU or any EU Member State because of detection of African swine fever in domestic or feral swine.'' We also removed Sardinia as an individually listed region because Sardinia is under ASF restrictions by the EU. These list changes were effective August 31, 2015, and as a result of that action, the importation into the United States of pork and pork products from EU regions under restrictions for ASF became restricted.

The notice also proposed that APHIS would recognize as affected with ASF any region of the EU that the EU or any EU Member State has placed under restriction because of detection of ASF. Going forward, the APHIS-recognized ASF status of almost any region of the EU would follow the EU and EU Member State restrictions based on ASF detections; we would not list each affected region of the EU. The only exception would be Malta, which we currently recognize as affected with ASF, but which is not under ASF restrictions by the EU.

Comments on the notice were required to be received on or before October 30, 2015. We received one comment, from a domestic pork industry association. The commenter did not object to the recognition of EU and EU Member State regionalization decisions for ASF in the EU. The commenter expressed concern that ASF continues to spread within the wild boar population, and concern that the potential exists for further spread. The commenter urged APHIS to remain extremely vigilant regarding actions by the European Commission (EC) and affected Member States to address ASF.

APHIS agrees with the commenter that ASF continues to spread in wild boar, and that the potential exists for further spread. APHIS agrees with the commenter that we should remain extremely vigilant regarding actions taken by the EC and affected Member States to address ASF. APHIS will continue monitor the epidemiological situation. If the EU or an EU Member State significantly changes or entirely removes its ASF restrictions or otherwise significantly alters its regulatory framework for ASF, APHIS will conduct an evaluation to assess the impact of the changes on the risk of ASF introduction into the United States. APHIS will present for public comment the findings of any such evaluation.

Because the EU- and EU Member State-defined ASF-affected regions include areas not currently on the APHIS list of ASF-affected regions, we added the new entry to our list effective August 31, 2015, to prevent the introduction of ASF into the United States. The list of ASF-affected regions can be found at: *http://www.aphis.usda.gov/import_export/animals/animals_disease_status.shtml.* Copies of the list are also available via postal mail, fax, or email upon request to the Regionalization Evaluation Services, National Import Export Services, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, MD 20737.

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 17th day of February 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–03675 Filed 2–22–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Submission for OMB Review; Comment Request

February 17, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are required regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by March 24, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Agricultural Foreign Investment Disclosure Act Report.

OMB Control Number: 0560–0097.

Summary of Collection: The Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA) requires foreign investors to report in a timely manner all held, acquired, or transferred U.S. agricultural land under penalty of law to Farm Service Agency (FSA). Authority for the collection of the information was delegated by the Secretary of Agriculture to the Farm Service Agency (FSA). The statute of authority is 92 STAT (1263–1267) or 7 U.S.C. 3501–3508 or Public Law 95–460. Foreign investors may obtain form FSA–153, AFIDA Report, from their local FSA county office or from the FSA Internet site.

Need and Use of the Information: The information collected from the AFIDA Reports is used to monitor the effect of foreign investment upon family farms and rural communities and in the preparation of a voluntary report to Congress and the President. Congress reviews the report and decides if regulatory action is necessary to limit the amount of foreign investment in U.S. agricultural land. If this information was not collected, USDA could not effectively monitor foreign investment and the impact of such holdings upon family farms and rural communities.

Description of Respondents: Business or other for-profit; Individuals or households; Farms.

Number of Respondents: 5,525.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 2,631.

Title: Servicing Minor Program Loans.

OMB Control Number: 0560–0230.

Summary of Collection: Farm Loan Program staff provides supervised credit in the form of loans to family farmers and ranchers to purchase land and finance agricultural production. Regulations are promulgated to implement selected provisions of sections 331 and 335 of the Consolidated Farm and Rural Development Act. Section 331 authorizes the Secretary of Agriculture to grant releases from personal liability where security property is transferred to approve applicants who, under agreement, assume the outstanding secured indebtedness. Section 335 provides servicing authority for real estate security; operation or lease of realty, disposition of surplus property; conveyance of complete interest of the United States; easements; and condemnations. The information is collected from Farm Service Agency (FSA) Minor Program borrowers who may be individual farmers or farming partnerships, associations, or corporations.

Need and Use of the Information: FSA will collect information related to a program benefit recipient or loan borrower requesting action on security they own, which was purchased with FSA loan funds, improved with FSA loan funds or has otherwise been mortgaged to FSA to secure a Government loan. The information collected is primarily financial data, such as borrower's asset values, current financial information and public use and employment data. Failure to obtain this information at the time of the request for servicing will result in rejection of the borrower's request.

Description of Respondents: Farms; Individuals or households; Business or other-for-profit; Not-for-profit institutions; State. Local and Tribal Government.

Number of Respondents: 58.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 37.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–03676 Filed 2–22–16; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2016–0005]

National Advisory Committee on Meat and Poultry Inspection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that the National Advisory Committee on Meat and Poultry Inspection (NACMPI) is sponsoring a public meeting on March 29–30, 2016. The objective of the public meeting is to review and determine the steps FSIS should take to ensure better *Listeria monocytogenes (Lm)* control at retail. FSIS is seeking input on whether FSIS should require certain actions by retail stores. FSIS will ask the Committee to consider the following: (1) Should FSIS rely on regulation, the Food Code, or some other means to effect these actions? (2) Are there sources of information that FSIS should consider when deciding on what steps to take that the Agency has not identified?

NACMPI will also review and discuss whether FSIS should pursue mandatory features on the label of processed *not ready to eat* (NRTE) products that do not appear to be ''not ready to eat.'' For example: (1) Should all NRTE products be required to bear the statement ''raw meat/poultry, for safety cook thoroughly''? (2) Are there other steps FSIS should consider requiring of processors to prevent illnesses involving these products?

DATES: The meeting is scheduled for March 29–30, 2016, from 9:00 a.m.–5:00 p.m. eastern standard time. NACMPI will meet from 8:00 a.m.–9:00 a.m. eastern standard time on March 29, 2016, for administrative purposes. This portion of the meeting is not open to the public.

ADDRESSES: The meeting will take place in the Auditorium at the Patriot Plaza III building, 355 E Street SW., Washington, DC 20024. The auditorium is located on the first floor. Due to increased security measures at the Patriot Plaza III, all persons wishing to attend are strongly encouraged to pre-register in advance.

FOR FURTHER INFORMATION CONTACT: Natasha Williams, Program Specialist, Designated Federal Officer, Outreach and Partnership Division, Office of Outreach, Employee Education and Training, FSIS, Patriot Plaza III Building, 355 E Street SW., Washington, DC 20024; *Telephone:* (202) 690–6531; Fax: (202) 690–6519; Email: *Natasha.Williams@fsis.usda.gov*, regarding specific questions about the committee or this meeting. General information about the committee can also be found at: *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/advisory-committees/nacmpi.*

SUPPLEMENTARY INFORMATION:

Background

NACMPI provides advice and recommendations to the Secretary of Agriculture on meat and poultry inspection programs, pursuant to sections 7(c), 24, 301(a)(3), and 301(c) of the Federal Meat Inspection Act, 21 U.S.C. 607(c), 624, 645, 661(a)(3), and 661(c), and to sections 5(a)(3), 5(c), 8(b), and 11(e) of the Poultry Products Inspection Act, 21 U.S.C. 454(a)(3), 454(c), 457(b), and 460(e). The current charter and other information about NACMPI can be found at *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/advisory-committees/nacmpi.*

The U.S. Department of Agriculture's Deputy Under Secretary for Food Safety, Al Almanza is the chairperson of NACMPI. Membership of NACMPI is drawn from distinguished representatives of consumer groups; producers; processors; and marketers from the meat, poultry and egg product industries; State and local government officials; and academia. The current members of NACMPI are: Dr. Michael Crupain, The Dr. Oz Show; Mr. George Wilson, Wilson and Associates; Dr. Tanya Roberts, Center for Foodborne Illness Research and Prevention; Mr. Kurt Brandt, United Food and Commercial Workers International Union; Dr. Dustin Oedekoven, South Dakota Animal Industry Board; Dr. Krzysztof Mazurczak, Illinois Department of Agriculture; Dr. Manpreet Singh, Purdue University; Dr. Randall K. Phebus, Kansas State University; Dr. Patricia Curtis, Auburn University; Mr. Brian Sapp, White Oak Pastures, Inc.; Ms. Sherri Jenkins, JBS®, USA, LLC; Dr. Betsy Booren, North American Meat Institute; Dr. Alice Johnson, Butterball, LLC; Ms. Sherika Harvey, Mississippi Department of Agriculture; Dr. Carol L. Lorenzen, University of Missouri; Dr. Michael L. Rybolt, Tyson Foods, Inc.; and Dr. John A. Marcy, University of Arkansas.

On March 29–30, 2016, NACMPI will review and discuss steps FSIS should take to ensure better *Lm* controls at retail, and whether FSIS should pursue mandatory features on the label of processed not ready to eat (NRTE) products that do not appear ''not ready to eat.''

The two issues described above will be presented to the full Committee. The Committee will then divide into two subcommittees to discuss the issues. Each subcommittee will provide a report of their comments and recommendations to the full Committee before the meeting concludes on Tuesday, March 30, 2016.

Register: Attendees are asked to pre-register for the meeting. Your pre-registration is to include the name of each person in your group; organization or interest represented; the number of people planning to give oral comments, if any; and whether anyone in your group requires special accommodations. Attendees should bring photo identification and plan for adequate time to pass through security screening systems. Attendees may submit their registrations to: *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/advisory-committees/nacmpi/nacmpi-meetings/nacmpi-registration.* FSIS will also accept walk-in registrations. Members of the public requesting to give oral comment to the Committee are to sign in at the registration desk.

Public Comments: Written public comments may be mailed to USDA/FSIS, 1400 Independence Avenue SW., Mail Stop 3778, Washington, DC 20250; submitted via fax (202) 690–6519; or by Email at: *NACMPI@fsis.usda.gov.*

All written comments are to arrive by March 24, 2016.

Oral comments are also accepted (see instructions under ''Register for the Meeting'' above).

Availability of Materials for the Meeting: All written public comments will be compiled into a binder and available for review at the meeting. Duplicate comments from multiple individuals will appear as one comment, with a notation that multiple copies of the comment were received. For additional information about the agenda or reports resulting from this meeting please visit: *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/advisory-committees/nacmpi/nacmpi-meetings.*

Meeting Accommodations: USDA is committed to ensuring that all interested persons are included in our events. If you are a person with a disability and would like to request reasonable accommodations to participate in this meeting, please contact Natasha Williams via Telephone: (202) 690–6531; Fax (202) 690–6519; or Email: *Natasha.Williams@fsis.usda.gov.* All reasonable accommodation requests are managed on a case by case basis.

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.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

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: February 18, 2016.

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2016–03762 Filed 2–22–16; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; State Administrative Expense Funds

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

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this information collection. This collection is a revision of a currently approved collection for State administrative expense funds expended in the operation of the Child Nutrition Programs (7 CFR parts 210, 215, 220, 226 and 250) administered under the Child Nutrition Act of 1966. The current approval for the information collection burden associated with 7 CFR part 235 expires on May 31, 2016.

DATES: Written comments must be received on or before April 25, 2016.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Steve Hortin, Chief, Operational Support Branch, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 632, Alexandria, VA 22302–1594. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Sarah Smith-Holmes at (703) 605–3223.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR part 235—State Administrative Expense Funds.

Form Numbers: FNS–74, FNS–525.

OMB Number: 0584–0067.

Expiration Date: May 31, 2016.

Type of Request: Revision of a currently approved collection.

Abstract: Section 7 of the Child Nutrition Act of 1966 (Pub. L. 89–642), 42 U.S.C. 1776, authorizes the Department to provide Federal funds to State agencies (SAs) for administering the Child Nutrition Programs (7 CFR parts 210, 215, 220, 226 and 250). State Administrative Expense (SAE) Funds, 7 CFR part 235, sets forth procedures and recordkeeping requirements for use by SAs in reporting and maintaining records of their need and use of SAE funds. A summary of the reporting and recordkeeping burden associated with this revision is presented in the table below. For this revision, the number of State Agencies was updated (decreased from 87 to 84) resulting in a decrease of 321 recordkeeping burden hours. The burden for maintaining accounting records was adjusted to more accurately reflect the average frequency of updating records due to electronic system processing resulting in a decrease of 5,564 recordkeeping hours. The burden of documenting expenditures of funds from State sources in any fiscal year for the administration of CNP is already accounted for in the quarterly recordkeeping for the FNS–777; therefore, the burden for this recordkeeping requirement has been decreased by 856 hours. The burden associated with form FNS–777, Financial Status Report, was removed since the burden for this form has been approved under the information collection for the Food Program Reporting System (FPRS), OMB Control Number 0584–0594, which expires June 30, 2017, resulting in a decrease of 174 reporting hours. The burden associated with form FNS–525, State Administrative Expense Funds Reallocation Report, is proposed for removal and transfer to the FPRS information collection to accommodate electronic reporting of the data resulting in a transfer of 308 reporting hours. These revisions result in a net decrease of 7,223 total burden hours. Revisions to the update form FNS–74, Federal-State Agreement, are also being proposed. The revised FNS–74 form is included in the Supporting Documents to this notice on *www.regulations.gov*.

Affected Public: State Agencies.

Estimated Number of Respondents: 84.

Estimated Number of Responses per Respondent: 40.297.

Estimated Total Annual Responses: 3,385.

Estimated Hours per Response: 1.869.

Estimated Total Hours Annual Reporting Burden: 315.

Estimated Total Hours Annual Recordkeeping Burden: 6,010.

Estimated Total Annual Burden: 6,325.

Current OMB Inventory: 13,548.

Difference (requested with this renewal): −7,223.

Refer to the following table for estimated annual burden for each type of respondent:

Affected public	Estimated number of respondents	Number of responses per respondent	Estimated total annual responses	Estimated hours per response	Estimated total annual burden
Reporting					
State Agencies	84	1.917	161	1.955	315
Total Estimated Reporting Burden	84		161		315
Recordkeeping					
State Agencies	84	38.381	3,224	1.864	6,010
Total Estimated Recordkeeping Burden	84		3,224		6,010
Total of Reporting and Recordkeeping					
Reporting	84	1.917	161	1.955	315
Recordkeeping	84	38.38	3,224	1.864	6,010
Total	84		3,385		6,325

Dated: February 9, 2016.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2016–03788 Filed 2–22–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Grand Mesa, Uncompahgre and Gunnison National Forests; Colorado; Federal Coal Lease Modifications COC–1362 & COC–67232

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The Grand Mesa, Uncompahgre and Gunnison National Forests (GMUG) is considering whether or not to consent to Bureau of Land Management (BLM) modifying the Federal Coal Leases COC–1362 and COC–67232 by adding 800 and 922 acres, respectively, to them. If the GMUG does consent to lease, it will prescribe conditions (as stipulations) for the protection of non-mineral resources. BLM will, in turn, decide whether or not to grant lease modifications and will further decide, if leased, whether or not to permit on-lease exploration consistent with lease terms. Subsequent mine plan modification activities may be permitted by Office of Surface Mining Reclamation and Enforcement (OSM).

Previous GMUG and BLM analyses and decisions were vacated by U.S. District Court for Colorado (1:13–cv–01723–RBJ) on September 11, 2014 for issues related to econonic analysis on the agencies' leasing analysis and BLM's exploration analysis of recreation impacts and a redundant road. A Supplemental Environmental Impact Statement (EIS) is being prepared to correct Court-identified deficiencies and to update analysis, as needed, since the Final EIS in 2012 and BLM's Environmental Assessment (EA) in 2013. The leasing and exploration analyses will be combined into a single document for agency and public convenience.

DATES: Public comments for this project were received April–May, 2010 during the preparation of an EA for the lease modifications, April–May, 2012 on the Notice of Intent to prepare a Draft EIS, June–July, 2012 on the Draft EIS and April–May, 2013 on BLM's Sunset Trail Area Coal Exploration Plan Environmental Assessment. Comments received during those periods will be also be considered in this analysis and those that were submitted in a timely manner during official comment periods also qualify for standing in future Forest Service objection opportunities (36 CFR 218 Subparts A & B) and BLM appeal periods. These comments have contributed to the issue analysis and alternative development. Additionally, the agency will continue to accept public comments throughout the preparation of the Supplemental Draft EIS, which is estimated to be released in spring 2016 with an additional formal comment period following its release. The Supplemental Final EIS is expected in summer 2016; however, timing of Supplemental Final EIS is subject to reinstatement of the 2012 Colorado Roadless Rule exception for the North Fork Coal Mining Area, which is currently under separate analysis.

ADDRESSES: Written comments should be addressed to Grand Mesa, Uncompahgre and Gunnison National Forests, Attn: Forest Supervisor, 2250 HWY 50, Delta, CO 81416. Comments may also be submitted electronically to *https://cara.ecosystem-management.org/Public//Comment Input?Project=32459* or via facsimile to 970–874–6698.

FOR FURTHER INFORMATION CONTACT: Niccole Mortenson, 406–329–3163 or *nmortenson@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

Lease Modifications

Under 43 CFR 3432 (as amended by the Energy Policy Act of 2005), the holder of a federal coal lease may apply to modify a lease by adding up to 960 acres. The federal agencies are responding to applications to modify existing leases. The GMUG and BLM have identified the need to consider issuing two coal lease modifications for federal coal lands immediately adjacent to exiting federal coal leases COC–1362 and COC–67232. The purpose of the federal agencies' actions is to facilitate recovery of federal coal resources in an environmentally sound manner. Further, the purpose of the lease modifications is to ensure that compliant and super-compliant coal reserves are recovered and not bypassed. The proposed action responds to the federal government's overall policy to foster and encourage private enterprise in the development of economically sound and stable industries, to help assure satisfaction of industrial, security and environmental needs (Mining and Minerals Policy Act of 1970).

The BLM, charged with administration of the mineral estate on these Federal lands, is required, by law, to consider leasing Federally-owned minerals for economic recovery. Processing of these particular

applications are not subject to Department of Interior's January 2016 leasing moratorium (Secretarial Order No. 3338).

The USDA-Forest Service (FS), as the surface management agency, considers consenting to the BLM leasing reserves underlying lands under its jurisdiction and prescribes stipulations for the protection of non-mineral resources. Based on Forest Service consent, the Secretary of Interior (represented by the BLM Southwest District Manager) makes the determination on whether there are no significant recreation, timber, economic, or other values which may be incompatible with leasing the lands in question, and whether or not to modify the leases. BLM could then modify the existing leases, which is a non-competitive leasing action (43 CFR part 3430).

Exploration Plan

The BLM's purpose is to decide whether to approve the exploration plan and allow the activities to occur on the proposed coal leases, consistent with lease rights, if granted, in the manner described in the plan; disapprove the plan with a statement of conformity; or approve the plan with additional conditions (43 CFR 3482.2(a)(1)), if needed, to minimize impacts. As the surface management agency, the GMUG has to determine the adequacy of the bond and has to concur with the approval terms of the exploration plan.

The BLM's need is to respond to an application to explore the coal deposits in accordance with the federal lease agreements, if issued; NEPA; the Mineral Leasing Act, as amended by the Federal Coal Leasing Amendments Act of 1976; and the Federal Land Policy and Management Act of 1976. The BLM would also be fulfilling management obligations regarding the federal coal resource by obtaining information which allows the BLM to verify the recoverable reserves.

Proposed Action

Lease Modifications

Ark Land Company (Ark) submitted an application in January 2009 and resubmitted in February 2015 seeking to modify two existing federal coal leases COC–1362, owned by Mountain Coal Company (MCC), and COC–67232, owned by Ark, by adding 800 and 922 additional acres (respectively) to them. The applications are being processed according to procedures set forth in 43 CFR 3432.

The proposed action is for the Forest Service to consent to and BLM approving modifications to MCC's existing federal coal leases COC–67232 and/or COC–1362 and thereby adding 922 and 800 additional acres (respectively) to ensure that compliant and super-compliant coal reserves are recovered and not bypassed, and to identify stipulations for the protection of non-mineral (*i.e.* surface) resources. The proposed coal lease modification areas lie in portions of sections 10, 11, 13, 14, 22 and 23 of T.14S, R. 90W, 6th PM in Gunnison County, Colorado, adjacent to the currently operating West Elk Mine.

As part of the proposed action alternatives the GMUG Forest Supervisor must decide if the existing stipulations on the parent leases are sufficient for the protection of non-mineral (*i.e.* surface) resources. If not, additional stipulations that would provide for the protection of non-mineral resources must be prescribed. The Final EIS Tables 2.1a and 2.1b show the stipulations on the parent leases and their applicability to the lease modifications, as well as, proposed modifications and changes.

In accordance with Forest Service Manual (FSM) 2820, the Standard Notice for Lands under the Jurisdiction of Agriculture is part of the parent leases, and hence would apply to the lease modifications. This Standard Notice includes requirements for Cultural and Paleontological Resources, and Threatened and Endangered Species (see Final EIS Table 2.1a). Further, the Standard Notice contains the following language: ''The permittee/lessee must comply with all the rules and regulations of the Secretary of Agriculture set forth at Title 36, Chapter II, of the Code of Federal Regulations governing the use and management of the National Forest System (NFS) when not inconsistent with the rights granted by the Secretary of Interior in the permit. The Secretary of Agriculture's rules and regulations must be complied with for (1) all use and occupancy of the NFS prior to approval of an exploration plan by the Secretary of the Interior, (2) uses of all existing improvements, such as forest development roads, within and outside the area permitted by the Secretary of the Interior, and (3) use and occupancy of the NFS not authorized by the permit/operation approved by the Secretary of the Interior.''

Lease stipulations that have been identified in the Final EIS would be brought forward in the Supplemental Draft EIS for all action alternatives.

The proposed action responds to the overall guidance given in the GMUG Land and Resource Management Plan, as amended (USDA Forest Service, 1991) which encourages environmentally sound energy and mineral development, and the BLM Uncompahgre Basin Resource Management Plan (RMP; USDI BLM, 1989). To that end, the GMUG has identified the need to consider consenting to two coal lease modifications for federal coal lands immediately adjacent to existing federal coal leases COC–1362 and COC–67232 to further the Forest Plan direction.

Exploration Plan

The proposed action is for the BLM to approve the Sunset Trail Area Coal Exploration Plan to conduct coal exploration activities after a leasing decision is made in sections 10, 11, 14, and 15 of T.14S, R. 90W, 6th PM in Gunnison County, Colorado within the coal lease modification area. The exploration plan was submitted by Ark on behalf of MCC. Ark would conduct the exploration activities. Exploration consists of drilling, obtaining e-logs down-hole, and collecting core samples for testing.

Alternatives

No Action Alternative

A. Leasing

Analysis of the No Action alternative is required by CEQ 40 CFR part 1502.14(d). Under the no action alternative, the lease modifications would not be approved, and no mining would occur in these specific areas. Impacts from mining coal under these areas would not occur on these lands, and the effects from on-going land uses could continue including coal mining activities such as exploration and monitoring and subsidence related to existing mine activities, as well as continued recreation and grazing. The land would continue to be managed according to Forest Plan standards, goals and guidelines.

B. Exploration Plan

Issuance of on-lease exploration is conditional upon lease rights being granted. If the lease modifications were not approved, the Sunset Trail Area Coal Exploration Plan could also not be approved as submitted. Information would not be acquired on the coal resource. The No Action Alternative would not preclude MCC from applying to BLM for an exploration license for off-lease activities in the future unless otherwise precluded by the Colorado Roadless Rule.

Alternative 3—Consent to and Modify the Lease(s) Under the Colorado Roadless Rule Framework (Agencies' Preferred Alternative)

A. Leasing

The proposed action is for the Forest Service to to consent to and BLM modifying existing federal coal leases COC–1362 and COC–67232 by adding 800 and 922 additional acres (respectively) to ensure that compliant and super-compliant coal reserves are recovered and not bypassed, and to identify stipulations for the protection of non-mineral (*i.e.* surface) resources.

The proposed action deals primarily with underground mining. It is assumed that longwall mining practices would be used. Minor surface disturbance would occur on Forest Service lands as a result of subsidence (slight lowering of the land surface and possible soil cracking along the outside edges) as the coal is removed. In the event that post-lease surface activities are proposed and authorized, other soil disturbance may occur due to temporary road construction and drilling of methane drainage wells (MDWs) which are needed for safety of miners underground. Current technology is not available that would be able to drill MDWs without roads.

Because leasing itself does not approve any mineral development or surface disturbance, it is necessary to project the amount of surface use or activity that may result during lease development in order to disclose potential effects and inform decision-making. A Reasonably Foreseeable Mine Plan (RFMP) has been developed to address potential environmental effects and is detailed to the extent necessary without being predecisional. A RFPM has previously been developed for this alternative and is included in the Final EIS (Section 3.2). It must be noted that decisions pertaining to surface use and disturbance, with the exception of subsidence impacts, are not made at the leasing stage. Rather, the decisions related to permit-related surface activities are made when and if site-specific surface uses are proposed, and are evaluated through the BLM's on-lease exploration (detailed below) or through State permitting process for mining. The environmental effects analysis of post-lease surface use and disturbance associated with this alternative will include subsidence and MDW pads and their associated access. It should be noted that approval of these lease modifications may extend the life of the existing West Elk Mine by approximately 1.4 years and provides underground access to existing privately-owned (fee) and other federal coal reserves which could extend the life of the mine by an additional 1.3 years; it would not approve a new mine nor is it anticipated to change current production rates at the West Elk Mine.

Alternative 3 would be analyzed under the framework of the Colorado Roadless Rule (CRR). This rule went into effect on July 3, 2012. The CRR specifically addressed coal mining in this area (known as the ''North Fork Coal Mining Area'') by providing for the construction of temporary roads which would be needed for MDWs. The CRR in this instance includes the Sunset Colorado Roadless Area (CRA). Sunset CRA includes 786 acres of the COC–1362 lease modification and 915 acres of the COC–67232 lease modification. Under Alternative 3, the Forest Service would consent to and BLM would modify the leases with all stipulations/notices/addenda identified in the Final EIS (Tables 2.1a and 2.1b). This alternative would rely on the reinstatement of the North Fork Coal Mining Area exception to the CRR after Court vacateur; analysis of which is in progress. The North Fork Coal Mining Area exception would allow for MDW drilling and temporary road access, and would therefore allow for mining the coal under RFMP (described in the Final EIS Section 3.2) with today's available technology. Because a leasing decision itself does not involve any mineral development or surface disturbance, it is necessary to project the amount of surface use or activity that will likely result during lease development in order to disclose potential effects and inform decision-making.

B. Exploration Plan

The proposed action is for the BLM to approve the site-specific Sunset Trail Area Coal Exploration Plan to conduct coal exploration activities after a leasing decision. Exploration would consist of drilling, obtaining e-logs down-hole, and collecting core samples for testing and is detailed below.

Sites, locations, temporary access road lengths, and estimated disturbed acreage of the 10 exploration sites proposed have previously been identified. They would be located within the proposed coal leases modifications above. Exploration activities would be scheduled to be completed over the course of two years. Exploration and reclamation activities would be completed by October 31 each year.

Access road upgrades and new construction would begin one to two weeks prior to moving the drill rig onto the site. The construction, drilling, and reclamation activities would take an average of 16 days per hole.

Roads would be needed for access to drill pad locations at this time. Roads would generally have a travel width of 14 feet wide. For construction road width would generally be 30 to 45 feet. For the analysis, an average of 35 feet will be used, which would disturb 4.24 acres per mile. Drill pads would, at a maximum, disturb 0.46 acres per pad. Total disturbance on NFS lands would be 29.64 acres.

Drilling activities such as pad construction, road grading, or watering, would not be scheduled on opening weekend of big game hunting seasons to avoid user conflicts.

There would be no stationary fuel storage on site. Fuel would be brought to the equipment by truck. If left on-site, the fuel truck would be parked on a prepared drill pad where drainage is contained on the pad and mud pit.

Exploration activities would follow any required stipulations attached to the leases and lease modifications.

First Year Exploration Drilling Program—Four exploration drill holes (SST–2, SST–4, SST–5, and SST–6) are planned to be drilled in the first field season. These four holes would be within the lease modification area of COC–1362. Temporary roads and drill sites would be developed. Upon completion of the first field season and subsequent data review, Ark would determine if completion of the exploration plan with the remaining six exploration drill holes is warranted for a second season. If Ark determines further exploration drilling is not warranted, unless the drill sites and access roads would be used as future MDW locations, they would then be reclaimed. If further exploration is warranted, the edges of temporary roads would be reclaimed to a maximum 14 foot width running surface. Per Forest Service stipulations, waterbars and stormwater control devices will be placed at the end of the field season, even if the road will be used again in the next season. Culverts would be removed to allow unhindered natural flow events over the winter and spring. Site SST–6 may be kept open as a staging area for the next season's activities.

Second Year Exploration Drilling Program—If the results of the coal resource exploration from the first field season are favorable, exploration activities would continue during the second field season at sites SST–1, SST–3, and SST–7 through SST–10.

Drainage control on temporary roads used for the previous year's exploration program will be reestablished.

Pre-drilling Activities—On-site inspection of proposed drill sites and access routes was conducted with representatives from appropriate regulatory agencies to discuss site-specific concerns. A road was relocated to improve stream crossings and avoid steep slopes.

State, Forest Service, and BLM regulatory personnel would be notified at least 48 hours before any construction or drilling equipment is mobilized. An authorized representative of Ark would supervise all construction and drilling activities. A copy of the exploration permit and all pertinent permit documents would be available from the Ark representative for inspection. Any proposed changes in the exploration plan after permit approval woul be reviewed and approved by the appropriate regulatory agencies before changes take effect.

Road Construction—Existing roads would be used whenever possible and movement of equipment across undisturbed land would be kept to a minimum. New roads would be constructed only when necessary and only as the drilling program progresses. A projected maximum 14-foot road running width would be employed except in locations such as curves, where more width would be needed for the drill rig. Maximum road width disturbed area would be 40 feet. The analysis will use an average of 35 feet of disturbance width. The drill sites have been located so temporary roads are as short and disturb as little ground as possible and still provide reasonable access and appropriate coal data. Topsoil would be stockpiled and redistributed at reclamation. Erosion control structures such as water bars would be installed as required and would be constructed in accordance with regulations and stipulations. Any culverts placed would be removed at the completion of the project.

Drill Site Construction—Drill sites would be 0.46 acres of disturbance or smaller. Drill site sizes and dimensions were reviewed and field fitted to topography with the aid of Forest Service representatives.

A bulldozer (D–7 or smaller) would clear brush and small trees from the drill pad. Topsoil would be removed and stockpiled on the upslope side of the drill pad and remain undisturbed during drilling. Up to one foot of topsoil thickness would be salvaged and stockpiled at the disturbance site with a ''TOPSOIL'' sign clearly marking the pile. Drill sites would be leveled by grading.

Slurry (mud) pits would be made on the drill pad. One or two pits would be excavated at each site depending upon depth of drill hole and projected water requirements. The mud pit(s) would be approximately 10 feet wide, 30 feet long, and 6 feet deep. Subsoil and rock materials would be stockpiled within the drill pad clearing and used to refill the mud pits at reclamation.

Erosion and transportation of sediment would be minimized through stormwater controls. Using the existing roads or trails would minimize disturbance. Where possible, the existing vegetation would be left to reduce the need for sediment control. Using existing level areas for drill pads would minimize surface disturbance.

Salvaged soils would be placed adjacent to the drill pad with appropriate sediment control devices surrounding the down slope portion of the soil stockpile. A similar sediment control device would be placed on the downslope side of the subsoil/rock stockpiles from the slurry (mud) pits.

Methods and Equipment for Drilling—Rotary drilling and coring on each site would be completed using a rubber-tired, truck-mounted drilling rig. To aid in the reduction of surface disturbances, Ark would use the smallest possible drill rig that can be used safely and successfully. Support equipment may consist of one or two water trucks, one rig-up truck, a pipe truck, flatbed trailer, one or more air compressors and/or boosters, a supply trailer, and three 4-wheel drive pickups.

Water sources for drilling operations would be nearby streams, where MCC owns the water rights, or stock watering ponds. Water from streams would be either pumped or trucked to the sites. If pumped, pipes (1-inch polyvinylchloride or 2- to 3-inch hose) would be laid alongside the roads and undisturbed ground surface. If trucked, about two 4,000-gallon water truck trips would be needed per site. The use of these water sources would be approved by the agency or party owning the water rights. In the event stock ponds are used, minimum water levels would be established to ensure sufficient water is left for stock and wildlife. Removal of sediments and other maintenance of stock watering ponds within proximity to the exploration sites would provide improved water storage for drilling operations and long term use for wildlife and livestock. Sediments removed from ponds would be placed on the pond embankment, wheel-rolled, and seeded. Water consumption is estimated at 5,500 to 8,500 gallons per drill hole (0.017–0.026 acre feet). No water storage tanks would be needed. Overland flow of the drill fluids would be directed into the slurry pit as would most precipitation runoff.

Upon drill hole completion, one truck mounted geophysical logging unit would be used at each hole location.

Modification of Drill Holes to Surveillance for Water Levels—Exploration hole SST–2 may be converted to an E-Seam water monitoring site if a mineable thickness of E-Seam coal is present. Construction of the water monitoring well would be delayed until a determination on mineability of the coal is made. The necessary well permit would then be obtained from the Colorado Division of Reclamation, Mining and Safety (CDRMS) for the well installation. It is not anticipated that significant water-bearing bedrock or aquifers would be encountered. The Mesa Verde Formation is known to contain limited water bearing sandstones, and no known bedrock aquifers exist. If significant quantities of water are encountered, the appropriate regulatory officials would be notified and if directed, the hole may be completed as an additional water monitoring well.

Drill Hole Abandonment Methods—The hole plugging method described in 43 CFR 3484.1(a), states that each open hole would be plugged with cement from bottom to 50 feet above the uppermost thick coal seam and from 50 feet below to 50 feet above any aquifers encountered in the hole. The remainder of the hole would be filled with an approved completion mud, gel, cuttings, or cement to within 10 feet of the surface. A 10 foot cement surface plug would be set, and an appropriately labeled monument marker to be cemented into the surface plug. For monitoring wells, the surface casing would be cut off at or below the level of the soil surface. Ark may elect to fill the hole in its entirety with cement.

Access—Primary routes used to access the exploration area would be Highway 133 to the West Elk Mine entrance and the private and National Forest administrative road through Sylvester Gulch to National Forest System Road (NFSR) 711. Approximately 0.4 miles of NFSR 711 will be used to access the Sylvester Gulch Road.

Secondary access may use the Gunnison County Road 710 to Lick Creek. Access is controlled through a gate at the bottom of the Lick Creek Road on MCC's fee surface to the exploration area. Additionally there may be access via NFSR 711 and the spurs 711–2C to the proposed sites and 711–2A.

NFSR 711 has been maintained by MCC as an access road to exploration

drill holes and methane drainage well sites for 17 years. Upgrades and improvements to the road include gravel base, culverts, ditches, gates, and drainage control structures. Ongoing maintenance is a condition of MCC's Road Use Permit.

Reclamation Plan—Final reclamation activities would follow the completion of the hole as soon as possible. Upon completion of all drilling activities at each site; debris, trash, and drilling equipment will be removed. Mud pit(s), once sufficiently dry, would be filled with stored subsoil and compacted. Remaining subsoil would be redistributed on and around the drill pad to the original contour. Stored topsoil would be distributed evenly over the disturbed pad area.

The entire drill pad area would be re-seeded using the Paonia Ranger District seed mix. After seeding, the cleared brush would be redistributed over the drill pad area to act as natural mulch. This method has proven successful for the revegetation of previous drill sites. Sediment control measures would include slash, silt fence, erosion control blankets, or straw wattles.

Newly developed access roads would be graded to the original contour as closely as possible and re-seeded.

The drill pad and access roads reclamation procedure outlined above would apply only to newly disturbed areas. Existing roads, as identified in the 2010 Gunnison National Forest's Travel Management Plan, would be left in a condition equal to or better than that observed upon Ark's entry into the area.

After reclamation, newly constructed access roads to certain drill sites may be blocked and closed to vehicle entry at the GMUG or surface owner's request. Alternate road closure methods may be employed where practical after review with the Forest Service representative.

Alternative 4—Consent to and Modify Only COC–1362 Lease (Environmentally Preferable Alternative)

A. Leasing

Many commenters expressed concerns regarding roadless area effects due to post-lease development. Similarly, some commenters suggested an alternative requesting agencies' consent/leasing for proposed modification to COC–1362 only, while not consenting to proposed modification to lease COC–67232. In response to those comments Alternative 4 was brought forward for further analysis from alternatives Considered but Eliminated from Detailed Study in the Draft EIS. Alternative 4 would include all the same lease stipulations considered for Alternative 3 as detailed in the Final EIS (Tables 2.1a and 2.1b). As part of the analysis of this alternative, the Forest Service requested an additional review from BLM to make determinations of mineable resources.

Alternative 4 will analyze the effects of post-lease surface activities—

1. Under the Colorado Roadless Rule including temporary road construction in the Sunset Colorado Roadless Area, as described in Alternative 3 above, or

2. with no road construction above.

An RFMP was developed to address indirect and cumulative effects specific to the COC–1362 modification only.

B. Exploration Plan

The on-lease exploration activities would remain similar to Alternative 3 except roads would truncated at the lease modification boundary. This may result in a reduction of three or more exploration drill holes and a reduction of approximately 2.75 miles of temporary road within the COC–67232 lease modification. Because an exploration plan specific to this alternative has not been submitted, the agencies are unsure if road density and miles might be increased on the COC–1362 lease to try to reach drill holes close to the lease modification boundary or if they will be foregone. Effects analysis will rely on the RFMP developed for leasing to assess impacts.

Alternatives to be removed from detailed analysis in the SDEIS include:

Alternative 2—Under Alternative 2, the Forest Service would consent to and BLM would modify the leases with stipulations/notices/addendums above listed for the Action Alternatives. However, under the provisions of 2001 Roadless Area Conservation Rule, road construction would not be allowed in the lease modification areas. At the time of this notice, the 2001 Roadless Area Conservation Rule is no longer in effect in Colorado. It has been replaced with the 2012 Colorado Roadless Rule and the roadless area boundaries have changed. Therefore, this alternative is now moot.

Alternatives not considered in detail in the SDEIS remain as described in the FEIS and BLM EA:

Mitigate the potential greenhouse gas emissions of the project by requiring MCC to use MDW ventilation air methane—In the geological process, methane and coal are formed together. In many coal-bearing formations, the methane can be trapped within the coal seams and/or within the surrounding rock strata. The process of longwall mining reduces the geological pressure and fractures the coal, thereby releasing the methane. In underground coal mining, methane is released into the mine during extraction. MSHA regulations require methane to be diluted in the ventilation air and then vented to the atmosphere, known as VAM, for the safety of the mine workers.

With respect to the VAM, no technology currently exists that has been demonstrated to have the capability of handling the volume of ventilation air and dilute concentrations of methane at the West Elk Mine to make capture economically feasible (current lease stipulation language). In 2009, the DOE released the results of a study to simulate VAM capture using a non-producing mine (see U.S. Department of Energy Cooperative Agreement DE–FC26–02NT41620, available on the Internet at: *http://www.epa.gov/cmop/docs/vam_executive-summary.pdf*). The project demonstrated continued advancements and a viable solution for coal mine VAM control. The DOE, however, stated that the, ''system is only economically feasible when there is value for GHG emission reduction.'' This implies carbon credits, cap- and-trade, or another market or regulatory-based incentivized system for reducing GHGs. (The DOE assessment included carbon credits in their economic feasibility model, which provided a cost basis for controlling VAM up to 180k cfm).

In relation to the coal lease modifications, MCC commissioned an analysis (Final EIS Appendix A) for capturing and/or conditioning the MDW methane for use onsite as fuel for a co-generation facility in order to produce electricity for sale to the grid, or for sale as pipeline quality natural gas. The study evaluated the gas characteristics and potential quantities of methane that would be realistically produced based upon existing well data and testing. This information was then used to engineer a collections system, including options for pipelines and screw compressor configurations for pressure management; and dehydration units, control systems, values, and metering. Options for energy generation equipment included reciprocating internal combustion engines (RICE) and combustion turbines. Additional gas processing equipment options for rendering natural gas from the CMM were also presented. The analysis covered multiple scenarios for multiple configurations of equipment. The analysis for the production of natural gas from CMM indicated that the levels of contaminants in the gas (including carbon dioxide, oxygen, and nitrogen) were treatable, but that the cost of treatment of the gas, the cost of gas compression, and the distance to access

available existing pipeline systems were prohibitive for delivery of the gas as a saleable product. This mining project would be an addition to an existing mine; therefore, uninterrupted mining would need to take place in order for this project to be economically viable.

An alternative for methane capture, with the required infrastructure, would likely include more miles of road construction connecting to a capture facility (probably centralized to operations) and pipeline construction (even though pipelines may occur near or in roads) and surface disturbance than would the Alternative 3, which would also produce additional impacts across multiple resource areas including air resources and roadless areas.

Mitigate the potential greenhouse gas emissions of the project by requiring MCC to purchase of carbon credits or do off-set mitigations—It was suggested that MCC be required to purchase carbon credits as mitigation for methane. Congress may develop cap-and-trade legislation as a means to reduce greenhouse gas emissions. Under ''cap-and-trade,'' the government sets a limit or a cap on the amount of a pollutant that may be emitted. The limit or cap is allocated or sold to businesses in the form of emissions permits, which then represent the right to emit or discharge a specific volume of the specified pollutant. Under this type of legislation, businesses are required to hold a number of permits (or ''carbon credits'') equivalent to their emissions. Generally, one carbon credit is equal to one tonne (metric ton) of carbon dioxide or carbon dioxide equivalent gases. The total number of carbon credits cannot exceed the established cap, limiting total emissions to that level. Businesses that need to increase their carbon credits must buy from those who require fewer carbon credits (''trade''). The goal of cap-and-trade legislation is to allow market mechanisms to drive industrial and commercial endeavors where carbon emissions are constrained (or limited); to date they are not constrained in the US. Since GHG mitigation projects (such as those listed for flaring or capture above) generate carbon credits, the sale can be used to finance carbon reduction projects between trading partners around the world. Currently, purchasing carbon credits is a voluntary financial investment that MCC may choose to entertain for business reasons. The federal agencies are not involved in any financial investment decisions that MCC makes as a corporation. Since no cap has been established, there is no need to require purchase of carbon credits as mitigation measure for this leasing analysis.

While other specific off-set (or off-site) mitigations may be possible, they have not been brought forward for consideration related to this leasing analysis.

Prevent all future disturbances from road construction, methane drainage well pads and the like in Roadless Areas—The environmental consequences from an alternative that considers prevention of future surface disturbance is already covered by consideration of the No Action Alternative. Therefore, CEQ NEPA regulations describe this situation as having been covered by prior environmental review (Sec. 1506.3).

Shrink the boundaries of the lease to conform to the area where the coal will be mined underground—The proposed lease modification boundaries were defined by the BLM during tract delineation, and the FS has not found reasons for shrinking the tracts due to surface resource concerns or results of the unsuitability assessment (see Appendix B).

The mine plan is approved in a later permitting process by DRMS and OSM. The longwall panels foreseen by MCC are based on current, yet limited knowledge of the geology. As panels are developed, they could be longer or shorter, depending upon conditions found during development. If the area to be mined is limited, it could cause bypass of mineable coal. Therefore, where actual subsidence or mining may occur is not known at this time. The estimated subsidence, derived from the RFMP for each alternative is described in the Final EIS Section 3.4.

Protect values of the area by using this set of stipulations for the Proposed Action.

Protect a number of values by adopting the following no surface occupancy (NSO) stipulations (proposed stipulation is followed by response):

1. NSO stipulations prohibiting road and MDW well pad construction within ¼ mile of the hiking route known as ''Sunset Trail,'' which traverses the lease modification, to protect recreational values.

GMUG Forest Plan indicates (III–68) coal mining is prohibited on trails on the National System of Trails in ''Further Planning Areas'' (*i.e.*, areas identified in the Rare II inventory for wilderness designation). The Sunset CRA is not a further planning area and the Sunset Trail is not on the National System of Trails (examples on the GMUG include Crag Crest Trail, Continental Divide National Scenic Trail, etc), it is simply a non-system non-motorized trail that is mostly overgrown with minimal use by the public. Recreational values according to the Forest Plan for this management area could range from semi-primitive non-motorized to roaded natural or rural. Further, the Alternative 3 includes a lease notice that addresses development scenarios for Roadless Areas.

- NSO stipulations prohibiting road and MDW well pad construction for all areas within ¼ mile of: (a) All lynx denning habitat; (b) all lynx winter foraging habitat; and (c) all lynx foraging habitat which is adjacent to lynx denning habitat.

Appropriate stipulations specific to Lynx and related to Threatened and Endangered species are in Alternatives 3 & 4. Lynx stipulations included are consistent with the GMUG Forest Plan 2008 amendment, Southern Rockies Lynx Amendment and the Endangered Species Act. Further, the Forest Service has consulted with the USFWS regarding Canada lynx. CEQ NEPA regulations describe this situation as having been covered by prior environmental review (Sec. 1502.20).

2. NSO stipulations prohibiting road and MDW well pad construction for all areas within ¼ mile of a water influence zone (WIZ).

The GMUG's WIZ is defined as: The land next to water bodies where vegetation plays a major role in sustaining long-term integrity of aquatic systems. It includes the geomorphic floodplain (valley bottom), riparian ecosystem, and inner gorge. Its minimum horizontal width (from top of each bank) is 100 feet or the mean height of mature dominant late-seral vegetation, whichever is most. The Watershed Conservation Practices Handbook 12.1 Management Measure (3) states in the WIZ ''allow only those actions that maintain or improve long-term stream health and riparian ecosystem condition.'' Lease stipulations addressed in the Alternatives 3 & 4 address the concern of activities in the WIZ.

3. NSO stipulations prohibiting road and MDW well pad construction for all areas within ½ mile of the West Elk Wilderness boundary, to protect roadless, wildlife, scenic, and other values.

The West Elk IRA was not brought forward as a further planning area during the RARE II wilderness inventory. Unlike Oil, Gas and Geothermal development (Forest Plan III–54), coal leasing does not provide any conditions that would warrant the issuance of an NSO buffer stipulation in this area (Forest Plan III–66).

Recreational values according to the Forest Plan for this management area could range from semi-primitive non-motorized to roaded natural or rural. Furthermore, provisions of the Colorado Wilderness Act (specific to the West Elk Wilderness) do not allow for the prevention of activities outside wilderness ''Congress does not intend that designation of wilderness areas in the State of Colorado lead to the creation of protective perimeters or buffer zones around each wilderness area. The fact that nonwilderness activities or uses can be seen or heard from areas within the wilderness shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area'' (96–560, Sec. 110).

• NSO stipulations prohibiting road and MDW well pad construction within ¼ mile of any old growth forest to prevent fragmentation.

Old growth stands have not been identified in the lease modification area. There are three stands which may or may not be old growth outside the lease modification area within the affected 6th level hydrologic unit code (HUC) (same acreage as the 4th level watersheds described in early old growth definitions) that meet the first screening criteria (large diameter trees) for old growth using Mehl's definitions (Mehl 1992). One is a spruce-fir stand located in the West Elk Wilderness; one is a cottonwood stand located primarily on private land; the last is a spruce-fir stand over a mile west of the lease modifications. None of these stands would be impacted directly or cumulatively by post-leasing surface impacts. However, assuming post-lease surface disturbing activities would occur in mature/over-mature classes (which may provide some of the same habitat components as old growth), the GMUG Forest Plan (page III–9a, III–9b) allows for removal of 70–80% of these stands assuming residual patch sizes are met. If the RFMP were implemented in Alternative 3, it is estimated that up to 61 acres of mature/over-mature aspen (0.3% of vegetation unit), and 7 acres of mature/over-mature spruce-fir (0.09% of vegetation unit) may be disturbed. These are both only a tiny fraction of that allowed to be removed under forest plan standards to protect structural diversity.

• NSO stipulations prohibiting road and MDW well pad construction within ½ mile of any raptor nest site.

There is no need for an NSO stipulation related to raptor nest sites as it is covered by survey and timing limitations requirements (Lease Stipulations) in Alternatives 3 & 4 for sensitive raptors in Colorado as identified by Region 2 list. CEQ NEPA regulations describe this situation as having been covered by prior environmental review (Sec. 1502.20).

4. NSO stipulations prohibiting road and MDW well pad construction on slopes greater than 40% to protect soils and prevent erosion.

A stipulation that requires restrictions for no surface occupancy to be allowed in ''areas of high geologic hazard or high erosion potential, or on slopes which exceed 60%'' and a stipulation that requires ''special interdisciplinary team analysis and mitigation plans detailing construction and mitigation techniques would be required on areas where slopes range from 40–60% . . . the interdisciplinary team could include engineers, soil scientist, hydrologist, landscape architect, reclamation specialist and mining engineer'' already exists as part of the Alternative 3. These stipulations are required by the Forest Plan and supported by the Watershed Conservation Practices Handbook (FSH 2509.25). CEQ NEPA regulations describe this situation as having been covered by prior environmental review (Sec. 1506.3).

For Exploration Use Helicopters to Transport Drill Rig—An alternative analyzing drilling using a drill rig that can be placed on site by a helicopter drill rig to avoid construction of access roads was considered; however, this alternative was not carried forward for detailed analysis because it is ineffective and technically infeasible. The geology of the exploration area is such that the aggregate material is not structurally sound; therefore, the drill hole must be cased. In order for the holes to be properly cased, the initial diameter must be wide enough to allow for casing and core extraction. This is not feasible to do with a drill rig that can be transported by helicopter because they are too small and not powerful enough. Furthermore, this alternative would not fulfill the purpose and need for the proposed action because it would not allow the exploration to be accomplished if the holes collapse before the core sample can be obtained.

For Exploration Analyze Only the Holes Proposed to be Drilled During the First Field Season for Exploration—An alternative was suggested by Wild Earth Guardians that would include only the four holes that MCC proposes to drill during the first field season. This alternative was not carried forward for detailed analysis because it is ineffective as it would not provide the necessary information on the coal. This alternative would not meet the purpose and need of the proposed action because it would not effectively explore the coal leases consistent with lease rights, if granted.

Lead and Cooperating Agencies

Lead Agency:
Grand Mesa, Uncompahgre and Gunnison National Forests
Cooperating Agencies:
Uncompahgre Field Office, Bureau of Land Management
Southwest District Office, Bureau of Land Management
Colorado State Office, Bureau of Land Management
Western Region, Office of Surface Mining Reclamation and Enforcement
Colorado Division of Reclamation Mining and Safety

Responsible Officials

GMUG Forest Supervisor
BLM Southwestern District Manager

Nature of Decision To Be Made

Forest Service

The GMUG Forest Supervisor is the Authorized Officer for this discretionary consent decision on these coal lease modifications (FSM 2822.04c, R2 Supplement). Given the purpose and need, the Authorized Officer will review the proposed action, the other alternatives, and the environmental consequences in order to decide the following:

• Whether or not to consent to the BLM modifying existing Federal Coal Lease COC–1362 by adding 800 acres, and whether or not to consent to the BLM modifying existing Federal Coal Lease COC–67232 by adding 922 acres according to the Mineral Leasing Act of 1920; as amended by the Federal Coal Leasing Amendments Act of 1976 and Energy Policy Act of 2005;

• If the Forest Service consents to modify the leases, they will prescribe stipulations needed for the protection of non-mineral surface resources by determining if the existing stipulations on the parent lease are sufficient. If they are not sufficient, prescribe additional stipulations that will provide for the protection of non-mineral interests in the lands.

The Forest Service Authorized Officer will determine if the activity is consistent with the GMUG Forest Plan. The Forest Service decision will be made based on the analysis relative to the No Action and Proposed Action Alternatives.

BLM

The BLM is a cooperating agency for this EIS to respond directly to their role in the Federal coal leasing process which is tied to the mineral (not

surface) estate. The BLM State Director is the Authorized Officer for the BLM, and will decide whether or not to modify the existing coal lease under the Mineral Leasing Act, as amended, and the federal regulations under 43 CFR 3400. The Uncompahgre Field Office Manager/Southwest District Manager is responsible for providing the State Director with briefings and recommendations. Specifically, the BLM will decide whether to:

- Adopt the No-Action Alternative (no leasing);
- Adopt the coal lease modifications as applied for by the applicants;

BLM cannot issue lease modifications without the consent of the surface managing agency. BLM's must also decide whether to approve the exploration plan and allow the activities to occur on the coal leases, consistent with lease rights if granted, in the manner described in the plan, disapprove the plan with a statement of conformity, or approve the plan with additional conditions (43 CFR 3482.2(a)(1)), if needed to minimize impacts. BLM cannot approve an exploration plan without concurrence by the surface management agency (concurrence is not a ''decision'' subject to Forest Service objection process).

OSM

Office of Surface Mining Reclamation Enforcement (OSM) is a cooperating agency in preparing this EIS. If the leases are modified, OSM will determine if there is a need for a federal mining plan modification at the time the actual permitting process is underway. If a federal mining plan modification is needed, OSM would be responsible to recommend that the DOI Assistant Secretary for Lands and Minerals approve, approve with conditions, or not approve the modification.

DRMS

In Colorado, the Division of Reclamation Mining and Safety (DRMS) operates under an OSM-approved program for administering coal mining operations in the state, as codified by the Colorado Surface Coal Mining Reclamation Act (CRS 34–33–101) and attendant regulations which are consistent with the overarching federal regulations (30 CFR part 906, Appendix B). Any applications submitted to the State of Colorado to revise the state mining and reclamation permit, including applications to allow mining and its related surface disturbances, reclamation, and the changing of the approved mine permit boundary to include the modification area, would be reviewed by the DRMS.

Preliminary Issues

Issues have previously been addressed in the Final EIS (Table 1.9) and will be carried forward in this analysis. It is believed that new issues will arise during this the Supplemental EIS process including, but not limited to: Changes in fish recovery status prompting reconsideration of GMUG's Programmatic Biological Opinion for Water Depletions related to Endangered Big River Fishes and request for Social Cost of Methane analysis.

Scoping Process

In addition to receiving and considering previous comments from the public, the agency continues to accept and consider public comments to guide the development of this Supplemental EIS and the resulting decision. Additional comments should clearly articulate the reviewer's concerns and contentions, and focus on the adequacy of stipulations proposed as they relate to the protection of surface resources or specific to anaysis that must be undertaken relative to exploration activities. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: February 12, 2016.

Scott G. Armentrout,

Forest Supervisor.

[FR Doc. 2016–03734 Filed 2–22–16; 8:45 am]

BILLING CODE 3410–11–P

BROADCASTING BOARD OF GOVERNORS

Government in the Sunshine Act Meeting Notice

DATE AND TIME: Friday, February 26, 2016, 11:00 a.m.–1:30 p.m. EST.

PLACE: Cohen Building, Room 3321, 330 Independence Ave. SW., Washington, DC 20237.

SUBJECT: Notice of Meeting of the Broadcasting Board of Governors.

SUMMARY: The Broadcasting Board of Governors (Board) will be meeting at the time and location listed above. The Board will vote on a consent agenda consisting of the minutes of its December 16, 2015 meeting, a resolution honoring Voice of America's (VOA) stringer Almigdad Mojalli, and a resolution honoring the 30th anniversary of VOA's Creole Service. The Board will receive a report from the Chief Executive Officer and Director of BBG. The Board will also hear from the BBG networks regarding enhanced coordination efforts.

This meeting will be available for public observation via streamed webcast, both live and on-demand, on the agency's public Web site at *www.bbg.gov.* Information regarding this meeting, including any updates or adjustments to its starting time, can also be found on the agency's public Web site.

The public may also attend this meeting in person at the address listed above as seating capacity permits. Members of the public seeking to attend the meeting in person must register at *https://www.eventbrite.com/e/meeting-of-the-broadcasting-board-of-governors-tickets-21487255961* by 12:00 p.m. (EST) on February 25. For more information, please contact BBG Public Affairs at (202) 203–4400 or by email at *pubaff@bbg.gov.*

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Oanh Tran at (202) 203–4545.

Oanh Tran,

Director of Board Operations.

[FR Doc. 2016–03880 Filed 2–19–16; 4:15 pm]

BILLING CODE 8610–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–68–2015]

Foreign-Trade Zone (FTZ) 102—St. Louis, Missouri; Authorization of Production Activity; H–J Enterprises, Inc./H–J International, Inc. (Electrical Transformer Bushing Assemblies), High Ridge, Missouri

On October 20, 2015, the St. Louis County Port Authority, grantee of FTZ 102, submitted a notification of proposed production activity to the FTZ Board on behalf of H–J Enterprises, Inc./H–J International, Inc. (H–J), within FTZ 102, in High Ridge, Missouri.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (80 FR 66489, October 29, 2015). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: February 17, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–03759 Filed 2–22–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–9–2016]

Foreign-Trade Zone 27—Boston, Massachusetts; Application for Subzone, Barrett Distribution Centers, Inc., Franklin, Massachusetts

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Massachusetts Port Authority, grantee of FTZ 27, requesting subzone status for the facility of Barrett Distribution Centers, Inc., located in Franklin, Massachusetts. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on February 17, 2016.

The proposed subzone (20 acres) is located at 15 Freedom Way, Franklin, Massachusetts. No authorization for production activity has been requested at this time.

In accordance with the FTZ Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is April 4, 2016. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 18, 2016.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or (202) 482–1346.

Dated: February 18, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–03730 Filed 2–22–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Imminent Establishment of the United States-Mexico Energy Business Council and Solicitation of Nominations for U.S. Private Sector Members

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Imminent Establishment of the United States-Mexico Energy Business Council and Solicitation of Nominations for U.S. Private Sector Members.

SUMMARY: The U.S. Department of Commerce announces the imminent establishment of the United States-Mexico Energy Business Council (the ''Council'') with U.S. Department of Energy, the Ministry of Economy of the United Mexican States, and the Ministry of Energy of the United Mexican States, and is soliciting nominations for U.S. private sector members. The Council is expected to have as its objective bringing together representatives of the respective energy industries of the United States and Mexico to discuss issues of mutual interest, particularly ways to strengthen the economic and commercial ties between energy industries in the two countries, and communicating actionable, non-binding recommendations to the U.S. and Mexican governments.

DATES: All nominations must be received by the Office of North America by 5:00 p.m. Eastern Standard Time (EST) on April 18, 2016.

ADDRESSES: Please submit nominations to Patrick Krissek, International Trade Specialist, Office of North America, U.S. Department of Commerce either by email at *Patrick.Krissek@trade.gov* or by mail to U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 30014, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Patrick Krissek, Office of North America, U.S. Department of Commerce, telephone: (202) 482–4231, email *Patrick.Krissek@trade.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of Commerce, the U.S. Department of Energy, the Ministry of Economy of the United Mexican States, and the Ministry of Energy of the United Mexican States anticipate formally establishing the Council following the U.S.-Mexico High-Level Economic Dialogue meeting in late February 2016. Please consult *www.trade.gov/hled* for more information, where the Terms of Reference of the Council will be published following its formal establishment. The expected objective of the Council is to bring together representatives of the respective energy industries of the United States and Mexico to discuss issues of mutual interest, particularly ways to strengthen the economic and commercial ties between energy industries in the two countries, and communicating actionable, non-binding recommendations to the U.S. and Mexican Governments.

The Council is expected to consist of the U.S. Department of Commerce, represented by the Under Secretary of Commerce for International Trade, and the U.S. Department of Energy, represented by the Assistant Secretary of Energy for International Affairs, for the United States Government (the ''U.S. Participants''); the Ministry of Energy of the United Mexican States, represented by General Director of Investor Relations and Promotion, and the Ministry of Economy of the United Mexican States, represented by the Under Secretary of Foreign Trade, for the Government of Mexico (the ''Mexican Participants''); and a Committee comprised of private sector members from both countries. The Committee would be composed of a U.S. Section and a Mexican Section, each consisting of approximately ten members from the private sector appointed by their respective Government, representing the views and interests of the private sector business community, including their respective energy industry sub-sector and the energy industry more broadly. Each Government would seek to appoint at least one representative from each of the oil and gas, renewable energy, electricity, nuclear energy, and energy efficiency industry sub-sectors. Members of the Sections would freely exchange information, best industry practices, and points of view among themselves and provide actionable, non-binding recommendations jointly addressed to both Governments that reflect their views, needs, and concerns regarding creating an environment in which their respective energy industries can participate, thrive, and enhance bilateral commercial ties that could form the basis for expanded trade and investment between the United States and Mexico.

Nominations are currently being sought for membership on the U.S.

Section of the Committee. Each candidate must be a senior representatives (*e.g.,* Chief Executive Officer, Vice President, Regional Manager, Senior Director, etc.) of a U.S.-owned or controlled individual company, trade association, or private sector organization that is incorporated in and has its main headquarters in the United States and whose activities focus on the manufacture, production, commercialization and/or trade of goods and services for the energy industries in the United States and Mexico. Each candidate must also be a U.S. citizen or otherwise legally authorized to work in the United States and able to travel to Mexico or locations in the United States to attend official Council meetings, as well as independent U.S. Section and Committee meetings. In addition, the candidate may not be a registered foreign agent under the Foreign Agents Registration Act of 1938, as amended.

Nominations for membership in the U.S. Section of eligible individuals will be evaluated on the following criteria:

—A demonstrated commitment by the entity to be represented to the Mexican market, including as applicable either through exports or investment.

—A demonstrated strong interest in Mexico and its economic development.

—The ability to offer a broad perspective and business experience specific to the energy industry to the discussions.

—The ability to address cross-cutting issues that affect the individual's entire energy industry sub-sector.

—The ability to initiate and be responsible for activities in which the Council will be active.

U.S. Section members will also be selected on the basis of who is best qualified to carry out the anticipated objectives of the Council to:

—Promote increased two-way investment in the energy industry;

—Promote two-way trade in goods and services produced by and used in the energy industry, including the oil and gas, renewable energy, electricity, nuclear energy, and energy efficiency sub-sectors;

—Promote the development of binational value chains in the production of goods and services in the energy sector;

—Promote the development of modern energy infrastructure and bolster energy efficiency and security;

—Foster an enabling environment for the rapid development, deployment, and integration of new energy industry technologies—including clean renewable energy technologies—into the marketplace;

—Improve competitiveness through innovation and entrepreneurship in the energy industry, to include the promotion of technology exchanges and research partnerships; and

—Partner in skills development to create solutions in training and education to address evolving energy industry workforce needs.

To the extent possible, members of the U.S. Section also should represent a cross-section of small, medium-sized and large firms.

U.S. Section members will receive no compensation for their participation in Council-related activities. Individual U.S. Section members will be responsible for all travel and related expenses associated with their participation in the Council, including attendance at Committee and Section meetings. Only appointed U.S. Section members may participate in official Council meetings; substitutes and alternates will not be designated. U.S. Section members are expected to serve for two-year terms, but may be reappointed.

To nominate an eligible individual for membership in the U.S. Section, please submit the following information as instructed in the **ADDRESSES** and **DATES** captions above:

—Name(s) and title(s) of the nominated individual(s);

—Name and address of represented entity's headquarters;

—Location of incorporation or establishment; size of the represented entity;

—As applicable, size of the company's export trade, investment, and nature of operations or interest in Mexico;

—And a brief statement of why the candidate should be considered, including information about the candidate's ability to initiate and be responsible for activities in which the Council will be active.

All candidates will be notified of whether they have been selected once the application window closes and selection of U.S. Section members has been made.

Dated: February 18, 2016.

Geri Word,

Director for the Office of North America.

[FR Doc. 2016–03594 Filed 2–22–16; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 90–8A007]

Export Trade Certificate of Review

ACTION: Notice of Issuance of an amended Export Trade Certificate of Review to the United States Surimi Commission (''USSC'').

SUMMARY: The Secretary of Commerce, through the Office of Trade and Economic Analysis (''OTEA''), issued an amended Export Trade Certificate of Review to the United States Surimi Commission on February 10, 2016.

FOR FURTHER INFORMATION CONTACT: Joseph E. Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325 (2016).

OTEA is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

USSC's Export Trade Certificate of Review

1. Remove the following members as Member of the Certificate: Alaska Ocean Seafood Limited Partnership; Highland Light Seafoods Limited Liability Company; and Alaska Trawl Fisheries, Inc.

2. Replace the existing Member American Seafoods Company with American Seafoods Company LLC, and add as new Members three entities

affiliated with American Seafoods Company LLC: American Seafoods Japan, Ltd.; AS Europe ApS; and American Seafoods China (Dalian) Ltd.

3. Add as new Members six entities that are affiliated with the existing Member Arctic Storm, Inc.: Arctic Storm International, Inc.; Arctic Fjord, Inc.; AF International, Inc.; Fjord Seafoods LLC; Arctic Storm Management Group LLC; and Fjord Fisheries General Partnership;

4. Replace the existing Member Glacier Fish Company with Glacier Fish Company LLC, and add as a new Member an affiliated company, ASM Export Co; and

5. Replace the existing Member The Starbound Limited Partnership with Starbound LLC, and add as new Members affiliated companies, NWPI, Inc, and Aleutian Spray Fisheries, Inc.

USSC's Export Trade Certificate of Review Now Lists Following Entities as Members Under the Amended Certificate

1. American Seafoods Company LLC
2. American Seafoods Japan, Ltd.
3. AS Europe ApS
4. American Seafoods China (Dalian) Ltd.
5. Arctic Storm, Inc.
6. Arctic Storm International, Inc.
7. Fjord Fisheries General Partnership
8. Arctic Fjord, Inc.
9. AF International, Inc.
10. Fjord Seafood LLC
11. Arctic Storm Management Group LLC
12. Glacier Fish Company, LLC
13. ASM Export Co.
14. Starbound LLC
15. Aleutian Spray Fisheries, Inc.
16. NWPI, Inc.

Dated: February 17, 2016.

Joseph E. Flynn,

Director, Office of Trade and Economic Analysis.

[FR Doc. 2016–03742 Filed 2–22–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–039]

Certain Amorphous Silica Fabric From the People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 16, 2016.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas at (202) 482–3813, John Corrigan at (202) 482–7438, and Emily Maloof at (202) 482–5649, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On January 20, 2016, the Department of Commerce (Department) received a countervailing duty (CVD) petition concerning imports of certain amorphous silica fabric (silica fabric) from the People's Republic of China (the PRC), filed in proper form on behalf of Auburn Manufacturing, Inc. (Petitioner). The CVD petition was accompanied by an antidumping duty (AD) petition, also concerning imports of amorphous silica fabric from the PRC.[1] Petitioner is a domestic producer of amorphous silica fabric.[2]

On January 28, 2016, the Department requested information and clarification for certain areas of the Petition.[3] Petitioner filed its response to this request on February 1, 2016.[4] On January 27, 2016, the Department determined to toll all deadlines four business days as a result of the Federal Government closure during snowstorm ''Jonas,'' which is applicable to this initiation.[5]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), Petitioner alleges that the Government of the PRC (GOC) is providing countervailable subsidies (within the meaning of sections 701 and 771(5) of the Act) with respect to imports of amorphous silica fabric from the PRC, and that imports of amorphous silica fabric from the PRC are materially injuring, and threaten material injury to, the domestic industry producing amorphous silica fabric in the United States. Also, consistent with section 702(b)(1) of the Act, for those alleged programs on which we have initiated a CVD investigation, the Petition is accompanied by information reasonably available to Petitioner supporting its allegations.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested parties as defined in section 771(9)(C) of the Act, and that Petitioner has demonstrated sufficient industry support with respect to the initiation of the investigation Petitioner is requesting.[6]

Period of Investigation

The period of the investigation is January 1, 2015, through December 31, 2015.[7]

Scope of the Investigation

The product covered by this investigation is amorphous silica fabric from the PRC. For a full description of the scope of this investigation, *see* ''Scope of Investigation'' at Appendix I of this notice.

Comments on Scope of the Investigation

During our review of the Petition, the Department issued questions to, and received responses from, Petitioner pertaining to the proposed scope to ensure that the scope language in the Petition would be an accurate reflection of the products for which the domestic industry is seeking relief.[8]

As discussed in the preamble to the Department's regulations,[9] we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope). The Department will consider all comments received from interested parties, and if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information (*see* 19 CFR 351.102(b)(21)), all such factual information should be limited to public information. In order to facilitate preparation of its questionnaire, the Department requests all interested parties to submit such comments by 5:00 p.m. Eastern Time (ET) on Monday, March 7, 2016, which is 20 calendar

[1] *See* ''Petition for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Amorphous Silica Fabric from the People's Republic of China,'' dated January 20, 2016 (Petitions).

[2] *See* Volume I of the Petitions, at 2, and Exhibit I–1.

[3] *See* letter from the Department, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Amorphous Silica Fabric from the People's Republic of China: Supplemental Questions,'' dated January 27, 2016.

[4] *See* letter from Petitioners, ''Certain Amorphous Silica Fabric from the People's Republic of China: Amendment to Volume I of the Petition,'' dated February 1, 2016.

[5] *See* Memorandum for the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, ''Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm 'Jonas,' '' (January 27, 2016).

[6] *See* ''Determination of Industry Support for the Petition'' below.

[7] *See* 19 CFR 351.204(b)(2).

[8] *See* Memorandum to the File, ''Phone Call with Counsel to Petitioner,'' dated February 10, 2016; *see also* Letter from Petitioner to the Department, ''Certain Amorphous Silica Fabric from the People's Republic of China: Scope Clarification Letter,'' dated February 10, 2016; *see also* Memorandum to the File, ''Phone Call with Counsel to Petitioner,'' dated February 12, 2016.

[9] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on Thursday, March 17, 2016, which is 10 calendar days after the initial comments deadline.

The Department requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact the Department and request permission to submit the additional information. All such comments must be filed on the record of the concurrent AD investigation.

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[10] An electronically-filed document must be received successfully in its entirety by the time and date it is due. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Consultations

Pursuant to section 702(b)(4)(A)(i) of the Act, the Department notified representatives of the GOC of the receipt of the Petition. Also, in accordance with section 702(b)(4)(A)(ii) of the Act, the Department provided representatives of the GOC the opportunity for consultations with respect to the CVD petition.[11] As the GOC did not request consultations prior to the initiation of this investigation, the Department and the GOC did not hold consultations.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[12] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[13]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition).

With regard to the domestic like product, Petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that silica fabric, as defined in the scope, constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[14]

In determining whether Petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in Appendix I of this notice. To establish industry support, Petitioner provided its own production of the domestic like product in 2015, and conservatively compared this to the estimated total production of amorphous silica fabric (both industrial grade and aerospace grade) for the entire domestic industry.[15] We have relied upon data Petitioner provided for purposes of measuring industry support.[16]

Our review of the data provided in the Petition, General Issues Supplement, and other information readily available to the Department indicates that Petitioner has established industry support.[17] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling).[18] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section

[10] *See* 19 CFR 351.303 (for general filing requirements); *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011), for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[11] *See* Letter of Invitation Regarding Countervailing Duty Petition Certain Amorphous Silica Fabric from the People's Republic of China, dated January 20, 2016.

[12] *See* section 771(10) of the Act.

[13] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[14] For a discussion of the domestic like product analysis in this case, *see* Countervailing Duty Investigation Initiation Checklist: Certain Amorphous Silica Fabric from the People's Republic of China (PRC CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Amorphous Silica Fabric from the People's Republic of China (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[15] *See* Volume I of the Petition, at 4–6; *see also* General Issues Supplement, at 1–2 and Exhibit Supp. I–1.

[16] *See* PRC CVD Initiation Checklist, at Attachment II.

[17] *Id.*

[18] *See* section 702(c)(4)(D) of the Act; *see also* PRC CVD Initiation Checklist, at Attachment II.

702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[19] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[20] Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting the Department initiate.[21]

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threatening to cause, material injury to the U.S. industry producing the domestic like product. In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[22]

Petitioner contends that the industry's injured condition is illustrated by reduced market share; underselling and price suppression or depression; lost sales and revenues; declines in domestic industry production, capacity utilization, and U.S. shipments; declines in financial performance; and declines in employment indicators.[23]

We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[24]

Initiation of Countervailing Duty Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD investigation whenever an interested party files a CVD petition on behalf of an industry that: (1) Alleges elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to Petitioner supporting the allegations.

Petitioner alleges that producers/exporters of certain amorphous silica fabric in the PRC benefit from countervailable subsidies bestowed by the GOC. The Department examined the Petition and finds that it complies with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating a CVD investigation to determine whether manufacturers, producers, or exporters of certain amorphous silica fabric from the PRC receive countervailable subsidies from the GOC and various authorities thereof.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law.[25] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[26] The amendments to sections 776 and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this CVD investigation.[27]

Based on our review of the petition, we find that there is sufficient information to initiate a CVD investigation on all of the 19 alleged programs in the PRC.[28] For a full discussion of the basis for our decision to initiate or not initiate on each program, *see* the PRC CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Respondent Selection

Petitioner named 81 companies as producers/exporters of amorphous silica fabric in the PRC.[29] Following standard practice in CVD investigations, the Department will, where appropriate, select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports of amorphous silica fabric during the period of investigation. For this investigation, the Department will release U.S. Customs and Border Protection (CBP) data for U.S. imports of subject merchandise during the period of investigation under the following Harmonized Tariff Schedule of the United States numbers: 7019.59.4021, 7019.59.4096, 7019.59.9021, and 7019.59.9096. We intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five business days of the announcement of this **Federal Register** notice. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found at *http://enforcement.trade.gov/apo/.*

Interested parties may submit comments regarding the CBP data and respondent selection by 5:00 p.m. ET on the seventh calendar day after publication of this notice. Comments must be filed in accordance with the filing requirements stated above. If respondent selection is necessary, we intend to base our decision regarding respondent selection upon comments received from interested parties and our analysis of the record information within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR

[19] *See* PRC CVD Initiation Checklist, at Attachment II.

[20] *Id.*

[21] *Id.*

[22] *See* Volume I of the Petition, at 37 and Exhibit I–12.

[23] *See* Volume I of the Petition, at 22–25, 34–48, and Exhibits I–12—I–14 and I–15—I–26.

[24] *See* PRC CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Amorphous Silica Fabric from the People's Republic of China.

[25] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[26] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015) (*Applicability Notice*). The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

[27] *Id.* at 46794–95.

[28] Petitioner initially alleged 19 subsidy programs. *See* Volume III of the Petition, at 15–58.

[29] *See* Volume I of the Petition at Exhibit I–11,

351.202(f), a copy of the public version of the Petition has been provided to the GOC *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each known exporter (as named in the Petition), consistent with 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of certain amorphous silica fabric from the PRC are materially injuring, or threatening material injury to, a U.S. industry.[30] A negative ITC determination will result in the investigation being terminated;[31] otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The regulation requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Parties should review the regulations prior to submitting factual information in this investigation.

Extension of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301 expires. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[32] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule*.[33] The Department intends to reject factual submissions if the submitting party does not comply with the applicable revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act.

Dated: February 16, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The product covered by this investigation is woven (whether from yarns or rovings) industrial grade amorphous silica fabric, which contains a minimum of 90 percent silica (SiO_2) by nominal weight, and a nominal width in excess of 8 inches. The investigation covers industrial grade amorphous silica fabric regardless of other materials contained in the fabric, regardless of whether in roll form or cut-to-length, regardless of weight, width (except as noted above), or length. The investigation covers industrial grade amorphous silica fabric regardless of whether the product is approved by a standards testing body (such as being Factory Mutual (FM) Approved), or regardless of whether it meets any governmental specification.

Industrial grade amorphous silica fabric may be produced in various colors. The investigation covers industrial grade amorphous silica fabric regardless of whether the fabric is colored. Industrial grade amorphous silica fabric may be coated or treated with materials that include, but are not limited to, oils, vermiculite, acrylic latex compound, silicone, aluminized polyester (Mylar®) film, pressure-sensitive adhesive, or other coatings and treatments. The investigation covers industrial grade amorphous silica fabric regardless of whether the fabric is coated or treated, and regardless of coating or treatment weight as a percentage of total product weight. Industrial grade amorphous silica fabric may be heat-cleaned. The investigation covers industrial grade amorphous silica fabric regardless of whether the fabric is heat-cleaned.

Industrial grade amorphous silica fabric may be imported in rolls or may be cut-to-length and then further fabricated to make welding curtains, welding blankets, welding pads, fire blankets, fire pads, or fire screens. Regardless of the name, all industrial grade amorphous silica fabric that has been further cut-to-length or cut-to-width or further finished by finishing the edges and/or adding grommets, is included within the scope of this investigation.

Subject merchandise also includes (1) any industrial grade amorphous silica fabric that has been converted into industrial grade amorphous silica fabric in China from fiberglass cloth produced in a third country; and (2) any industrial grade amorphous silica fabric that has been further processed in a third country prior to export to the United

[30] *See* section 703(a)(2) of the Act.

[31] *See* section 703(a)(1) of the Act.

[32] *See* section 782(b) of the Act.

[33] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (''*Final Rule*''); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

States, including but not limited to treating, coating, slitting, cutting to length, cutting to width, finishing the edges, adding grommets, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope industrial grade amorphous silica fabric.

Excluded from the scope of the investigation is amorphous silica fabric that is subjected to controlled shrinkage, which is also called ''pre-shrunk'' or ''aerospace grade'' amorphous silica fabric. In order to be excluded as a pre-shrunk or aerospace grade amorphous silica fabric, the amorphous silica fabric must meet the following exclusion criteria: (1) The amorphous silica fabric must contain a minimum of 98 percent silica (SiO_2) by nominal weight; (2) the amorphous silica fabric must have an areal shrinkage of 4 percent or less; (3) the amorphous silica fabric must contain no coatings or treatments; and (4) the amorphous silica fabric must be white in color. For purposes of this scope, ''areal shrinkage'' refers to the extent to which a specimen of amorphous silica fabric shrinks while subjected to heating at 1800 degrees F for 30 minutes.

Areal shrinkage is expressed as the following percentage:

$$\frac{\text{Fired Area, cm}^2 - \text{Initial Area, cm}^2}{\text{Initial Area, cm}^2} \times 100 = \text{Areal Shrinkage, \%}$$

Also excluded from the scope are amorphous silica fabric rope and tubing (or sleeving). Amorphous silica fabric rope is a knitted or braided product made from amorphous silica yarns. Silica tubing (or sleeving) is braided into a hollow sleeve from amorphous silica yarns.

The subject imports are normally classified in subheadings 7019.59.4021, 7019.59.4096, 7019.59.9021, and 7019.59.9096 of the Harmonized Tariff Schedule of the United States (HTSUS), but may also enter under HTSUS subheadings 7019.40.4030, 7019.40.4060, 7019.40.9030, 7019.40.9060, 7019.51.9010, 7019.51.9090, 7019.52.9010, 7019.52.9021, 7019.52.9096 and 7019.90.1000. HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of this investigation is dispositive.

[FR Doc. 2016–03751 Filed 2–22–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–038]

Certain Amorphous Silica Fabric From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice.

DATES: *Effective Date:* February 16, 2016.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney at (202) 482–4475 or Scott Hoefke (202) 482–4947, AD/CVD Operations, Enforcement & Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On January 20, 2016, the Department of Commerce (the Department) received an antidumping duty (AD) petition concerning imports of certain amorphous silica fabric (silica fabric) from the People's Republic of China (PRC), filed in proper form on behalf of Auburn Manufacturing, Inc. (Auburn) (Petitioner).[1] The AD petition was accompanied by a countervailing duty (CVD) petition for the PRC.[2] Petitioner is a domestic producer of silica fabric.[3]

On January 27, 2016, the Department requested additional information and clarification of certain areas of the Petition.[4] Petitioner filed responses to these requests on February 1, 2016.[5] On February 10, 2016, Petitioner submitted further clarification regarding the scope of the investigation.[6] On January 27, 2016, the Department determined to toll all deadlines four business days as a result of the Federal Government closure during snowstorm Jonas, which is applicable to this initiation.[7]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), Petitioner alleges that imports of silica fabric from the PRC are being, or are likely to be, sold in the United States at less-than-fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to Petitioner supporting its allegations.

The Department finds that Petitioner filed this Petition on behalf of the domestic industry because Petitioner is an interested party as defined in section 771(9)(C) of the Act. The Department also finds that Petitioner demonstrated sufficient industry support with respect to the initiation of the AD investigation that Petitioner is requesting.[8]

Period of Investigation

Because the Petition was filed on January 20, 2016, the period of investigation (POI) is, pursuant to 19 CFR 351.204(b)(1), July 1, 2015 through December 31, 2015.

Scope of the Investigation

The product covered by this investigation is silica fabric from the PRC. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' in Appendix I of this notice.

Comments on Scope of the Investigation

During our review of the Petition, the Department issued questions to, and received responses from, Petitioner pertaining to the proposed scope to ensure that the scope language in the Petition would be an accurate reflection of the products for which the domestic industry is seeking relief.[9]

As discussed in the preamble to the Department's regulations,[10] we are setting aside a period for interested parties to raise issues regarding product coverage (scope). The Department will consider all comments received from parties and, if necessary, will consult with parties prior to the issuance of the preliminary determination. If scope comments include factual information (*see* 19 CFR 351.102(b)(21)), all such factual information should be limited to

[1] *See* the Petition for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Amorphous Silica Fabric from the PRC, dated January 20, 2016 (the Petition) at Volumes I and II.

[2] *Id.* at Volume III.

[3] *See* Volume I of the Petition at 2.

[4] *See* Letters from the Department to Petitioner entitled ''Re: Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Amorphous Silica Fabric from the People's Republic of China: Supplemental Questions dated January 27, 2016 (General Issues Supplemental Questionnaire) and ''Re: Petition for the Imposition of Antidumping Duties on Imports of Certain Amorphous Silica Fabric from the People's Republic of China: Supplemental Questions Antidumping'' dated January 27, 2016.

[5] *See* ''Certain Amorphous Silica Fabric from the People's Republic of China: Amendment to Volume I of the Petition'' dated February 1, 2016 (General Issues Supplement); see also ''Re: Certain Amorphous Silica Fabric from the People's Republic of China: Amendment to Volume II of the Petition'' dated February 1, 2016 (AD Supplemental Response).

[6] *See* Scope Supplement to the Petition, dated February 10, 2016 (Scope Supplement).

[7] *See* Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas,'' dated January 27, 2016.

[8] *See* the ''Determination of Industry Support for the Petition'' section below.

[9] *See* Memorandum to the File, Phone Call with Counsel to Petitioner,'' dated February 10, 2016; *see also* Letter from Petitioner to the Department, ''Certain Amorphous Silica Fiber from the People's Republic of China: Scope Clarification Letter,'' dated February 10, 2016; *see also* Memorandum to the File, ''Phone Call with Counsel to Petitioner,'' dated February 12, 2016.

[10] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

public information. In order to facilitate preparation of its questionnaires, the Department requests all interested parties to submit such comments by 5:00 p.m. Eastern Time (ET) on Monday, March 7, 2016, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on Thursday, March 17, 2016, which is 10 calendar days after the initial comments deadline.

The Department requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact the Department and request permission to submit the additional information. All such comments must also be filed on the record of the concurrent CVD investigation.

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement & Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[11] An electronically filed document must be received successfully in its entirety by the time and date when it is due. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement & Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Comments on Product Characteristics for AD Questionnaires

The Department requests comments from interested parties regarding the appropriate physical characteristics of silica fabric to be reported in response to the Department's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors and costs of production accurately as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics and (2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe silica fabric, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaire, all comments must be filed by 5:00 p.m. ET on March 7, 2016, which is 20 calendar days from the signature date of this notice. Any rebuttal comments must be filed by 5:00 p.m. ET on March 14, 2016. All comments and submissions to the Department must be filed electronically using ACCESS, as explained above, on the record of this less-than-fair-value investigation.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[12] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[13]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition).

With regard to the domestic like product, Petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that silica fabric, as defined in the scope, constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[14]

[11] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[12] *See* section 771(10) of the Act.

[13] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[14] For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: Certain Amorphous Silica Fabric from the People's Republic of China (PRC AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Amorphous Silica Fabric from the

In determining whether Petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in Appendix I of this notice. To establish industry support, Petitioner provided its own production of the domestic like product in 2015, and conservatively compared this to the estimated total production of the silica fabric (both industrial grade and aerospace grade) for the entire domestic industry.[15] We have relied upon data Petitioner provided for purposes of measuring industry support.[16]

Our review of the data provided in the Petition, General Issues Supplement, and other information readily available to the Department indicates that Petitioner has established industry support.[17] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling).[18] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[19] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[20] Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the AD investigation that it is requesting the Department initiate.[21]

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[22]

Petitioner contends that the industry's injured condition is illustrated by reduced market share; underselling and price suppression or depression; lost sales and revenues; declines in domestic industry production, capacity utilization, and U.S. shipments; declines in financial performance; and declines in employment indicators.[23] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[24]

Allegations of Sales at Less-Than-Fair Value

The following is a description of the allegation of sales at less-than-fair value upon which the Department based its decision to initiate an investigation of imports of silica fabric from the PRC. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the initiation checklist.

Export Price

Petitioner based U.S. price on an offer for sale for silica fabric from a Chinese producer. Petitioner made deductions from U.S. price for movement expenses consistent with the delivery terms.[25]

Normal Value

Petitioner stated that the Department has found the PRC to be a non-market economy (NME) country in every administrative proceeding in which the PRC has been involved.[26] In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product is appropriately based on factors of production (FOPs) valued in a surrogate market economy country, in accordance with section 773(c) of the Act. In the course of this investigation, all parties, and the public, will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

Petitioner claims that Thailand is an appropriate surrogate country because it is a market economy that is at a level of economic development comparable to that of the PRC and it is a significant producer of comparable merchandise.[27]

Based on the information provided by Petitioner, we believe it is appropriate to use Thailand as a surrogate country for initiation purposes. Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

Factors of Production

Petitioner based the FOPs for materials, labor, and energy on its consumption rates for producing silica fabric as it did not have access to the consumption rates of PRC producers of the subject merchandise.[28] Petitioner notes that it chose its production experience because, like the Chinese producer from which the U.S. price quote was obtained, Petitioner is an integrated producer of silica fabric.[29] Petitioner valued the estimated factors of production using surrogate values from Thailand.[30]

Valuation of Raw Materials

Petitioner valued the FOPs for raw materials (*e.g.,* hydrochloric acid,

People's Republic of China (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room 18022 of the main Department of Commerce building.

[15] *See* Volume I of the Petition, at 4–6; *see also* General Issues Supplement, at 1–2 and Exhibit Supp. I–1.

[16] *See* PRC AD Initiation Checklist, at Attachment II.

[17] *Id.*

[18] *See* section 732(c)(4)(D) of the Act; *see also* PRC AD Initiation Checklist, at Attachment II.

[19] *See* PRC AD Initiation Checklist, at Attachment II.

[20] *Id.*

[21] *Id.*

[22] *See* Volume I of the Petition, at 37 and Exhibit I–12.

[23] *See* Volume I of the Petition, at 22–25, 34–48, and Exhibits I–12—I–14 and I–15—I–26.

[24] *See* PRC AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Amorphous Silica Fabric from the People's Republic of China.

[25] See Volume II of the Petition, at 7–10 and AD Exhibits 6 through 9.

[26] *See* Volume II of the Petition, at 2–3.

[27] *Id.* at 3–5.

[28] *See* Volume II of the Petition, at 11 and AD Exhibit 23.

[29] *Id.* at 11.

[30] *Id.* at 12 and AD Exhibit 23.

acrylic polymers, lime, *etc.*) using reasonably available, public import data for Thailand obtained from the Global Trade Atlas (GTA) for the period covering June 2015 to November 2015, the most recent POI-contemporaneous data available at the time the Petition was filed.[31] Petitioner excluded all import values from countries previously determined by the Department to maintain broadly available, non-industry-specific export subsidies and from countries previously determined by the Department to be NME countries. In addition, in accordance with the Department's practice, the average import value excludes imports that were labeled as originating from an unidentified country. The Department determines that the surrogate values used by Petitioner are reasonably available and, thus, are acceptable for purposes of initiation.

Valuation of Labor

Petitioner valued labor using monthly Thai labor data published by Thailand's National Statistics Office (NSO).[32] Specifically, Petitioner relied on data pertaining to wages and benefits earned by Thai workers engaged in the manufacturing sector of the Thai economy.[33] Petitioner converted the wage rates to hourly and converted to U.S. dollars using the average exchange rate during the POI.[34]

Valuation of Packing Materials

Petitioner valued the packing materials used by PRC producers based on Thai import data obtained from GTA for the period covering June 2015 to November 2015.[35]

Valuation of Energy

Petitioner calculated energy usage based upon its own production experience associated with both electricity and natural gas.[36] Petitioner valued natural gas using the average unit value of imports of liquefied natural gas into Thailand, as reported by GTA.[37] To value electricity, Petitioner used public information, as compiled by the Thai Metropolitan Electricity Authority.[38] This information was reported in Thai baht, converted into U.S. dollars/kilowatt hours, and multiplied by Petitioner's factor usage rates.[39]

Yield Loss

Petitioner based its calculation of yield loss upon its own production experience incurred during the leaching and dry line process stages.[40]

Valuation of Factory Overhead, Selling, General and Administrative Expenses, and Profit

Petitioner calculated surrogate financial ratios (*i.e.,* manufacturing overhead, SG&A expenses, and profit) using the 2014 audited financial statement of Thai Toray Textile Mills Public Company, a Thai producer of comparable merchandise (*i.e.,* an industrial textile).[41]

Fair Value Comparisons

Based on the data provided by Petitioner, there is reason to believe that imports of silica fabric from the PRC are being, or are likely to be, sold in the United States at less-than-fair value. Based on comparisons of EP to NV, in accordance with section 773(c) of the Act, the estimated dumping margin for silica fabric from the PRC is 160.28 percent.[42]

Initiation of Less-Than-Fair-Value Investigation

Based upon the examination of the AD Petition on silica fabric from the PRC, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of silica fabric from the PRC are being, or are likely to be, sold in the United States at less-than-fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we intend to make our preliminary determination no later than 140 days after the date of this initiation.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law.[43] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[44] The amendments to sections 771(15), 773, 776, and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this AD investigation.[45]

Respondent Selection

Petitioner named 81 companies as producers/exporters of silica fabric.[46] In accordance with our standard practice for respondent selection in cases involving NME countries, we intend to issue Q&V questionnaires to producers/exporters of merchandise subject to the investigation[47] and base respondent selection on the responses received. In addition, the Department will post the Q&V questionnaire along with filing instructions on the Enforcement and Compliance Web site at *http://www.trade.gov/enforcement/news.asp.*

Exporters/producers of silica fabric from the PRC that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy from the Enforcement & Compliance Web site. The Q&V response must be submitted by the relevant PRC exporters/producers no later than March 1, 2016, which is two weeks from the signature date of this notice. All Q&V responses must be filed electronically via ACCESS.

Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate application.[48] The specific requirements for submitting a separate-rate application in the PRC investigation are outlined in detail in the application itself, which is available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html.* The separate-rate application will be due 30 days after publication of this initiation notice.[49] Exporters and

[31] *Id.* at AD Exhibit 12.

[32] *Id.* at 13 and AD Exhibit 15.

[33] *Id.*

[34] *Id.* at 14 and AD Exhibits 15 and 16.

[35] *See* Volume II of the Petition at 16 and AD Exhibit 21.

[36] *Id.* at 15.

[37] *Id.* at 16 and AD Exhibits 12, 18 and 23; *see also* AD Supplemental Response, at 1–2 and AD-Supp. Exhibit 3.

[38] *Id.* at 15–16 and AD Exhibit 19.

[39] *Id.* at AD Exhibits 17 19, Exhibit 22 and Exhibit 23.

[40] *Id.* at 15 and AD Exhibit 11.

[41] *Id.* at 15–16 and AD Exhibit 20.

[42] *See* Volume II of the Petition at 17 and AD Exhibit 24; *see also* PRC AD Initiation Checklist.

[43] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[44] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

[45] *Id.* at 46794–95. The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

[46] *See* Volume I of the Petition at Exhibit 11.

[47] *See* Appendix I, ''Scope of the Investigations.''

[48] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries (April 5, 2005), available at *http://enforcement.trade.gov/policy/bull05-1.pdf* (Policy Bulletin 05.1).

[49] Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that ''the Secretary may request any

producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they respond to all parts of the Department's AD questionnaire as mandatory respondents. The Department requires that respondents from the PRC submit a response to both the Q&V questionnaire and the separate-rate application by their respective deadlines in order to receive consideration for separate-rate status.

Use of Combination Rates

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[50]

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petition has been provided to the government of the PRC via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition were filed, whether there is a reasonable indication that imports of silica fabric from the PRC are materially injuring or threatening material injury to a U.S. industry.[51] A negative ITC determination will result in the investigation being terminated;[52] otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[53] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[54] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Please review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351 expires. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these investigations.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[55] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of petition filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule.*[56] The Department intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective order (APO) in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed in 19 CFR 351.103(d)).

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: February 16, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The product covered by this investigation is woven (whether from yarns or rovings)

person to submit factual information at any time during a proceeding,'' this deadline is now 30 days.

[50] *See* Policy Bulletin 05.1 at 6 (emphasis added).

[51] *See* section 733(a) of the Act.

[52] *Id.*

[53] *See* 19 CFR 351.301(b).

[54] *See* 19 CFR 351.301(b)(2).

[55] *See* section 782(b) of the Act.

[56] *See Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

industrial grade amorphous silica fabric, which contains a minimum of 90 percent silica (SiO_2) by nominal weight, and a nominal width in excess of 8 inches. The investigation covers industrial grade amorphous silica fabric regardless of other materials contained in the fabric, regardless of whether in roll form or cut-to-length, regardless of weight, width (except as noted above), or length. The investigation covers industrial grade amorphous silica fabric regardless of whether the product is approved by a standards testing body (such as being Factory Mutual (FM) Approved), or regardless of whether it meets any governmental specification.

Industrial grade amorphous silica fabric may be produced in various colors. The investigation covers industrial grade amorphous silica fabric regardless of whether the fabric is colored. Industrial grade amorphous silica fabric may be coated or treated with materials that include, but are not limited to, oils, vermiculite, acrylic latex compound, silicone, aluminized polyester (Mylar®) film, pressure-sensitive adhesive, or other coatings and treatments. The investigation covers industrial grade amorphous silica fabric regardless of whether the fabric is coated or treated, and regardless of coating or treatment weight as a percentage of total product weight. Industrial grade amorphous silica fabric may be heat-cleaned. The investigation covers industrial grade amorphous silica fabric regardless of whether the fabric is heat-cleaned.

Industrial grade amorphous silica fabric may be imported in rolls or may be cut-to-length and then further fabricated to make welding curtains, welding blankets, welding pads, fire blankets, fire pads, or fire screens. Regardless of the name, all industrial grade amorphous silica fabric that has been further cut-to-length or cut-to-width or further finished by finishing the edges and/or adding grommets, is included within the scope of this investigation.

Subject merchandise also includes (1) any industrial grade amorphous silica fabric that has been converted into industrial grade amorphous silica fabric in China from fiberglass cloth produced in a third country; and (2) any industrial grade amorphous silica fabric that has been further processed in a third country prior to export to the United States, including but not limited to treating, coating, slitting, cutting to length, cutting to width, finishing the edges, adding grommets, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope industrial grade amorphous silica fabric.

Excluded from the scope of the investigation is amorphous silica fabric that is subjected to controlled shrinkage, which is also called ''pre-shrunk'' or ''aerospace grade'' amorphous silica fabric. In order to be excluded as a pre-shrunk or aerospace grade amorphous silica fabric, the amorphous silica fabric must meet the following exclusion criteria: (l) The amorphous silica fabric must contain a minimum of 98 percent silica (SiO_2) by nominal weight; (2) the amorphous silica fabric must have an areal shrinkage of 4 percent or less; (3) the amorphous silica fabric must contain no coatings or treatments; and (4) the amorphous silica fabric must be white in color. For purposes of this scope, ''areal shrinkage'' refers to the extent to which a specimen of amorphous silica fabric shrinks while subjected to heating at 1800 degrees F for 30 minutes.

Areal shrinkage is expressed as the following percentage:

$$\frac{\text{Fired Area, cm}^2 - \text{Initial Area, cm}^2}{\text{Initial Area, cm}^2} \times 100 = \text{Areal Shrinkage, \%}$$

Also excluded from the scope are amorphous silica fabric rope and tubing (or sleeving). Amorphous silica fabric rope is a knitted or braided product made from amorphous silica yarns. Silica tubing (or sleeving) is braided into a hollow sleeve from amorphous silica yarns.

The subject imports are normally classified in subheadings 7019.59.4021, 7019.59.4096, 7019.59.9021, and 7019.59.9096 of the Harmonized Tariff Schedule of the United States (HTSUS), but may also enter under HTSUS subheadings 7019.40.4030, 7019.40.4060, 7019.40.9030, 7019.40.9060, 7019.51.9010, 7019.51.9090, 7019.52.9010, 7019.52.9021, 7019.52.9096 and 7019.90.1000. HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of this investigation is dispositive.

[FR Doc. 2016–03756 Filed 2–22–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta From Italy: Final Results, and Rescission, in Part, of Countervailing Duty Administrative Review; 2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (Department) has conducted an administrative review of the countervailing duty (CVD) order on certain pasta from Italy. On August 10, 2015, we published the *Preliminary Results* for this administrative review.[1] The period of review (POR) is January 1, 2013, through December 31, 2013. We find that DeMatteis Agroalimentare S.p.A. (also known as, De Matteis Agroalimentare SpA) (DeMatteis) received countervailable subsidies and La Molisana S.p.A. (La Molisana) received *de minimis* countervailable subsidies during the POR. These rates are shown below in the final results of review section. As discussed below, we are rescinding the review with respect to La Molisana Industrie Alimentari S.p.A. (LMIA).

DATES: *Effective Date:* February 23, 2016.

FOR FURTHER INFORMATION CONTACT: Jennifer Meek or Joseph Shuler, AD/CVD Operations, Office I, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2778 or (202) 482–1293, respectively.

SUPPLEMENTARY INFORMATION:

Background

In the *Preliminary Results,* we indicated that we would seek clarification regarding La Molisana's use of Article 14 of Law 46/1982 and additional historical sales data from La Molisana and its parent company. We invited interested parties to file case briefs and rebuttal briefs following the release of the *Preliminary Results*. La Molisana filed a case brief. No other parties commented on the *Preliminary Results*. We also invited interested parties to comment on the additional information we solicited from La Molisana following the *Preliminary Results;* no additional comments were provided.

Scope of the Order

The scope of the *Order* consists of certain pasta from Italy.[2] The merchandise subject to the order is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive. A full description of the scope of the *Order* is contained in the ''Issues and Decision Memorandum for Final Results of Countervailing Duty Administrative Review: Certain Pasta from Italy,'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, dated February 12, 2016

[1] *See Certain Pasta From Italy: Preliminary Results of Countervailing Duty Administrative Review, Rescission in Part, and Preliminary Intent to Rescind in Part; 2013,* 80 FR 47900 (August 10, 2015) (*Preliminary Results*). *See also* Memorandum from Jennifer Meek, International Trade Analyst, to the File, ''Preliminary Results Program Description,'' for details regarding program ''Law 488/92—Industrial Development Grants,'' August 4, 2015.

[2] *See Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') From Italy,* 61 FR 38544 (July 24, 1996) (*Order*).

(Issues and Decision Memorandum), and hereby adopted by this notice.

The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and available to all parties in the Central Records Unit, room 7046 of the main Department building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html*. The signed and electronic versions of the Issues and Decision Memorandum are identical in content. A list of topics discussed in the Issues and Decision Memorandum is provided in the Appendix to this notice.

Analysis of Comments Received

All issues raised in the case brief filed by La Molisana in this review are addressed in the Issues and Decision Memorandum, which is incorporated herein by reference. A list of the issues which parties raised, and to which we respond in the Issues and Decision Memorandum, follows as an appendix to this notice.

Changes Since the Preliminary Results

Based on additional information provided by La Molisana after the *Preliminary Results* at the Department's request, the Department corrected certain program calculations which affected the countervailable subsidy rate to be applied to La Molisana. For a full explanation of the changes made, see the Issues and Decision Memorandum.

Methodology

We have conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we determine that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[3] In making these findings, we have relied, in part, on an adverse inference in selecting from among the facts otherwise available because we find that the GOI did not act to the best of its ability to respond to our requests for information regarding certain programs.[4]

Partial Rescission

In the *Preliminary Results,* we announced our intent to recind the administrative review with respect to LMIA. As we stated in the *Preliminary Results,* the record demonstrates that LMIA ceased operations prior to the POR. Moreover, La Molisana reported that all entries shown in the entry data from Customs and Border Protection (CBP) as entries made by LMIA were of subject merchandise produced and exported by La Molisana. There is no record evidence that LMIA made entries of subject merchandise during the POR. Therefore, we are now rescinding the review with respect to LMIA.

Final Results of the Review

In accordance with 19 CFR 351.221(b)(5), we calculated individual subsidy rates for the mandatory respondents, DeMatteis and La Molisana.

We find the net countervailable subsidy rate for the producers and/or exporters under review to be as follows:

Producer/exporter	Net subsidy rate
DeMatteis Agroalimentare S.p.A. (also known as De Matteis Agroalimentare SpA)	2.12
La Molisana S.p.A	0.26

Disclosure

We intend to disclose the calculations performed to interested parties within five days of the publication of these final results in accordance with 19 CFR 351.224(b).

Assessment Rates

Consistent with 19 CFR 351.212(b)(2), we intend to issue assessment instructions to the U.S. Customs and Border Protection (CBP) fifteen days after the date of publication of these final results. Because we have calculated a *de minimis* countervailable subsidy rate for La Molisana in the final results of this review, in accordance with 19 CFR 351.212 we will instruct CBP to liquidate the appropriate entries without regard to countervailing duties. For DeMatteis, we will instruct CBP to assess countervailing duties on the value of POR entries at the rate shown above.

Cash Deposit Requirements

In accordance with section 751(a)(2)(C) of the Act, we intend to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown above, for the companies listed above, with the exception of La Molisana, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. Because the countervailable subsidy rate for La Molisana is *de minimis,* the Department will instruct CBP to collect cash despoits at a rate of zero for La Molisana for all shipments of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed companies (except Barilla G. e R. F.lli S.p.A. and Gruppo Agricoltura Sana S.r.l., which are excluded from the order,[5] and Pasta Lensi S.r.l., which was revoked from the *Order*[6]), we will instruct CBP to continue to collect cash deposits at the most recently assigned company-specific or all-others rate applicable to the company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: February 12, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

1. Summary
2. Background

[3] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity. For a full description of the methodology underlying our conclusions, *see* Issues and Decision Memorandum.

[4] *See* sections 776(a) and (b) of the Act. For further discussion, *see* Issues and Decision Memorandum at ''Use of Facts Otherwise Available and Adverse Inferences.''

[5] *See Order,* 61 FR 38545.

[6] *See Certain Pasta from Italy: Final Results of the Ninth Countervailing Duty Administrative Review and Notice of Revocation of Order, in Part,* 71 FR 36318 (June 26, 2006).

[FR Doc. 2016–03750 Filed 2–22–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD124

National Environmental Policy Act Compliance for Council-Initiated Fishery Management Actions Under the Magnuson-Stevens Act

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

ACTION: Notice of availability.

SUMMARY: The purpose of this notice is to notify the public that NOAA/NMFS has finalized revisions to the NOAA policy and procedures for complying with the National Environmental Policy Act (NEPA) in the context of Magnuson-Stevens Act (MSA) fishery management actions. This notice provides a summary of the public comments received and the agency's responses. The final revised and updated NEPA procedures for MSA actions are available online at *http://www.nmfs.noaa.gov/msa2007/nepa.htm.*

DATES: The final policy is effective February 23, 2016.

FOR FURTHER INFORMATION CONTACT: Steve Leathery, 301–427–8014.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 2013, in compliance with section 304(i), NMFS issued an internal policy pertaining to complying with NEPA in the context of MSA fishery management actions. This policy, entitled ''Policy Directive 30–132: National Environmental Policy Act Compliance for Council-Initiated Fishery Management Actions under the Magnuson-Stevens Act'' (the policy): Clarified roles and responsibilities of NMFS and the Regional Fishery Management Councils (Councils); explained timing and procedural linkages; provided guidance on documentation needs; and provided guidance for fostering partnerships and cooperation between NMFS and the Councils on NEPA compliance.

After consulting with the Councils and with the Council on Environmental Quality (CEQ) on proposed revisions to the 2013 NMFS NEPA policy, NMFS proposed using this policy as a basis for issuing revised and updated NEPA procedures for MSA actions in the form of a line-office supplement to NOAA Administrative Order (NAO) 216–6), which contains NOAA's policies and procedures for complying with the NEPA. On June 30, 2014, NMFS published a notice in the **Federal Register** inviting public comments for a 90-day period on a proposed supplement to the NAO (NAO supplement) intended to satisfy fully the requirements of section 304(i) of the Magnuson-Stevens Act (MSA). Section 304(i) requires NMFS, in consultation with the Councils and Council on Environmental Quality (CEQ), to revise and update agency NEPA procedures to conform to the timelines for review and approval of fishery management plans and to integrate applicable environmental analytical procedures. 16 U.S.C. 1854(i). After careful consideration of the public comments received in response to the 2014 notice, NOAA/NMFS has decided to finalize the NAO supplement with editorial, but no substantive, changes to the June 30, 2014 draft.

NMFS received comments from 5 environmental non-governmental organizations and 2 fishery management councils. The key issues are summarized below along with NMFS's responses. We note that many comments are similar to those raised previously either as comments on a proposed rule (73 FR 27998, May14, 2008), (which was subsequently withdrawn (79 FR 40703, Jul. 14, 2014)), or as comments on the 2013 NMFS NEPA policy. When NMFS issued the 2013 NMFS NEPA policy directive, it developed a background document that addressed many of these comments. A copy of the background document for 2013 Policy Directive can be viewed and downloaded at the following site: *http://www.nmfs.noaa.gov/sfa/laws_policies/msa/nepa.html.*

In this notice, we will limit our discussion to those comments that specifically address issues pertaining to the NAO supplement. Many of these comments pertain broadly to transparency in the NEPA process. NMFS is supportive of these comments and will explore ways to improve public access to NEPA documents and information on the status of ongoing NEPA analyses. However, NMFS believes that, given the limited purpose of the draft NAO supplement—to revise and update agency NEPA procedures to conform to the timelines for review and approval of fishery management plans and to integrate applicable environmental analytical procedures—the NAO supplement is not the appropriate vehicle for addressing all such issues. As NOAA generally works to revise and update its NEPA procedures through the NAO, the agency will continue seeking ways to enhance public access, participation and process transparency through all appropriate mechanisms.

Key Issues Raised In Comments: NMFS notes that since the initiation of efforts to comply with section 304(i), commenters have expressed widely divergent opinions on how best to proceed. When introducing Policy Directive 30–132, ''National Environmental Policy Act Compliance for Fishery Management Actions under the Magnuson-Stevens Act (2/19/2013),'' NMFS provided a background document that summarized NMFS's consideration of key issues and concerns, ''Introduction to NMFS Policy Directive: National Environmental Policy Act Compliance for Fishery Management Actions under the Magnuson-Stevens Act.'' Some of the same issues and concerns were re-introduced as comments on the draft Supplement. For additional context regarding NMFS's treatment of these concerns, please see the background document, available at: *http://www.nmfs.noaa.gov/sfa/management/councils/ccc/2013/2013_md_agenda.htm.*

Comments and Responses

Comment 1: Ultimate Responsibility for NEPA Lies With NMFS

Comment: Commenters expressed support for the position emphasized in the NMFS NEPA procedures that NMFS retains ultimate responsibility for NEPA compliance. Some comments requested that the procedures be revised to indicate that NMFS must remain primary author of the NEPA documents, that NMFS must oversee the NEPA process, and that the Councils should not conduct NEPA scoping during Council meetings.

Response: The NAO supplement clearly states that ''ultimate legal responsibility for NEPA lies . . . with NMFS.'' However, for reasons stated in

the final NAO supplement, NMFS believes that either NMFS or Council staff may draft NEPA documents as long as NMFS participates early, provides information or advice as needed, conducts appropriate outreach with other agencies and constituents, and independently evaluates each NEPA document's adequacy prior to using it in some fashion to satisfy its NEPA responsibilities. Further, for reasons stated in the draft NAO supplement, NMFS believes that the MSA and NEPA requirements for timelines, format, and public participation are compatible and may be conducted jointly as long as all responsibilities are fulfilled. Using a Council meeting to satisfy any requirement of NEPA for a public meeting or public outreach, such as scoping, enhances both the NEPA and MSA processes by infusing the NEPA activities and information into the council forum. As long as NMFS ensures that the procedures required by NEPA are satisfied, this arrangement can enhance NEPA's effectiveness. Where Council meetings will be used to conduct NEPA scoping, NMFS will work closely with Councils to ensure all requirements are met.

Comment 2: Supplemental Information Reports (SIRs) and Advanced Planning Procedure

Comment: Some commenters opposed the proposed option of using a ''NEPA Advanced Planning Procedure'' (NAPP), a Supplemental Impact Report (SIR), or other ''non-standard documentation,'' and in their comments, cited to CEQ regulations on programmatic EISs and tiering (40 CFR 1502.20–1502.21).

Response: The CEQ regulations do not preclude use of other documentation to support advanced planning on what actions may need NEPA analyses and/or to consider whether existing analyses are sufficient. Recently, the Ninth Circuit upheld NMFS' use of an SIR to conclude that a supplemental Environmental Assessment was unnecessary. Humane Society of the *United States* v. *Pritzker,* 548 Fed. Appx. 355, 360 (9th Cir. 2013). *See also, e.g., Marsh* v. *Oregon Natural Resources Council,* 490 U.S. 360, 383–85 (1989) (upholding the Army Corps of Engineers' use of a SIR to analyze the significance of new reports in determining whether to supplement existing NEPA analysis). NMFS believes that the optional use of these forms of documentation offers a potential means to improve the efficiency of the NEPA process without sacrificing substantive obligations under NEPA. Therefore, NMFS retains these provisions in the final NAO supplement.

Comment 3. Conflict of Interest Guidance and Financial Disclosure Requirements

Comment: Citing to 40 CFR 1506.5, one commenter suggested development of conflict of interest and financial disclosure procedures for Council members and staff involved in the NEPA documentation process. Those regulations require that when an agency relies on contractors to prepare NEPA documents, those contractors must execute a disclosure statement specifying that they have no financial or other interest in the outcome of the project. *Id.* § 1506.5(c).

Response: Council members and Council staff are not ''contractors'' and therefore the contractor-specific provisions of § 1506.5 are inapplicable. The MSA establishes financial disclosure and recusal requirements for Council members (16 U.S.C. 1852(j)). These requirements are developed further and an explanation of the obligations on council staff are provided by regulation at 50 CFR 600.225. As explained in the regulations, council members and council staff are subject to most Federal criminal statutes covering bribery, conflict-of-interest, disclosure of confidential information, and lobbying with appropriated funds. The conflict of interest and other conduct rules applicable to Council members and Council staff are summarized in Regional Fishery Management Councils—Rules of Conduct for Members (2014) (*http://www.nmfs.noaa.gov/sfa/management/councils/training/2014/e_h1_members_conduct_rules.pdf*) and Regional Fishery Management Councils—Rules of Conduct for Employees and Advisors (2014) (*http://www.nmfs.noaa.gov/sfa/management/councils/training/2014/e_h2_employee_conduct_rules.pdf*). While NMFS acknowledges that the scope of the CEQ NEPA regulations is not co-extensive with the applicable council staff conflict of interest regulations, given that council staff are not analogous to contractors, and that the existing regulations act to prevent conflicts of interest, NMFS does not believe that additional financial disclosure requirements will enhance or improve the MSA NEPA process or the quality of NEPA documents developed.

Comment 4. The Procedures Merely Capture the Status Quo

Comment: NMFS received a comment that the draft NAO supplement does not represent ''revisions,'' as required by MSA section 304(i), because it merely captures the status quo.

Response: The final NAO supplement establishes national-level guidance which adopts best practices currently in use by some region-council pairs. While these approaches may seem like status quo to some parties, due to regional variations in practices, the guidance does represent changes for others. NMFS believes that the MSA NEPA process has been substantially improved and refined over the past decade or more, and the draft NAO supplement builds on that success and can help NMFS and the Councils achieve greater consistency for MSA NEPA implementation. Establishing a uniform framework applicable to all parties effectuates a reasoned change that institutionalizes lessons-learned and best practices for the development of expeditious and useful NEPA processes.

Comment 5. The Procedures Should Facilitate Transparent Public Involvement

Comment: NMFS received comments indicating that the procedures should facilitate and enhance public involvement and transparency. Some comments provided specific suggestions pertaining to mandatory use of Web sites to provide greater public access to NEPA information.

Response: NMFS agrees that the procedures should promote transparency and public participation. Encouraging the application of NEPA as much as practicable via the council process should enhance meaningful public participation and promote transparency. Most Councils currently provide online access to NEPA documents that were completed or that are being developed for fishery management actions. NMFS will continue to work with Councils to improve accessibility and ease of navigation of these sites to promote transparency and improved public participation in the MSA NEPA process.

Comment 6. MSA Section 304(i) Requirements

Comment: NMFS received comments that the draft NAO supplement satisfies fully the requirements of MSA section 304(i) and conversely, that it does not satisfy those requirements.

Response: The NAO supplement satisfies the requirements of MSA section 304(i) by establishing national-level guidance and by adopting best practices currently in use by some region-council pairs, thereby revising and updating agency NEPA procedures to conform to the timelines for review and approval of fishery management plans while integrating applicable environmental analytical procedures.

NMFS consulted extensively with the Councils and with CEQ over the course of several years, held public hearings and a public workshop as authorized by Congress, issued a proposed rule and received over 150,000 public comments that were carefully analyzed and considered, developed and implemented an internal NMFS Policy Directive on MSA NEPA procedures, and released the draft NAO supplement for public comment. During this process, the Councils and stakeholders expressed a broad range of views regarding what MSA section 304(i) required and what improvements to the process were needed. MSA section 304(i) did not change or eliminate any existing MSA or NEPA requirements, but required development of revised and updated NEPA procedures that conformed to the timelines for FMP review and approval and integrated applicable procedures. NMFS has carefully considered all input received to date and believes the final NAO supplement fully satisfies requirements as mandated by Congress under MSA section 304(i).

Comment 7. Compliance With NEPA, CEQ Regulations, and Other Guidance

Comment: Several comments suggested that the draft NAO supplement should include various NEPA requirements established by CEQ regulations, guidance or other sources, such as avoiding the use of stale documentation, addressing new information, considering an adequate scope of alternatives, and identifying when an EIS is required.

Response: NMFS is cognizant of the requirements of NEPA and the CEQ regulations, as well as other sources of Guidance such as CEQ's ''Forty Most-Asked Questions.'' The intent of the final NAO supplement is not to reiterate existing guidance and requirements, but to clarify how NMFS and Councils can work together to effectively comply within the context of MSA management and regulatory requirements. In addition, the main body of NAO 216–6 provides additional guidance on the types of NEPA documentation and how to use them.

Comment 8. Requirement for Council Usage

Comment: The policy should require that the NEPA analysis must be completed prior to Council deliberations so that Councils can rely upon that analysis to inform their deliberations.

Response: NMFS and the Councils work cooperatively and collaboratively to address NEPA requirements for MSA fishery management actions while continually assessing new information and emerging fishery conservation and management issues.

NMFS agrees that both the NEPA and MSA processes are enhanced by integrating NEPA into the Council process. The final NAO supplement encourages NMFS and the Councils to prepare and make available as much NEPA documentation as practicable (given timelines and resource needs) during the Council's development of its management recommendation. This approach recognizes that the Council-proposed alternative, and thus final development of the NEPA analysis, may not occur until after a Council takes final action on its management recommendation.

The final NAO supplement recognizes that there will be variations regarding the extent to which NEPA can be completed during council deliberations because of the need to take timely management action to address conservation and management needs as new information becomes available. To better integrate NEPA into the iterative and deliberative processes of the Councils while allowing enough flexibility so that the fishery management system can respond effectively in time-constrained situations and still comply with NEPA, the final NAO supplement identifies factors to consider and establishes a procedural nexus setting forth the minimum requirements for completeness in the Council process.

Dated: February 11, 2016.

Eileen Sobeck,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–03684 Filed 2–22–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting and hearing.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Hawaii Archipelago Fishery Ecosystem Plan (FEP) Advisory Panel (AP) and American Samoa Archipelago FEP AP Advisory Panel to discuss and make recommendations on fishery management issues in the Western Pacific Region.

DATES: The Hawaii Archipelago FEP AP will meet on Thursday, March 10, 2016, between 9 a.m. and 11 a.m. and the American Samoa Archipelago FEP AP will meet on Thursday, March 10, 2016, between 6 p.m. and 9 p.m. All times listed are local island times. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The Hawaii Archipelago FEP AP will meet at the Council Office, 1164 Bishop St., Suite 1400, Honolulu, HI 96813 and by teleconference. The teleconference will be conducted by telephone. The teleconference numbers are: U.S. toll-free: 1–888–482–3560 or International Access: +1 647 723–3959, and Access Code: 5228220. The American Samoa Archipelago FEP AP will meet at the Department of Commerce Market Conference Room, Fagatogo Village, American Samoa.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: Public comment periods will be provided in the agenda. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for the Hawaii Archipelago FEP AP Meeting

Thursday, March 10, 2016, 9 a.m.–11 a.m.

1. Welcome and Introductions
2. Outstanding Council Action Items
3. Council Issues
   - A. Council Program Review
   - B. Overview of Eastern Pacific Ocean Swordfish
   - C. FEP Review Modifications
4. Hawaii FEP Community Activities
6. Hawaii FEP AP Issues
   - A. Report of the Subpanels
   - i. Island Fisheries Subpanel
   - ii. Pelagic Fisheries Subpanel
   - iii. Ecosystems and Habitat Subpanel
   - iv. Indigenous Fishing Rights Subpanel
   - B. Other Issues
7. Public Comment
8. Discussion and Recommendations
9. Other Business

Schedule and Agenda for the American Samoa Archipelago FEP AP Meeting

Thursday, March 10, 2016, 9 a.m.–11 a.m.

1. Welcome and Introductions
2. Outstanding Council Action Items

3. Council Issues
   A. Council Program Review
   B. Overfishing of EPO Swordfish
   C. FEP Review Modifications
4. American Samoa FEP Community Activities
5. American Samoa FEP AP Issues
   A. Report of the Subpanels
   i. Island Fisheries Subpanel
   ii. Pelagic Fisheries Subpanel
   iii. Ecosystems and Habitat Subpanel
   iv. Indigenous Fishing Rights Subpanel
   B. Other Issues
6. Public Comment
7. Discussion and Recommendations
8. Other Business

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: February 18, 2016.

Tracey L. Thompson,

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

[FR Doc. 2016–03705 Filed 2–22–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE441

Endangered and Threatened Species; Initiation of 5-Year Review for Indus River Dolphin

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

ACTION: Notice of initiation of 5-year review; request for information.

SUMMARY: We, NMFS, announce a 5-year review of the Indus River dolphin (*Platanista gangetica minor*) under the Endangered Species Act of 1973, as amended (ESA). The purpose of these reviews is to ensure that the listing classification of a species is accurate. The 5-year review will be based on the best scientific and commercial data available at the time of the review; therefore, we request submission of any such information on Indus River dolphins that has become available since their original listing as endangered in January 1991. Based on the results of this 5-year review, we will make the requisite determination under the ESA.

DATES: To allow us adequate time to conduct this review, we must receive your information no later than May 23, 2016. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: You may submit information on this document identified by NOAA–NMFS–2016–0016 by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the Federal e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2016–0016 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail or hand-delivery:* Therese Conant, NMFS Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. 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. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Therese Conant, NMFS Office of Protected Resources, 301–427–8456.

SUPPLEMENTARY INFORMATION: Under the ESA, the U.S. Fish and Wildlife Service maintains a list of endangered and threatened wildlife and plant species at 50 CFR 17.11 (for animals and 17.12 (for plants). Section 4(c)(2)(A) of the ESA requires that we conduct a review of listed species at least once every five years. On the basis of such reviews under section 4(c)(2)(B), we determine whether or not any species should be delisted or reclassified from endangered to threatened or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiates that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the Indus River dolphin currently listed as endangered (56 FR 1463; January 14, 1991).

Background information on Indus River dolphins including the endangered listing is available on the NMFS Office of Protected Species Web site at: *http://www.fisheries.noaa.gov/pr/species/mammals/dolphins/indus-river-dolphin.html#documents.*

Determining if a Species Is Threatened or Endangered

Section 4(a)(1) of the ESA requires that we determine whether a species is endangered or threatened based on one or more of the five following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Section 4(b) also requires that our determination be made on the basis of the best scientific and commercial data available after taking into account those efforts, if any, being made by any State or foreign nation, to protect such species.

Public Solicitation of New Information

To ensure that the 5-year review is complete and based on the best available scientific and commercial information, we are soliciting new information from the public, governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of Indus River dolphins. The 5-year review considers the best scientific and commercial data and all new information that has become available since the listing determination or most recent status review. Categories of requested information include: (1) Species biology including, but not limited to, population trends,

distribution, abundance, demographics, and genetics; (2) habitat conditions including, but not limited to, amount, distribution, and important features for conservation; (3) status and trends of threats; (4) conservation measures that have been implemented that benefit the species, including monitoring data demonstrating effectiveness of such measures; (5) need for additional conservation measures; and (6) other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the list of endangered and threatened species, and improved analytical methods for evaluating extinction risk.

If you wish to provide information for this 5-year review, you may submit your information and materials electronically or via mail (see **ADDRESSES** section). We request that all information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. We also would appreciate the submitter's name, address, and any association, institution, or business that the person represents; however, anonymous submissions will also be accepted.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: February 17, 2016.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–03628 Filed 2–22–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE428

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Russian River Estuary Management Activities

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request from the Sonoma County Water Agency (SCWA) for authorization to take marine mammals incidental to Russian River estuary management activities. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to SCWA to incidentally take marine mammals, by Level B harassment only, during the specified activity.

DATES: Comments and information must be received no later than March 24, 2016.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Laws@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted to the Internet at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of SCWA's application and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental.htm.* In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

National Environmental Policy Act (NEPA)

NMFS has prepared an Environmental Assessment (EA; 2010) and associated Finding of No Significant Impact (FONSI) in accordance with NEPA and the regulations published by the Council on Environmental Quality. These documents are posted at the aforementioned Internet address. Information in SCWA's application, NMFS' EA (2010), and this notice collectively provide the environmental information related to proposed issuance of this IHA for public review and comment. We will review all comments submitted in response to this notice as we complete the NEPA process, including a decision of whether the existing EA and FONSI provide adequate analysis related to the potential environmental effects of issuing an IHA to SCWA, prior to a final decision on the incidental take authorization request.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified area, the incidental, but not intentional, taking of small numbers of marine mammals, providing that certain findings are made and the necessary prescriptions are established.

The incidental taking of small numbers of marine mammals may be allowed only if NMFS (through authority delegated by the Secretary) finds that the total taking by the specified activity during the specified time period will (i) have a negligible impact on the species or stock(s) and (ii) not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). Further, the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking must be set forth.

The allowance of such incidental taking under section 101(a)(5)(A), by harassment, serious injury, death, or a combination thereof, requires that regulations be established. Subsequently, a Letter of Authorization may be issued pursuant to the prescriptions established in such regulations, providing that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations. Under section 101(a)(5)(D), NMFS may authorize such incidental taking by harassment only, for periods of not more than one year, pursuant to requirements and conditions contained within an IHA. The establishment of these prescriptions requires notice and opportunity for public comment.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock

through effects on annual rates of recruitment or survival.'' Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: ''. . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

Summary of Request

On January 20, 2016, we received an adequate and complete request from SCWA for authorization of the taking of marine mammals incidental to Russian River estuary management activities in Sonoma County, California. SCWA proposes to manage the naturally-formed barrier beach at the mouth of the Russian River in order to minimize potential for flooding adjacent to the estuary and to enhance habitat for juvenile salmonids, as well as to conduct biological and physical monitoring of the barrier beach and estuary. Flood control-related breaching of barrier beach at the mouth of the river may include artificial breaches, as well as construction and maintenance of a lagoon outlet channel. The latter activity, an alternative management technique conducted to mitigate impacts of flood control on rearing habitat for Endangered Species Act (ESA)-listed salmonids, occurs only from May 15 through October 15 (hereafter, the ''lagoon management period''). Artificial breaching and monitoring activities may occur at any time during the one-year period of validity of the proposed IHA.

Breaching of naturally-formed barrier beach at the mouth of the Russian River requires the use of heavy equipment (*e.g.,* bulldozer, excavator) and increased human presence, and monitoring in the estuary requires the use of small boats. As a result, pinnipeds hauled out on the beach or at peripheral haul-outs in the estuary may exhibit behavioral responses that indicate incidental take by Level B harassment under the MMPA. Species known from the haul-out at the mouth of the Russian River or from peripheral haul-outs, and therefore anticipated to be taken incidental to the specified activity, include the harbor seal (*Phoca vitulina richardii*), California sea lion (*Zalophus californianus*), and northern elephant seal (*Mirounga angustirostris*).

This would be the seventh such IHA, if issued. SCWA was first issued an IHA, valid for a period of one year, effective on April 1, 2010 (75 FR 17382), and was subsequently issued one-year IHAs for incidental take associated with the same activities, effective on April 21, 2011 (76 FR 23306), April 21, 2012 (77 FR 24471), April 21, 2013 (78 FR 23746), April 21, 2014 (79 FR 20180), and April 21, 2015 (80 FR 24237).

Description of the Specified Activity

Overview

The proposed action involves management of the estuary to prevent flooding while preventing adverse modification to critical habitat for ESA-listed salmonids. Requirements related to the ESA are described in further detail below. During the lagoon management period, this involves construction and maintenance of a lagoon outlet channel that would facilitate formation of a perched lagoon. A perched lagoon, which is an estuary closed to tidal influence in which water surface elevation is above mean high tide, would reduce flooding while maintaining beneficial conditions for juvenile salmonids. Additional breaches of barrier beach may be conducted for the sole purpose of reducing flood risk. SCWA's proposed activity was described in detail in our notice of proposed authorization prior to the 2011 IHA (76 FR 14924; March 18, 2011); please see that document for a detailed description of SCWA's estuary management activities. Aside from minor additions to SCWA's biological and physical estuary monitoring measures, the specified activity remains the same as that described in the 2011 document.

Dates and Duration

The specified activity may occur at any time during the one-year timeframe (April 21, 2016, through April 20, 2017) of the proposed IHA, although construction and maintenance of a lagoon outlet channel would occur only during the lagoon management period. In addition, there are certain restrictions placed on SCWA during the harbor seal pupping season. These, as well as periodicity and frequency of the specified activities, are described in further detail below.

Specific Geographic Region

The estuary is located about 97 km (60 mi) northwest of San Francisco in Sonoma County, near Jenner, California (see Figure 1 of SCWA's application). The Russian River watershed encompasses 3,847 km^2 (1,485 mi^2) in Sonoma, Mendocino, and Lake Counties. The mouth of the Russian River is located at Goat Rock State Beach (see Figure 2 of SCWA's application); the estuary extends from the mouth upstream approximately 10 to 11 km (6–7 mi) between Austin Creek and the community of Duncans Mills (Heckel and McIver, 1994).

Detailed Description of Activities

Within the Russian River watershed, the U.S. Army Corps of Engineers (Corps), SCWA, and the Mendocino County Russian River Flood Control and Water Conservation Improvement District (District) operate and maintain federal facilities and conduct activities in addition to the estuary management, including flood control, water diversion and storage, instream flow releases, hydroelectric power generation, channel maintenance, and fish hatchery production. The Corps, SCWA, and the District conducted these activities for many years before salmonid species in the Russian River were protected under the ESA. Upon determination that these actions were likely to affect ESA-listed salmonids, as well as designated critical habitat for these species, formal consultation under section 7 of the ESA was initiated. In 2008, NMFS issued a Biological Opinion (BiOp) for Water Supply, Flood Control Operations, and Channel Maintenance conducted by the Corps, SCWA, and the District in the Russian River watershed (NMFS, 2008). This BiOp found that the activities—including SCWA's estuary management activities—authorized by the Corps and undertaken by SCWA and the District, if continued in a manner similar to recent historic practices, were likely to jeopardize the continued existence of ESA-listed salmonids and were likely to adversely modify critical habitat.

If a project is found to jeopardize a species or adversely modify its critical habitat, NMFS must develop and recommend a non-jeopardizing Reasonable and Prudent Alternative (RPA) to the proposed project, in coordination with the federal action agency and any applicant. A component of the RPA described in the 2008 BiOp requires SCWA to collaborate with NMFS and modify their estuary water level management in order to reduce marine influence (*i.e.,* high salinity and tidal inflow) and promote a higher water surface elevation in the estuary in order to enhance the quality of rearing habitat for juvenile salmonids. A program of potential incremental steps prescribed to reach that goal includes adaptive management of the outlet channel. SCWA is also required to monitor the response of water quality, invertebrate

production, and salmonids in and near the estuary to water surface elevation management in the estuary-lagoon system.

The analysis contained in the BiOp found that maintenance of lagoon conditions was necessary only for the lagoon management period. See NMFS' BiOp (2008) for details of that analysis. As a result of that determination, there are three components to SCWA's estuary management activities: (1) Lagoon outlet channel management, during the lagoon management period only, required to accomplish the dual purposes of flood risk abatement and maintenance of juvenile salmonid habitat; (2) traditional artificial breaching, with the sole goal of flood risk abatement; and (3) physical and biological monitoring. The latter activity, physical and biological monitoring, will remain the same as in past years and as described in our 2015 notice of proposed authorization (80 FR 14073; March 18, 2015). Please see the previously referenced Federal Register notice (76 FR 14924; March 18, 2011) for detailed discussion of lagoon outlet channel management, artificial breaching, and other monitoring activities.

NMFS' BiOp determined that salmonid estuarine habitat may be improved by managing the Russian River estuary as a perched, freshwater lagoon and, therefore, stipulates as a RPA to existing conditions that the estuary be managed to achieve such conditions between May 15th and October 15th. In recognition of the complexity and uncertainty inherent in attempting to manage conditions in a dynamic beach environment, the BiOp stipulates that the estuarine water surface elevation RPA be managed adaptively, meaning that it should be planned, implemented, and then iteratively refined based on experience gained from implementation. The first phase of adaptive management, which has been implemented since 2010, is limited to outlet channel management (ESA, 2015). The second phase, begun in 2014, requires study of and consideration of alternatives to a historical, dilapidated jetty present at Goat Rock State Beach (*e.g.,* complete removal, partial removal).

The plan for study of the jetty is described in greater detail in SCWA's ''Feasibility of Alternatives to the Goat Rock State Beach Jetty for Managing Lagoon Water Surface Elevations—A Study Plan'' (ESA PWA, 2011), and was also described in detail in our notice of proposed authorization prior to the 2013 IHA (78 FR 14985; March 8, 2013). Implementation of the study plan began in March 2014 with installation of wells monitoring water seepage through the barrier beach and geophysical mapping of the submerged substrate and structures. Visits to the well sites are not anticipated to disturb seals, as the wells are not located near the haul-out. In 2016, SCWA plans to remove the existing wells.

Description of Marine Mammals in the Area of the Specified Activity

Harbor seals are the most common species inhabiting the haul-out at the mouth of the Russian River (Jenner haul-out) and fine-scale local abundance data for harbor seals have been recorded extensively since 1972. California sea lions and northern elephant seals have also been observed infrequently in the project area. In addition to the primary Jenner haul-out, there are eight peripheral haul-outs nearby (see Figure 1 of SCWA's monitoring plan). These include North Jenner and Odin Cove to the north; Pocked Rock, Kabemali, and Rock Point to the south; and Penny Logs, Patty's Rock, and Chalanchawi upstream within the estuary.

This section provides summary information regarding local occurrence of these species. We have reviewed SCWA's detailed species descriptions, including life history information, for accuracy and completeness and refer the reader to Sections 3 and 4 of SCWA's application instead of reprinting the information here. Please also see NMFS Stock Assessment Reports, which may be accessed at *www.nmfs.noaa.gov/pr/sars/species.htm.*

Harbor Seals

Harbor seals inhabit coastal and estuarine waters and shoreline areas of the northern hemisphere from temperate to polar regions. The eastern North Pacific subspecies is found from Baja California north to the Aleutian Islands and into the Bering Sea. Multiple lines of evidence support the existence of geographic structure among harbor seal populations from California to Alaska (Carretta *et al.,* 2015). However, because stock boundaries are difficult to meaningfully draw from a biological perspective, three separate harbor seal stocks are recognized for management purposes along the west coast of the continental U.S.: (1) Inland waters of Washington, (2) outer coast of Oregon and Washington, and (3) California (Carretta *et al.,* 2014). Placement of a stock boundary at the California-Oregon border is not based on biology but is considered a political and jurisdictional convenience (Carretta *et al.,* 2015). In addition, harbor seals may occur in Mexican waters, but these animals are not considered part of the California stock. Only the California stock is expected to be found in the project area.

California harbor seals are not protected under the ESA or listed as depleted under the MMPA, and are not considered a strategic stock under the MMPA because annual human-caused mortality (43) is significantly less than the calculated potential biological removal (PBR; 1,641) (Carretta *et al.,* 2015). The population appears to be stabilizing at what may be its carrying capacity and the fishery mortality is declining. The best abundance estimate of the California stock of harbor seals is 30,968 and the minimum population size of this stock is 27,348 individuals (Carretta *et al.,* 2015).

Harbor seal pupping normally occurs at the Russian River from March until late June, and sometimes into early July. The Jenner haul-out is the largest in Sonoma County. A substantial amount of monitoring effort has been conducted at the Jenner haul-out and surrounding areas. Concerned local residents formed the Stewards' Seal Watch Public Education Program in 1985 to educate beach visitors and monitor seal populations. State Parks Volunteer Docents continue this effort towards safeguarding local harbor seal habitat. On weekends during the pupping and molting season (approximately March-August), volunteers conduct public outreach and record the numbers of visitors and seals on the beach, other marine mammals observed, and the number of boats and kayaks present.

Ongoing monthly seal counts at the Jenner haul-out were begun by J. Mortenson in January 1987, with additional nearby haul-outs added to the counts thereafter. In addition, local resident E. Twohy began daily observations of seals and people at the Jenner haul-out in November 1989. These datasets note whether the mouth at the Jenner haul-out was opened or closed at each observation, as well as various other daily and annual patterns of haul-out usage (Mortenson and Twohy, 1994). In 2009, SCWA began regular baseline monitoring of the haul-out as a component of its estuary management activity. Table 1 shows average daily numbers of seals observed at the mouth of the Russian River from 1993–2005 and from 2009–15.

TABLE 1—AVERAGE DAILY NUMBER OF SEALS OBSERVED AT RUSSIAN RIVER MOUTH FOR EACH MONTH, 1993–2005; 2009–14

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1993	140	219	269	210	203	238	197	34	8	38	78	163
1994	138	221	243	213	208	212	246	98	26	31	101	162
1995	133	270	254	261	222	182	216	74	37	24	38	148
1996	144	175	261	247	157	104	142	65	17	29	76	139
1997	154	177	209	188	154	119	186	58	20	29	30	112
1998	119	151	192	93	170	213	232	53	33	21	93	147
1999	161	170	215	210	202	128	216	98	57	20	74	123
2000	151	185	240	180	158	245	256	63	46	50	86	127
2001	155	189	161	168	135	212	275	75	64	20	127	185
2002	117	12	20	154	134	213	215	89	43	26	73	126
2003	—	1	26	161	164	222	282	100	43	51	109	116
2004	2	5	39	180	202	318	307	35	40	47	68	61
2005	0	7	42	222	220	233	320	145	.....	.....	.....	.....
Mean, 1993–2005	118	137	167	191	179	203	238	76	36	32	79	134
2009	.....	.....	.....	.....	.....	.....	219	117	17	22	96	80
2010	66	84	129	136	109	136	267	111	59	25	89	26
2011	116	92	162	124	128	145	219	98	31	53	92	48
2012	108	74	115	169	164	166	156	128	100	71	137	51
2013	51	108	158	112	162	139	411	175	77	58	34	94
2014	98	209	243	129	145	156	266	134	53	15	27	172
2015	113	171	145	177	153	219	373	120	48	33	49	138
Mean, 2013–15 [1]	89	173	182	136	154	170	345	143	59	37	37	134

Data from 1993–2005 adapted from Mortenson and Twohy (1994) and E. Twohy (unpublished data). Data from 2009–15 collected by SCWA. Months represented by dash indicate periods where data were missing or incomplete.
[1] Mean calculated as a weighted average to account for unequal sample sizes between years. See SCWA application, Table 4.

The number of seals present at the Jenner haul-out generally declines during bar-closed conditions (Mortenson, 1996). SCWA's pinniped monitoring efforts from 1996 to 2000 focused on artificial breaching activities and their effects on the Jenner haul-out. Seal counts and disturbances were recorded from one to two days prior to breaching, the day of breaching, and the day after breaching (MSC, 1997, 1998, 1999, 2000; SCWA and MSC, 2001). In each year, the trend observed was that harbor seal numbers generally declined during a beach closure and increased the day following an artificial breaching event. Heckel and McIver (1994) speculated that the loss of easy access to the haul-out and ready escape to the sea during bar-closed conditions may account for the lower numbers. Table 2 shows average daily seal counts recorded during SCWA monitoring of breaching events from 2009–15, representing bar-closed conditions, when seal numbers decline.

TABLE 2—AVERAGE NUMBER OF HARBOR SEALS OBSERVED AT THE MOUTH OF THE RUSSIAN RIVER DURING BREACHING EVENTS (*i.e.,* BAR-CLOSED CONDITIONS) BY MONTH

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2009–15	49	75	133	99	80	98	117	[1] 17	30	28	32	59

No estuary management events occurred; data from earlier monitoring effort (1996–2000).

Mortenson (1996) observed that pups were first seen at the Jenner haul-out in late March, with maximum counts in May. In this study, pups were not counted separately from other age classes at the haul-out after August due to the difficulty in discriminating pups from small yearlings. From 1989 to 1991, Hanson (1993) observed that pupping began at the Jenner haul-out in mid-April, with a maximum number of pups observed during the first two weeks of May. This corresponds with the peaks observed at Point Reyes, where the first viable pups are born in March and the peak is the last week of April to early May (SCWA, 2014). Based on this information, pupping season at the Jenner haul-out is conservatively defined here as March 15 to June 30.

California Sea Lions

California sea lions range from the Gulf of California north to the Gulf of Alaska, with breeding areas located in the Gulf of California, western Baja California, and southern California. Five genetically distinct geographic populations have been identified: (1) Pacific Temperate, (2) Pacific Subtropical, (3) Southern Gulf of California, (4) Central Gulf of California and (5) Northern Gulf of California (Schramm *et al.,* 2009). Rookeries for the Pacific Temperate population are found within U.S. waters and just south of the U.S.-Mexico border, and animals belonging to this population may be found from the Gulf of Alaska to Mexican waters off Baja California. Animals belonging to other populations (*e.g.,* Pacific Subtropical) may range into U.S. waters during non-breeding periods. For management purposes, a stock of California sea lions comprising those animals at rookeries within the U.S. is defined (*i.e.,* the U.S. stock of California sea lions) (Carretta *et al.,* 2015). Pup production at the Coronado Islands rookery in Mexican waters is considered an insignificant contribution to the overall size of the Pacific Temperate population (Lowry and Maravilla-Chavez, 2005).

California sea lions are not protected under the ESA or listed as depleted under the MMPA. Total annual human-caused mortality (389) is substantially less than the PBR (estimated at 9,200 per year); therefore, California sea lions

are not considered a strategic stock under the MMPA. There are indications that the California sea lion may have reached or is approaching carrying capacity, although more data are needed to confirm that leveling in growth persists (Carretta *et al.,* 2015). The best abundance estimate of the U.S. stock of California sea lions is 296,750 and the minimum population size of this stock is 153,337 individuals (Carretta *et al.,* 2015).

Beginning in January 2013, elevated strandings of California sea lion pups were observed in southern California, with live sea lion strandings nearly three times higher than the historical average. Findings to date indicate that a likely contributor to the large number of stranded, malnourished pups was a change in the availability of sea lion prey for nursing mothers, especially sardines. The causes and mechanisms of this remain under investigation (*www.nmfs.noaa.gov/pr/health/mmume/californiasealions2013.htm;* accessed December 3, 2015).

Solitary California sea lions have occasionally been observed at or in the vicinity of the Russian River estuary (MSC, 1999, 2000), in all months of the year except June. Male California sea lions are occasionally observed hauled out at or near the Russian River mouth in most years: August 2009, January and December 2011, January 2012, December 2013, February 2014, and February and April 2015. Other individuals were observed in the surf at the mouth of the river or swimming inside the estuary. Juvenile sea lions were observed during the summer of 2009 at the Patty's Rock haul-out, and some sea lions were observed during monitoring of peripheral haul-outs in October 2009. The occurrence of individual California sea lions in the action area may occur year-round, but is infrequent and sporadic.

Northern Elephant Seals

Northern elephant seals gather at breeding areas, located primarily on offshore islands of Baja California and California, from approximately December to March before dispersing for feeding. Males feed near the eastern Aleutian Islands and in the Gulf of Alaska, while females feed at sea south of 45 °N (Stewart and Huber, 1993; Le Boeuf *et al.,* 1993). Adults then return to land between March and August to molt, with males returning later than females, before dispersing again to their respective feeding areas between molting and the winter breeding season. Populations of northern elephant seals in the U.S. and Mexico are derived from a few tens or hundreds of individuals surviving in Mexico after being nearly hunted to extinction (Stewart *et al.,* 1994). Given the recent derivation of most rookeries, no genetic differentiation would be expected. Although movement and genetic exchange continues between rookeries, most elephant seals return to their natal rookeries when they start breeding (Huber *et al.,* 1991). The California breeding population is now demographically isolated from the Baja California population and is considered to be a separate stock.

Northern elephant seals are not protected under the ESA or listed as depleted under the MMPA. Total annual human-caused mortality (8.8) is substantially less than the PBR (estimated at 4,882 per year); therefore, northern elephant seals are not considered a strategic stock under the MMPA. Modeling of pup counts indicates that the population has reached its Maximum Net Productivity Level, but has not yet reached carrying capacity (Carretta *et al.,* 2015). The best abundance estimate of the California breeding population of northern elephant seals is 179,000 and the minimum population size of this stock is 81,368 individuals (Carretta *et al.,* 2015).

Censuses of pinnipeds at the mouth of the Russian River have been taken at least semi-monthly since 1987. Elephant seals were noted from 1987–95, with one or two elephant seals typically counted during May censuses, and occasional records during the fall and winter (Mortenson and Follis, 1997). A single, tagged northern elephant seal sub-adult was present at the Jenner haul-out from 2002–07. This individual seal, which was observed harassing harbor seals also present at the haul-out, was generally present during molt and again from late December through March. A single juvenile elephant seal was observed at the Jenner haul-out in June 2009 and, in recent years, a sub-adult seal was observed in late summer of 2013–14. The occurrence of individual northern elephant seals in the action area has generally been infrequent and sporadic in the past ten years.

Potential Effects of the Specified Activity on Marine Mammals

A significant body of monitoring data exists for pinnipeds at the mouth of the Russian River. In addition, pinnipeds have co-existed with regular estuary management activity for decades, as well as with regular human use activity at the beach, and are likely habituated to human presence and activity. Nevertheless, SCWA's estuary management activities have the potential to disturb pinnipeds present on the beach or at peripheral haul-outs in the estuary. During breaching operations, past monitoring has revealed that some or all of the seals present typically move or flush from the beach in response to the presence of crew and equipment, though some may remain hauled-out. No stampeding of seals—a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus—has been documented since SCWA developed protocols to prevent such events in 1999. While it is likely impossible to conduct required estuary management activities without provoking some response in hauled-out animals, precautionary mitigation measures, described later in this document, ensure that animals are gradually apprised of human approach. Under these conditions, seals typically exhibit a continuum of responses, beginning with alert movements (*e.g.,* raising the head), which may then escalate to movement away from the stimulus and possible flushing into the water. Flushed seals typically re-occupy the haul-out within minutes to hours of the stimulus.

In the absence of appropriate mitigation measures, it is possible that pinnipeds could be subject to injury, serious injury, or mortality, likely through stampeding or abandonment of pups. However, based on a significant body of site-specific data, harbor seals are unlikely to sustain any harassment that may be considered biologically significant. Individual animals would, at most, flush into the water in response to maintenance activities but may also simply become alert or move across the beach away from equipment and crews. During 2013, SCWA observed that harbor seals are less likely to flush from the beach when the primary aggregation of seals is north of the breaching activity (please refer to Figure 2 of SCWA's application), meaning that personnel and equipment are not required to pass the seals. Four artificial breaching events were implemented in 2013, with two of these events occurring north of the primary aggregation and two to the south (at approximately 250 and 50 m distance) (SCWA, 2014). In both of the former cases, all seals present eventually flushed to the water, but when breaching activity remained to the south of the haul-out, only 11 and 53 percent of seals, respectively, were flushed.

California sea lions and northern elephant seals have been observed as less sensitive to stimulus than harbor seals during monitoring at numerous

other sites. For example, monitoring of pinniped disturbance as a result of abalone research in the Channel Islands showed that while harbor seals flushed at a rate of 69 percent, California sea lions flushed at a rate of only 21 percent. The rate for elephant seals declined to 0.1 percent (VanBlaricom, 2010). In the event that either of these species is present during management activities, they would be expected to display a minimal reaction to maintenance activities—less than that expected of harbor seals.

Although the Jenner haul-out is not known as a primary pupping beach, pups have been observed during the pupping season; therefore, we have evaluated the potential for injury, serious injury, or mortality to pups. There is a lack of published data regarding pupping at the mouth of the Russian River, but SCWA monitors have observed pups on the beach. No births were observed during recent monitoring, but may be inferred based on signs indicating pupping (*e.g.,* blood spots on the sand, birds consuming possible placental remains). Pup injury or mortality would be most likely to occur in the event of extended separation of a mother and pup, or trampling in a stampede. As discussed previously, no stampedes have been recorded since development of appropriate protocols in 1999. Any California sea lions or northern elephant seals present would be independent juveniles or adults; therefore, analysis of impacts on pups is not relevant for those species.

Similarly, the period of mother-pup bonding, critical time needed to ensure pup survival and maximize pup health, is not expected to be impacted by estuary management activities. Harbor seal pups are extremely precocious, swimming and diving immediately after birth and throughout the lactation period, unlike most other phocids which normally enter the sea only after weaning (Lawson and Renouf, 1985; Cottrell *et al.,* 2002; Burns *et al.,* 2005). Lawson and Renouf (1987) investigated harbor seal mother-pup bonding in response to natural and anthropogenic disturbance. In summary, they found that the most critical bonding time is within minutes after birth. As described previously, the peak of pupping season is typically concluded by mid-May, when the lagoon management period begins. As such, it is expected that mother-pup bonding would likely be concluded as well. The number of management events during the months of March and April has been relatively low in the past, and the breaching activities occur in a single day over several hours. In addition, mitigation measures described later in this document further reduce the likelihood of any impacts to pups, whether through injury or mortality or interruption of mother-pup bonding (which may lead to abandonment).

In summary, and based on extensive monitoring data, we believe that impacts to hauled-out pinnipeds during estuary management activities would be behavioral harassment of limited duration (*i.e.,* less than one day) and limited intensity (*i.e.,* temporary flushing at most). Stampeding, and therefore injury or mortality, is not expected—nor been documented—in the years since appropriate protocols were established (see ''Mitigation'' for more details). Further, the continued, and increasingly heavy (see SCWA's monitoring report), use of the haul-out despite decades of breaching events indicates that abandonment of the haul-out is unlikely.

Anticipated Effects on Habitat

The purposes of the estuary management activities are to improve summer rearing habitat for juvenile salmonids in the Russian River estuary and/or to minimize potential flood risk to properties adjacent to the estuary. These activities would result in temporary physical alteration of the Jenner haul-out, but are essential to conserving and recovering endangered salmonid species, as prescribed by the BiOp. These salmonids are themselves prey for pinnipeds. In addition, with barrier beach closure, seal usage of the beach haul-out declines, and the three nearby river haul-outs may not be available for usage due to rising water surface elevations. Breaching of the barrier beach, subsequent to the temporary habitat disturbance, likely increases suitability and availability of habitat for pinnipeds. Biological and water quality monitoring would not physically alter pinniped habitat. Please see the previously referenced **Federal Register** notice (76 FR 14924; March 18, 2011) for a more detailed discussion of anticipated effects on habitat.

During SCWA's pinniped monitoring associated with artificial breaching activities from 1996 to 2000, the number of harbor seals hauled out declined when the barrier beach closed and then increased the day following an artificial breaching event (MSC, 1997, 1998, 1999, and 2000; SCWA and MSC, 2001). This response to barrier beach closure followed by artificial breaching has remained consistent in recent years and is anticipated to continue. However, it is possible that the number of pinnipeds using the haul-out could decline during the extended lagoon management period, when SCWA would seek to maintain a shallow outlet channel rather than the deeper channel associated with artificial breaching. Collection of baseline information during the lagoon management period is included in the monitoring requirements described later in this document. SCWA's previous monitoring, as well as Twohy's daily counts of seals at the sandbar (Table 1) indicate that the number of seals at the haul-out declines from August to October, so management of the lagoon outlet channel (and managing the sandbar as a summer lagoon) would have little effect on haul-out use during the latter portion of the lagoon management period. The early portion of the lagoon management period coincides with the pupping season. Past monitoring during this period, which represents some of the longest beach closures in the late spring and early summer months, shows that the number of pinnipeds at the haul-out tends to fluctuate, rather than showing the more straightforward declines and increases associated with closures and openings seen at other times of year (MSC, 1998). This may indicate that seal haul-out usage during the pupping season is less dependent on bar status. As such, the number of seals hauled out from May through July would be expected to fluctuate, but is unlikely to respond dramatically to the absence of artificial breaching events. Regardless, any impacts to habitat resulting from SCWA's management of the estuary during the lagoon management period are not in relation to natural conditions, but rather in relation to conditions resulting from SCWA's discontinued approach of artificial breaching during this period.

In summary, there will be temporary physical alteration of the beach. However, natural opening and closure of the beach results in the same impacts to habitat; therefore, seals are likely adapted to this cycle. In addition, the increase in rearing habitat quality has the goal of increasing salmonid abundance, ultimately providing more food for seals present within the action area. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or

stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

SCWA has proposed to continue the following mitigation measures, as implemented during the previous IHAs, designed to minimize impact to affected species and stocks:

- SCWA crews would cautiously approach (*e.g.,* walking slowly with limited arm movement and minimal sound) the haul-out ahead of heavy equipment to minimize the potential for sudden flushes, which may result in a stampede—a particular concern during pupping season.
- SCWA staff would avoid walking or driving equipment through the seal haul-out.
- Crews on foot would make an effort to be seen by seals from a distance, if possible, rather than appearing suddenly, again preventing sudden flushes.
- During breaching events, all monitoring would be conducted from the overlook on the bluff along Highway 1 adjacent to the haul-out in order to minimize potential for harassment.
- A water level management event may not occur for more than two consecutive days unless flooding threats cannot be controlled.

In addition, SCWA proposes to continue mitigation measures specific to pupping season (March 15–June 30), as implemented in the previous IHAs:

- SCWA will maintain a one week no-work period between water level management events (unless flooding is an immediate threat) to allow for an adequate disturbance recovery period. During the no-work period, equipment must be removed from the beach.
- If a pup less than one week old is on the beach where heavy machinery would be used or on the path used to access the work location, the management action will be delayed until the pup has left the site or the latest day possible to prevent flooding while still maintaining suitable fish rearing habitat. In the event that a pup remains present on the beach in the presence of flood risk, SCWA would consult with NMFS to determine the appropriate course of action. SCWA will coordinate with the locally established seal monitoring program (Stewards' Seal Watch) to determine if pups less than one week old are on the beach prior to a breaching event.
- Physical and biological monitoring will not be conducted if a pup less than one week old is present at the monitoring site or on a path to the site.

For all activities, personnel on the beach would include up to two equipment operators, three safety team members on the beach (one on each side of the channel observing the equipment operators, and one at the barrier to warn beach visitors away from the activities), and one safety team member at the overlook on Highway 1 above the beach. Occasionally, there would be two or more additional people (SCWA staff or regulatory agency staff) on the beach to observe the activities. SCWA staff would be followed by the equipment, which would then be followed by an SCWA vehicle (typically a small pickup truck, the vehicle would be parked at the previously posted signs and barriers on the south side of the excavation location). Equipment would be driven slowly on the beach and care would be taken to minimize the number of shut-downs and start-ups when the equipment is on the beach. All work would be completed as efficiently as possible, with the smallest amount of heavy equipment possible, to minimize disturbance of seals at the haul-out. Boats operating near river haul-outs during monitoring would be kept within posted speed limits and driven as far from the haul-outs as safely possible to minimize flushing seals.

We have carefully evaluated SCWA's proposed mitigation measures and considered their effectiveness in past implementation to preliminarily determine whether they are likely to effect the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation.

Any mitigation measure(s) we prescribe should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

- Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).
- A reduction in the number (total number or number at biologically important time or location) of individual marine mammals exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).
- A reduction in the number (total number or number at biologically important time or location) of times any individual marine mammal would be exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).
- A reduction in the intensity of exposure to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing the severity of behavioral harassment only).
- Avoidance or minimization of adverse effects to marine mammal habitat, paying particular attention to the prey base, blockage or limitation of passage to or from biologically important areas, permanent destruction of habitat, or temporary disturbance of habitat during a biologically important time.
- For monitoring directly related to mitigation, an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of SCWA's proposed measures and on SCWA's record of management at the mouth of the Russian River including information from monitoring of SCWA's implementation of the mitigation measures as prescribed under the previous IHAs, we have preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Any monitoring requirement we prescribe should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals, both within

defined zones of effect (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;

2. An increase in our understanding of how many marine mammals are likely to be exposed to stimuli that we associate with specific adverse effects, such as behavioral harassment or hearing threshold shifts;

3. An increase in our understanding of how marine mammals respond to stimuli expected to result in incidental take and how anticipated adverse effects on individuals may impact the population, stock, or species (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict pertinent information, *e.g.,* received level, distance from source);
- Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict pertinent information, *e.g.,* received level, distance from source);
- Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

4. An increased knowledge of the affected species; or

5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

SCWA submitted a marine mammal monitoring plan as part of the IHA application. It can be found on the Internet at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* The plan, which has been successfully implemented (in slightly different form from the currently proposed plan) by SCWA under previous IHAs, may be modified or supplemented based on comments or new information received from the public during the public comment period. The purpose of this monitoring plan, which is carried out collaboratively with the Stewards of the Coasts and Redwoods (Stewards) organization, is to detect the response of pinnipeds to estuary management activities at the Russian River estuary. SCWA has designed the plan both to satisfy the requirements of the IHA, and to address the following questions of interest:

1. Under what conditions do pinnipeds haul out at the Russian River estuary mouth at Jenner?

2. How do seals at the Jenner haul-out respond to activities associated with the construction and maintenance of the lagoon outlet channel and artificial breaching activities?

3. Does the number of seals at the Jenner haul-out significantly differ from historic averages with formation of a summer (May 15 to October 15) lagoon in the Russian River estuary?

4. Are seals at the Jenner haul-out displaced to nearby river and coastal haul-outs when the mouth remains closed in the summer?

Proposed Monitoring Measures

SCWA has proposed to modify the baseline monitoring component of their existing 2011 Monitoring Plan in order to better focus monitoring effort on the Jenner haul-out. This primary haul-out is where the majority of seals are found and where pupping occurs, and SCWA believes that the proposed modifications will better allow continued development in understanding the physical and biological factors that influence seal abundance and behavior at the site. In particular, SCWA notes that increasing the frequency of surveys would allow them to be able to observe the influence of physical changes that do not persist for more than ten days, like brief periods of barrier beach closures or other environmental changes. The changes will improve SCWA's ability to describe how seals respond to barrier beach closures and allow for more accurate estimation of the number of harbor seal pups born at Jenner each year.

Regarding decreased frequency of monitoring at peripheral sites, abundance at these sites has been observed to generally be very low regardless of river mouth condition. These sites are generally very small physically, composed of small rocks or outcrops or logs in the river, and therefore could not accommodate significant displacement from the main beach haul-out. Monitoring of peripheral sites under extended lagoon conditions will allow for possible detection of any changed use patterns. In summary, the modifications proposed include increasing the frequency of surveys at the Jenner haul-out from twice a month to four times a month and reducing the duration of each survey from eight to four hours. Baseline visits to the peripheral haul-outs would be eliminated except in the case that a lagoon outlet channel is constructed and maintained for a prolonged period (over 21 days).

Baseline Monitoring—As noted above, seals at the Jenner haul-out are counted for four hours every week, with no more than four baseline surveys each month. Two monitoring events each month would occur in the morning and two would occur in the afternoon with an effort to schedule a morning survey at low and high tide each month and an afternoon survey at low and high tide each month. This baseline information will provide SCWA with details that may help to plan estuary management activities in the future to minimize pinniped interaction. Survey protocols are unchanged: All seals hauled out on the beach are counted every thirty minutes from the overlook on the bluff along Highway 1 adjacent to the haul-out using spotting scopes. Monitoring may conclude for the day if weather conditions affect visibility (*e.g.,* heavy fog in the afternoon). Depending on how the sandbar is formed, seals may haul out in multiple groups at the mouth. At each thirty-minute count, the observer indicates where groups of seals are hauled out on the sandbar and provides a total count for each group. If possible, adults and pups are counted separately.

In addition to the census data, disturbances of the haul-out are recorded. The method for recording disturbances follows those in Mortenson (1996). Disturbances would be recorded on a three-point scale that represents an increasing seal response to the disturbance (Table 3). The time, source, and duration of the disturbance, as well as an estimated distance between the source and haul-out, are recorded. It should be noted that only responses falling into Mortenson's Levels 2 and 3 will be considered as harassment under the MMPA, under the terms of this proposed IHA.

TABLE 3—SEAL RESPONSE TO DISTURBANCE

Level	Type of response	Definition
1	Alert	Seal head orientation in response to disturbance. This may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, or changing from a lying to a sitting position.

TABLE 3—SEAL RESPONSE TO DISTURBANCE—Continued

Level	Type of response	Definition
2	Movement	Movements away from the source of disturbance, ranging from short withdrawals over short distances to hurried retreats many meters in length.
3	Flight	All retreats (flushes) to the water, another group of seals, or over the beach.

Weather conditions are recorded at the beginning of each census. These include temperature, Beaufort sea state, precipitation/visibility, and wind speed. Tide levels and estuary water surface elevations are correlated to the monitoring start and end times.

In an effort towards understanding possible relationships between use of the Jenner haul-out and nearby coastal and river haul-outs, several other haul-outs on the coast and in the Russian River estuary are monitored as well (see Figure 1 of SCWA's monitoring plan). As described above, peripheral site monitoring would occur only in the event of an extended period of lagoon conditions (*i.e.,* barrier beach closed with perched outlet channel).

Estuary Management Event Monitoring, Lagoon Outlet Channel—Should the mouth close during the lagoon management period, SCWA would construct a lagoon outlet channel as required by the BiOp. Activities associated with the initial construction of the outlet channel, as well as the maintenance of the channel that may be required, would be monitored for disturbances to the seals at the Jenner haul-out.

A one-day pre-event channel survey would be made within one to three days prior to constructing the outlet channel. The haul-out would be monitored on the day the outlet channel is constructed and daily for up to the maximum two days allowed for channel excavation activities. Monitoring would also occur on each day that the outlet channel is maintained using heavy equipment for the duration of the lagoon management period. Monitoring of outlet channel construction and maintenance would correspond with that described under the ''Baseline'' section previously, with the exception that management activity monitoring duration is defined by event duration. On the day of the management event, pinniped monitoring begins at least one hour prior to the crew and equipment accessing the beach work area and continues through the duration of the event, until at least one hour after the crew and equipment leave the beach.

In an attempt to understand whether seals from the Jenner haul-out are displaced to coastal and river haul-outs nearby when management events occur, other nearby haul-outs are monitored concurrently with monitoring of outlet channel construction and maintenance activities. This provides an opportunity to qualitatively assess whether these haul-outs are being used by seals displaced from the Jenner haul-out during lagoon outlet channel excavation and maintenance. This monitoring would not provide definitive results regarding displacement to nearby coastal and river haul-outs, as individual seals are not marked or photo-identified, but is useful in tracking general trends in haul-out use during lagoon outlet channel excavation and maintenance. As volunteers are required to monitor these peripheral haul-outs, haul-out locations may need to be prioritized if there are not enough volunteers available. In that case, priority would be assigned to the nearest haul-outs (North Jenner and Odin Cove), followed by the Russian River estuary haul-outs, and finally the more distant coastal haul-outs.

Estuary Management Event Monitoring, Artificial Breaching Events—In accordance with the Russian River BiOp, SCWA may artificially breach the barrier beach outside of the summer lagoon management period, and may conduct a maximum of two such breachings during the lagoon management period, when estuary water surface elevations rise above seven feet. In that case, NMFS may be consulted regarding potential scheduling of an artificial breaching event to open the barrier beach and reduce flooding risk.

Pinniped response to artificial breaching will be monitored at each such event during the term of the IHA. Methods would follow the census and disturbance monitoring protocols described in the ''Baseline'' section, which were also used for the 1996 to 2000 monitoring events (MSC, 1997, 1998, 1999, 2000; SCWA and MSC, 2001). The exception, as for lagoon management events, is that duration of monitoring is dependent upon duration of the event. On the day of the management event, pinniped monitoring begins at least one hour prior to the crew and equipment accessing the beach work area and continues through the duration of the event, until at least one hour after the crew and equipment leave the beach.

For all counts, the following information would be recorded in thirty-minute intervals: (1) Pinniped counts, by species; (2) behavior; (3) time, source and duration of any disturbance; (4) estimated distances between source of disturbance and pinnipeds; (5) weather conditions (*e.g.,* temperature, wind); and (5) tide levels and estuary water surface elevation.

Monitoring During Pupping Season—The pupping season is defined as March 15 to June 30. Baseline, lagoon outlet channel, and artificial breaching monitoring during the pupping season will include records of neonate (pups less than one week old) observations. Characteristics of a neonate pup include: Body weight less than 15 kg; thin for their body length; an umbilicus or natal pelage present; wrinkled skin; and awkward or jerky movements on land. SCWA will coordinate with the Seal Watch monitoring program to determine if pups less than one week old are on the beach prior to a water level management event.

If, during monitoring, observers sight any pup that might be abandoned, SCWA would contact the NMFS stranding response network immediately and also report the incident to NMFS' West Coast Regional Office and Office of Protected Resources within 48 hours. Observers will not approach or move the pup. Potential indications that a pup may be abandoned are no observed contact with adult seals, no movement of the pup, and the pup's attempts to nurse are rebuffed.

Staffing—Monitoring is conducted by qualified individuals, which may include professional biologists employed by NMFS or SCWA or volunteers trained by the Stewards' Seal Watch program (Stewards). All volunteer monitors are required to attend classroom-style training and field site visits to the haul-outs. Training covers the MMPA and conditions of the IHA, SCWA's pinniped monitoring protocols, pinniped species identification, age class identification (including a specific discussion regarding neonates), recording of count and disturbance observations (including completion of datasheets), and use of equipment. Pinniped identification includes the harbor seal, California sea

lion, and northern elephant seal, as well as other pinniped species with potential to occur in the area. Generally, SCWA staff and volunteers collect baseline data on Jenner haul-out use during the twice-monthly monitoring events. A schedule for this monitoring would be established with Stewards once volunteers are available for the monitoring effort. SCWA staff monitors lagoon outlet channel excavation and maintenance activities and artificial breaching events at the Jenner haul-out, with assistance from Stewards volunteers as available. Stewards volunteers monitor the coastal and river haul-out locations during lagoon outlet channel excavation and maintenance activities.

Training on the MMPA, pinniped identification, and the conditions of the IHA is held for staff and contractors assigned to estuary management activities. The training includes equipment operators, safety crew members, and surveyors. In addition, prior to beginning each water surface elevation management event, the biologist monitoring the event participates in the onsite safety meeting to discuss the location(s) of pinnipeds at the Jenner haul-out that day and methods of avoiding and minimizing disturbances to the haul-out as outlined in the IHA.

Reporting

SCWA is required to submit a report on all activities and marine mammal monitoring results to the Office of Protected Resources, NMFS, and the West Coast Regional Administrator, NMFS, ninety days prior to the expiration of the IHA if a renewal is sought, or within ninety days of the expiration of the IHA otherwise. This annual report will also be distributed to California State Parks and Stewards, and would be available to the public on SCWA's Web site. This report will contain the following information:

- The number of pinnipeds taken, by species and age class (if possible);
- Behavior prior to and during water level management events;
- Start and end time of activity;
- Estimated distances between source and pinnipeds when disturbance occurs;
- Weather conditions (*e.g.,* temperature, wind, etc.);
- Haul-out reoccupation time of any pinnipeds based on post-activity monitoring;
- Tide levels and estuary water surface elevation; and
- Pinniped census from bi-monthly and nearby haul-out monitoring.

The annual report includes descriptions of monitoring methodology, tabulation of estuary management events, summary of monitoring results, and discussion of problems noted and proposed remedial measures.

Summary of Previous Monitoring

SCWA complied with the mitigation and monitoring required under all previous authorizations. In accordance with the 2015 IHA, SCWA submitted a Report of Activities and Monitoring Results, covering the period of January 1 through December 31, 2015. Previous monitoring reports (available at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm*) provided additional analysis of monitoring results from 2009–14. A barrier beach was formed eleven times during 2015, but SCWA was required to implement artificial breaching for only four of these closure events. The Russian River outlet was closed to the ocean for a total of 115 days in 2015, including extended closures totaling 49 days during the lagoon management period. However, these closures all culminated in natural breaches and no outlet channel management events were required (although one closure that began on October 10, before the end of the lagoon management period, led to an artificial breaching event after the close of the management period on November 2). Over the past twenty years, there has been an average of five artificial breaching events per year. Only one lagoon management event has occurred since the current lagoon management period and process was instituted in 2009. For all events, pinniped monitoring occurred no more than three days before, the day of, and the day after each water level management activity. In addition, SCWA conducted biological and physical monitoring as described previously. During the course of these activities, SCWA did not exceed the take levels authorized under the relevant IHAs.

Baseline Monitoring

Baseline monitoring was performed to gather additional information about the population of harbor seals utilizing the Jenner haul-out including population trends, patterns in seasonal abundance and the influence of barrier beach condition on harbor seal abundance. The effect of tide cycle and time of day on the abundance of seals at the Jenner haul-out was explored in detail in a previous report (SCWA, 2012); data collected in 2013–15 did not change the interpretation of these findings. Baseline monitoring at the mouth of the Russian River was conducted concurrently with monitoring of the peripheral haul-outs, and was scheduled for two days out of each month with the intention of capturing a low and high tide each in the morning and afternoon. A total of 24 baseline surveys were conducted in 2015. Figure 2 of SCWA's 2015 report shows the mean number of harbor seals during twice-monthly baseline monitoring events from 2010–15.

Peak seal abundance, as determined by the single greatest count of harbor seals at the Jenner haul-out, was on July 9 (548 seals), and overall mean seal abundance at Jenner was greatest in July (mean = 373 ± 10.3 s.e.). Seal abundance was significantly greater in July and compared to all other months, which corresponds with the summer molting period. In 2014, monitoring showed a dual peak in July and in March, corresponding with the period prior to the start of pupping. Similar to previous years, seal abundance declined in the fall. In 2015, there were significantly more seals observed on the haul-out in June and July when compared with previous years combined.

No distressed or abandoned pups were reported in 2015. Pup production at the Jenner haul-out was 18.7 percent of total seals as calculated from the peak pup count recorded on April 28 and the number of adult harbor seals present at the same time. Although lower than in previous years, the average of pups observed (when pups were present) was up somewhat during April and May: 16.4 compared with 12.9–15.4 for 2011–14. Comparison of count data between the Jenner and peripheral haul-outs did not show any obvious correlations (*e.g.,* the number of seals occupying peripheral haul-outs compared to the Jenner haul-out did not necessarily increase or decrease as a result of disturbance caused by beach visitors). Please review SCWA's report for a more detailed discussion.

Water Level Management Activity Monitoring

Artificial breaching events occurred on March 31, November 2, November 5, and November 23, with pre- during, and post- breaching surveys conducted as required. No injuries or mortalities were observed during 2015, and harbor seal reactions ranged from merely alerting to crew presence to flushing from the beach. No elephant seals were observed during water level management activities or during biological and physical monitoring of the beach and estuary. Juvenile California sea lions were observed on two occasions.

Total observed incidents of marine mammal take, by Level B harassment only, from water level management activity and biological and physical

monitoring, was 2,383 harbor seals (detailed in Table 4) and one California sea lion. This total includes three harbor seal pups, one of which was a neonate. The neonate individual was encountered by SCWA staff posting signs on the beach in preparation for breaching activities and, as a result of this observation the planned breaching was canceled to avoid disturbance of neonates. One juvenile California sea lion was disturbed during pre-breaching activities on February 2.

While the observed take was significantly lower than the level authorized, it is possible that incidental take in future years could approach the level authorized. Actual take is dependent largely upon the number of water level management events that occur, which is unpredictable. Take of species other than harbor seals depends upon whether those species, which do not consistently utilize the Jenner haul-out, are present. The authorized take, though much higher than the actual take, was justified based on conservative estimated scenarios for animal presence and necessity of water level management. No significant departure from the method of estimation is used for the proposed IHA (see ''Estimated Take by Incidental Harassment'') for the same activities in 2016.

TABLE 4—OBSERVED INCIDENTAL HARASSMENT (LEVEL B HARASSMENT ONLY) OF HARBOR SEALS DURING RUSSIAN RIVER ESTUARY MANAGEMENT ACTIVITIES, 2015

Date	Event type	Observed take [a]
Jan 29	Beach topographic survey	256
Feb 2	Pre-breaching survey	38
Feb 26	Beach topographic survey	201
Mar 26	Beach topographic survey	201
Mar 31	Artificial breaching	58
Apr 20	Pre-breaching survey	64 + 1
May 27	Fisheries studies	2
May 28	Fisheries studies	1
May 28	Beach topographic survey	279 + 2
Jun 25	Fisheries studies	2
Jun 25	Beach topographic survey	124
Jul 3	Fisheries studies	1
Jul 22	Fisheries studies	2
Jul 23	Beach topographic survey	642
Jul 30	Fisheries studies	1
Aug 20	Beach topographic survey	74
Sep 17	Beach topographic survey	22
Oct 8	Beach topographic survey	77
Nov 2	Artificial breaching	75
Nov 5	Artificial breaching	100
Nov 12	Beach topographic survey	135
Nov 23	Artificial breaching	25
Total		2,380 + 3

[a] Take of harbor seal pups is accounted for separately. One neonate was disturbed on April 20 and two pups were disturbed on May 28.

It should be noted that one of the primary reasons for the increase in observed incidences of incidental take in 2013–15 (average 1,950) compared with prior years (average 180 from 2010–12) was a change in protocol for the beach topographic surveys (although realized level of activity would be expected to remain a primary determinant in future years). Due to the frequent and prolonged river mouth closures in 2013—including closures of 25 days in June/July and 21 days in September/October—there was an increased need to gather complete information about the topography and sand elevation of the beach to best inform water level management activities.

This necessitated the survey crew to access the entire beach, including any area where seals were hauled out. Therefore, beginning on May 30, 2013, the methods for conducting the monthly topographic surveys of the barrier beach were changed. Previously, monitors at a distance would inform survey crews via radio if harbor seals became alert to their presence. Survey crews would then retreat or avoid certain areas as necessary to avoid behavioral harassment of the seals. According to the revised protocol, and provided that no neonates or nursing pups were on the haul-out, the survey crew would continue their approach. The survey crews would proceed in a manner that allowed for the seals to gradually vacate the beach before the survey proceeded, thereby reducing the intensity of behavioral reactions as much as possible, but the numbers of incidences of behavioral harassment nevertheless increased. SCWA expects that this revised protocol would remain in place for the coming year.

SCWA continued to investigate the relative disturbance caused by their activities versus that caused by other sources (see Figures 5–6 of SCWA's monitoring report as well as SCWA, 2014). The data recorded during 2015 do not differ from the findings reported in SCWA (2014). Harbor seals are most frequently disturbed by people on foot, with an increase in frequency of people present during bar-closed conditions (see Figure 5 of SCWA's monitoring report). Kayakers are the next most frequent source of disturbance overall, also with an increase during bar-closed conditions. For any disturbance event it is often only a fraction of the total haul-out that responds. Some sources of disturbance, though rare, have a larger disturbing effect when they occur. For example, disturbances from dogs occur less frequently, but these incidents often disturb over half of the seals hauled out.

Conclusions

The following section provides a summary of information available in SCWA's monitoring report. The primary purpose of SCWA's Pinniped

monitoring plan is to detect the response of pinnipeds to estuary management activities at the Russian River estuary. However, as described previously, the questions listed below are also of specific interest. The limited data available thus far precludes drawing definitive conclusions regarding the key questions in SCWA's monitoring plan, but we discuss preliminary conclusions and available evidence below.

1. Under what conditions do pinnipeds haul out at the Russian River estuary mouth at Jenner?

Although multiple factors likely influence harbor seal presence at the haul-out, SCWA has shown that since 2009 harbor seal attendance is influenced by hour of day (increasing from morning through early afternoon; see Figure 2 in SCWA's monitoring plan), tidal state (decrease with higher tides; see Figure 3 of SCWA's monitoring plan), month of year (peak in July and decrease in fall; see Figure 4 of SCWA's monitoring plan), and river mouth condition (*i.e.,* open or closed).

Daily average abundance of seals was lower during bar-closed conditions compared to bar-open conditions. This effect is likely due to a combination of factors, including increased human disturbance, reduced access to the ocean from the estuary side of the barrier beach, and the increased disturbance from wave action when seals utilize the ocean side of the barrier beach. Baseline data indicate that the highest numbers of seals are observed at the Jenner haul-out in July (during the molting season; see Figure 2 of SCWA's monitoring report), as would be expected on the basis of harbor seal biological and physiological requirements (Herder, 1986; Allen *et al.,* 1989; Stewart and Yochem, 1994; Hanan, 1996; Gemmer, 2002).

Overall, seals appear to utilize the Jenner haul-out throughout the tidal cycle. Seal abundance is significantly lower during the highest of tides when the haul-out is subject to an increase in wave overwash. Time of day had some effect on seal abundance at the Jenner haul-out, as abundance was greater in the afternoon hours compared to the morning hours. More analysis exploring the relationship of ambient temperature, incidence of disturbance, and season on time of day effects would help to explain why these variations in seal abundance occur. It is likely that a combination of multiple factors (*e.g.,* season, tides, wave heights, level of beach disturbance) influence when the haul-out is most utilized.

2. How do seals at the Jenner haul-out respond to activities associated with the construction and maintenance of the lagoon outlet channel and artificial breaching activities?

SCWA has, thus far, implemented the lagoon outlet channel only once (July 8, 2010). The response of harbor seals at the Jenner haul-out to the outlet channel implementation activities was similar to responses observed during past artificial breaching events (MSC, 1997, 1998, 1999, 2000; SCWA and MSC, 2001). The harbor seals typically alert to the sound of equipment on the beach and leave the haul-out as the crew and equipment approach. Individuals then haul out on the beach while equipment is operating, leaving the beach again when equipment and staff depart, and typically begin to return to the haul-out within thirty minutes of the work ending. Because the barrier beach reformed soon after outlet channel implementation and subsequently breached on its own following the 2010 event, maintenance of the outlet channel was not necessary and monitoring of the continued response of pinnipeds at the Jenner haul-out to maintenance of the outlet channel and management of the lagoon for the duration of the lagoon management period has not yet been possible. As noted previously, when breaching activities were conducted south of the haul-out location seals often remained on the beach during all or some of the breaching activity. This indicates that seals are less disturbed by activities when equipment and crew do not pass directly past their haul-out.

3. Does the number of seals at the Jenner haul-out significantly differ from historic averages with formation of a summer lagoon in the Russian River estuary?

The duration of closures in recent years has not generally been dissimilar from the duration of closures that have been previously observed at the estuary, and lagoon outlet channel implementation has occurred only once, meaning that there has been a lack of opportunity to study harbor seal response to extended lagoon conditions. A barrier beach has formed during the lagoon management period sixteen times since SCWA began implementing the lagoon outlet channel adaptive management plan, with an average duration of fourteen days. However, the sustained river outlet closures observed in 2014–15 during the lagoon management period provide some information regarding the abundance of seals during the formation of a summer lagoon. While seal abundance was lower overall during bar-closed conditions, overall there continues to be a slight increasing trend in seal abundance. These observations may indicate that, while seal abundance exhibits a short-term decline following bar closure, the number of seals utilizing the Jenner haul-out overall during such conditions is not affected. Short-term fluctuations in abundance aside, it appears that the general trends of increased abundance during summer and decreased abundance during fall, which coincide with the annual molt and likely foraging dispersal, respectively, are not affected. Such short-term fluctuations are likely not an indicator that seals are less likely to use the Jenner haul-out at any time.

4. Are seals at the Jenner haul-out displaced to nearby river and coastal haul-outs when the mouth remains closed in the summer?

Initial comparisons of peripheral (river and coastal) haul-out count data to the Jenner haul-out counts have been inconclusive (see Table 2 and Figures 6–7 of SCWA's monitoring report). As noted above, SCWA will focus ongoing effort at peripheral sites during periods of extended bar-closure and lagoon formation.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: ''. . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

SCWA has requested, and NMFS proposes, authorization to take harbor seals, California sea lions, and northern elephant seals, by Level B harassment only, incidental to estuary management activities. These activities, involving increased human presence and the use of heavy equipment and support vehicles, are expected to harass pinnipeds present at the haul-out through disturbance only. In addition, monitoring activities prescribed in the BiOp may harass additional animals at the Jenner haul-out and at the three haul-outs located in the estuary (Penny Logs, Patty's Rock, and Chalanchawi). Estimates of the number of harbor seals, California sea lions, and northern

elephant seals that may be harassed by the proposed activities is based upon the number of potential events associated with Russian River estuary management activities and the average number of individuals of each species that are present during conditions appropriate to the activity. As described previously in this document, monitoring effort at the mouth of the Russian River has shown that the number of seals utilizing the haul-out declines during bar-closed conditions. Tables 5 and 6 detail the total number of estimated takes.

Events associated with lagoon outlet channel management would occur only during the lagoon management period, and are split into two categories: (1) Initial channel implementation, which would likely occur between May and September, and (2) maintenance and monitoring of the outlet channel, which would continue until October 15. In addition, it is possible that the initial outlet channel could close through natural processes, requiring additional channel implementation events. Based on past experience, SCWA estimates that a maximum of three outlet channel implementation events could be required. Outlet channel implementation events would only occur when the bar is closed; therefore, it is appropriate to use data from bar-closed monitoring events in estimating take (Table 2). Construction of the outlet channel is designed to produce a perched outflow, resulting in conditions that more closely resemble bar-closed than bar-open with regard to pinniped haul-out usage. As such, bar-closed data is appropriate for estimating take during all lagoon management period maintenance and monitoring activity. As dates of outlet channel implementation cannot be known in advance, the highest daily average of seals per month—the March average for 2009–15—is used in estimating take. For maintenance and monitoring activities associated with the lagoon outlet channel, which would occur on a weekly basis following implementation of the outlet channel, the average number of harbor seals for each month was used.

Artificial breaching activities would also occur during bar-closed conditions. Data collected specifically during bar-closed conditions may be used for estimating take associated with artificial breaching (Table 2). The number of estimated artificial breaching events is also informed by experience, and is equal to the annual average number of bar closures recorded for a given month from 1996–2013.

Prior to 2014, for monthly topographic surveys on the barrier beach, SCWA estimated that only ten percent of seals hauled out would be likely to be disturbed by this activity, which involves two people walking along the barrier beach with a survey rod. During those surveys a pinniped monitor was positioned at the Highway 1 overlook and would notify the surveyors via radio when any seals on the haul-out begin to alert to their presence. This enabled the surveyors to retreat slowly away from the haul-out, typically resulting in no disturbance. However, protocol for this monitoring activity has been changed (*i.e.,* surveyors will continue cautiously rather than retreat when seals alert—this is necessary to collect required data) and the resulting incidents of take are now estimated as one hundred percent of the seals expected to be encountered. The exception to this change is during the pupping season, when surveyors would continue to avoid seals to reduce harassment of pups and/or mothers with neonates. For the months of March-May, the assumption that only ten percent of seals present would be harassed is retained. The number of seals expected to be encountered is based on the average monthly number of seals hauled out as recorded during baseline surveys conducted by SCWA in 2013–15 (Table 1).

For biological and physical habitat monitoring activities in the estuary, it was assumed that pinnipeds may be encountered once per event and flush from a river haul-out. The potential for harassment associated with these events is limited to the three haul-outs located in the estuary. In past experience, SCWA typically sees no more than a single harbor seal at these haul-outs, which consist of scattered logs and rocks that often submerge at high tide.

TABLE 5—ESTIMATED NUMBER OF HARBOR SEAL TAKES RESULTING FROM RUSSIAN RIVER ESTUARY MANAGEMENT ACTIVITIES

Number of animals expected to occur [a]	Number of events [b c]	Potential total number of individual animals that may be taken
Lagoon Outlet Channel Management (May 15 to October 15)		
Implementation: 117 [d]	Implementation: 3	Implementation: 351.
Maintenance and Monitoring:	Maintenance:	Maintenance: 1,156.
May: 80	May: 1.	
June: 98	June–Sept: 4/month.	
July: 117	Oct: 1.	
Aug: 17	Monitoring:	Monitoring: 552.
Sept: 30	June–Sept: 2/month	
Oct: 28	Oct: 1	Total: 2,059.
Artificial Breaching		
Oct: 28	Oct: 2	Oct: 56.
Nov: 32	Nov: 2	Nov: 64.
Dec: 59	Dec: 2	Dec: 118.
Jan: 49	Jan: 1	Jan: 49.
Feb: 75	Feb: 1	Feb: 75.
Mar: 133	Mar: 1	Mar: 133.
Apr: 99	Apr: 1	Apr: 99.
May: 80	May: 2	May: 160.
	12 events maximum	Total: 754.

TABLE 5—ESTIMATED NUMBER OF HARBOR SEAL TAKES RESULTING FROM RUSSIAN RIVER ESTUARY MANAGEMENT ACTIVITIES—Continued

Number of animals expected to occur [a]	Number of events [b c]	Potential total number of individual animals that may be taken
Topographic and Geophysical Beach Surveys		
Jan: 89	1 topographic survey/month; 100 percent of animals present Jun–Feb; 10 percent of animals present Mar–May.	Jan: 89.
	Jetty well removal; 2 days	
Feb: 173		Feb: 173.
Mar: 183		Mar: 18.
Apr: 136		Apr: 14.
May: 154		May: 15.
Jun: 170		Jun: 170.
Jul: 345		Jul: 345.
Aug: 143		Aug: 143.
Sep: 59		Sep: 59.
Oct: 37		Oct: 37.
Nov: 37		Nov: 37.
Dec: 134		Dec: 134.
	Jetty work: 252 [f].	
		Total: 1,486.
Biological and Physical Habitat Monitoring in the Estuary		
1 [e]	165	165.
Total		4,464.

[a] For Lagoon Outlet Channel Management and Artificial Breaching, average daily number of animals corresponds with data from Table 2. For Topographic and Geophysical Beach Surveys, average daily number of animals corresponds with 2013–15 data from Table 1.

[b] For implementation of the lagoon outlet channel, an event is defined as a single, two-day episode. It is assumed that the same individual seals would be hauled out during a single event. For the remaining activities, an event is defined as a single day on which an activity occurs. Some events may include multiple activities.

[c] Number of events for artificial breaching derived from historical data. The average number of events for each month was rounded up to the nearest whole number; estimated number of events for December was increased from one to two because multiple closures resulting from storm events have occurred in recent years during that month. These numbers likely represent an overestimate, as the average annual number of events is five.

[d] Although implementation could occur at any time during the lagoon management period, the highest daily average per month from the lagoon management period was used.

[e] Based on past experience, SCWA expects that no more than one seal may be present, and thus have the potential to be disturbed, at each of the three river haul-outs.

[f] Jetty well removal is expected to require two days, but the specific timing of the event within a window from July–December cannot be predicted. Therefore, we use the average of the monthly averages for those months (126) to estimate potential take from this activity.

TABLE 6—ESTIMATED NUMBER OF CALIFORNIA SEA LION AND ELEPHANT SEAL TAKES RESULTING FROM RUSSIAN RIVER ESTUARY MANAGEMENT ACTIVITIES

Species	Number of animals expected to occur [a]	Number of events [a]	Potential total number of individual animals that may be taken
Lagoon Outlet Channel Management (May 15 to October 15)			
California sea lion (potential to encounter once per event)	1	6	6
Northern elephant seal (potential to encounter once per event)	1	6	6
Artificial Breaching			
California sea lion (potential to encounter once per month, Oct–May)	1	8	8
Northern elephant seal (potential to encounter once per month, Oct–May)	1	8	8
Topographic and Geophysical Beach Surveys			
California sea lion (potential to encounter once per month year-round for topographical surveys)	1	12	12
Northern elephant seal (potential to encounter once per month year-round for topographical surveys)	1	12	12
Biological and Physical Habitat Monitoring in the Estuary + Jetty Study			
California sea lion (potential to encounter once per month, Jul–Feb)	1	10	10

TABLE 6—ESTIMATED NUMBER OF CALIFORNIA SEA LION AND ELEPHANT SEAL TAKES RESULTING FROM RUSSIAN RIVER ESTUARY MANAGEMENT ACTIVITIES—Continued

Species	Number of animals expected to occur [a]	Number of events [a]	Potential total number of individual animals that may be taken
Northern elephant seal (potential to encounter once per month, Jul–Feb)	1	10	10
Total:			
California sea lion			36
Elephant seal			36

[a] SCWA expects that California sea lions and/or northern elephant seals could occur during any month of the year, but that any such occurrence would be infrequent and unlikely to occur more than once per month.

Analyses and Preliminary Determinations

Negligible Impact Analysis

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, we consider other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

Although SCWA's estuary management activities may disturb pinnipeds hauled out at the mouth of the Russian River, as well as those hauled out at several locations in the estuary during recurring monitoring activities, impacts are occurring to a small, localized group of animals. While these impacts can occur year-round, they occur sporadically and for limited duration (*e.g.,* a maximum of two consecutive days for water level management events). Seals will likely become alert or, at most, flush into the water in reaction to the presence of crews and equipment on the beach. While disturbance may occur during a sensitive time (during the March 15–June 30 pupping season), mitigation measures have been specifically designed to further minimize harm during this period and eliminate the possibility of pup injury or mother-pup separation.

No injury, serious injury, or mortality is anticipated, nor is the proposed action likely to result in long-term impacts such as permanent abandonment of the haul-out. Injury, serious injury, or mortality to pinnipeds would likely result from startling animals inhabiting the haul-out into a stampede reaction, or from extended mother-pup separation as a result of such a stampede. Long-term impacts to pinniped usage of the haul-out could result from significantly increased presence of humans and equipment on the beach. To avoid these possibilities, we have worked with SCWA to develop the previously described mitigation measures. These are designed to reduce the possibility of startling pinnipeds, by gradually apprising them of the presence of humans and equipment on the beach, and to reduce the possibility of impacts to pups by eliminating or altering management activities on the beach when pups are present and by setting limits on the frequency and duration of events during pupping season. During the past fifteen years of flood control management, implementation of similar mitigation measures has resulted in no known stampede events and no known injury, serious injury, or mortality. Over the course of that time period, management events have generally been infrequent and of limited duration.

No pinniped stocks for which incidental take authorization is proposed are listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. Recent data suggests that harbor seal populations have reached carrying capacity; populations of California sea lions and northern elephant seals in California are also considered healthy.

In summary, and based on extensive monitoring data, we believe that impacts to hauled-out pinnipeds during estuary management activities would be behavioral harassment of limited duration (*i.e.,* less than one day) and limited intensity (*i.e.,* temporary flushing at most). Stampeding, and therefore injury or mortality, is not expected—nor been documented—in the years since appropriate protocols were established (see ''Proposed Mitigation'' for more details). Further, the continued, and increasingly heavy (see figures in SCWA documents), use of the haul-out despite decades of breaching events indicates that abandonment of the haul-out is unlikely. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, we preliminarily find that the total marine mammal take from SCWA's estuary management activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers Analysis

The proposed number of animals taken for each species of pinnipeds can be considered small relative to the population size. There are an estimated 30,968 harbor seals in the California stock, 296,750 California sea lions, and 179,000 northern elephant seals in the California breeding population. Based on extensive monitoring effort specific to the affected haul-out and historical data on the frequency of the specified activity, we are proposing to authorize take, by Level B harassment only, of 4,464 harbor seals, 36 California sea lions, and 36 northern elephant seals, representing 14.4, 0.01, and 0.02 percent of the populations, respectively. However, this represents an overestimate of the number of individuals harassed over the duration of the proposed IHA, because these totals represent much smaller numbers

of individuals that may be harassed multiple times. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, we preliminarily find that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, we have determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

No species listed under the ESA are expected to be affected by these activities. Therefore, we have determined that a section 7 consultation under the ESA is not required. As described elsewhere in this document, SCWA and the Corps consulted with NMFS under section 7 of the ESA regarding the potential effects of their operations and maintenance activities, including SCWA's estuary management program, on ESA-listed salmonids. As a result of this consultation, NMFS issued the Russian River Biological Opinion (NMFS, 2008), including Reasonable and Prudent Alternatives, which prescribes modifications to SCWA's estuary management activities. The effects of the proposed activities and authorized take would not cause additional effects for which a section 7 consultation would be required.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, we prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from issuance of the original IHA to SCWA for the specified activities and found that it would not result in any significant impacts to the human environment. We signed a Finding of No Significant Impact (FONSI) on March 30, 2010. We have reviewed SCWA's application for a renewed IHA for ongoing estuary management activities for 2016 and the 2015 monitoring report. Based on that review, we have determined that the proposed action follows closely the IHAs issued and implemented in 2010–15 and does not present any substantial changes, or significant new circumstances or information relevant to environmental concerns which would require a supplement to the 2010 EA or preparation of a new NEPA document. Therefore, we have preliminarily determined that a new or supplemental EA or Environmental Impact Statement is unnecessary, and will, after review of public comments determine whether or not to rely on the existing EA and FONSI. The 2010 EA is available for review at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.*

Proposed Authorization

As a result of these preliminary determinations, we propose to issue an IHA to SCWA for conducting the described estuary management activities in Sonoma County, California, for one year from the date of issuance, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The proposed IHA language is provided next.

This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

The Sonoma County Water Agency (SCWA), California, is hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1371(a)(5)(D)) to harass marine mammals incidental to conducting estuary management activities in the Russian River, Sonoma County, California.

1. This Incidental Harassment Authorization (IHA) is valid from April 21, 2016 through April 20, 2017.

2. This IHA is valid only for activities associated with estuary management activities in the Russian River, Sonoma County, California, including:

(a) Lagoon outlet channel management;

(b) Artificial breaching of barrier beach;

(c) Work associated with a jetty study; and

(d) Physical and biological monitoring of the beach and estuary as required.

3. General Conditions

(a) A copy of this IHA must be in the possession of SCWA, its designees, and work crew personnel operating under the authority of this IHA.

(b) SCWA is hereby authorized to incidentally take, by Level B harassment only, 4,464 harbor seals (*Phoca vitulina richardii*), 36 California sea lions (*Zalophus californianus*), and 36 northern elephant seals (*Mirounga angustirostris*).

(c) The taking by injury (Level A harassment), serious injury, or death of any of the species listed in condition 3(b) of the Authorization or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA.

(d) If SCWA observes a pup that may be abandoned, it shall contact the National Marine Fisheries Service (NMFS) West Coast Regional Stranding Coordinator immediately and also report the incident to NMFS Office of Protected Resources within 48 hours. Observers shall not approach or move the pup.

(e) If SCWA observes any fur seal on the beach, it shall contact the NMFS West Coast Regional Stranding Coordinator immediately and shall discontinue any ongoing activity.

4. Mitigation Measures

In order to ensure the least practicable impact on the species listed in condition 3(b), the holder of this Authorization is required to implement the following mitigation measures:

(a) SCWA crews shall cautiously approach the haul-out ahead of heavy equipment to minimize the potential for sudden flushes, which may result in a stampede—a particular concern during pupping season.

(b) SCWA staff shall avoid walking or driving equipment through the seal haul-out.

(c) Crews on foot shall make an effort to be seen by seals from a distance, if possible, rather than appearing suddenly at the top of the sandbar, again preventing sudden flushes.

(d) During breaching events, all monitoring shall be conducted from the overlook on the bluff along Highway 1 adjacent to the haul-out in order to minimize potential for harassment.

(e) A water level management event may not occur for more than two consecutive days unless flooding threats cannot be controlled.

(f) Equipment shall be driven slowly on the beach and care will be taken to minimize the number of shut-downs and start-ups when the equipment is on the beach.

(g) All work shall be completed as efficiently as possible, with the smallest amount of heavy equipment possible, to minimize disturbance of seals at the haul-out.

(h) Boats operating near river haul-outs during monitoring shall be kept within posted speed limits and driven

as far from the haul-outs as safely possible to minimize flushing seals.

In addition, SCWA shall implement the following mitigation measures during pupping season (March 15–June 30):

(i) SCWA shall maintain a one week no-work period between water level management events (unless flooding is an immediate threat) to allow for an adequate disturbance recovery period. During the no-work period, equipment must be removed from the beach.

(j) If a pup less than one week old is on the beach where heavy machinery will be used or on the path used to access the work location, the management action shall be delayed until the pup has left the site or the latest day possible to prevent flooding while still maintaining suitable fish rearing habitat. In the event that a pup remains present on the beach in the presence of flood risk, SCWA shall consult with NMFS and CDFG to determine the appropriate course of action. SCWA shall coordinate with the locally established seal monitoring program (Stewards of the Coast and Redwoods) to determine if pups less than one week old are on the beach prior to a breaching event.

(k) Physical and biological monitoring shall not be conducted if a pup less than one week old is present at the monitoring site or on a path to the site.

5. Monitoring

The holder of this Authorization is required to conduct baseline monitoring and shall conduct additional monitoring as required during estuary management activities. Monitoring and reporting shall be conducted in accordance with the approved Pinniped Monitoring Plan.

(a) Baseline monitoring shall be conducted each week, with two events per month occurring in the morning and two per month in the afternoon. These censuses shall continue for four hours, weather permitting; the census days shall be chosen to ensure that monitoring encompasses a low and high tide each in the morning and afternoon. All seals hauled out on the beach shall be counted every thirty minutes from the overlook on the bluff along Highway 1 adjacent to the haul-out using high-powered spotting scopes. Observers shall indicate where groups of seals are hauled out on the sandbar and provide a total count for each group. If possible, adults and pups shall be counted separately.

(b) In addition, peripheral coastal haul-outs shall be visited concurrently with baseline monitoring in the event that a lagoon outlet channel is implemented and maintained for a prolonged period (over 21 days).

(c) During estuary management events, monitoring shall occur on all days that activity is occurring using the same protocols as described for baseline monitoring, with the difference that monitoring shall begin at least one hour prior to the crew and equipment accessing the beach work area and continue through the duration of the event, until at least one hour after the crew and equipment leave the beach. In addition, a one-day pre-event survey of the area shall be made within one to three days of the event and a one-day post-event survey shall be made after the event, weather permitting.

(d) For all monitoring, the following information shall be recorded in thirty-minute intervals:

i. Pinniped counts by species;

ii. Behavior;

iii. Time, source and duration of any disturbance, with takes incidental to SCWA actions recorded only for responses involving movement away from the disturbance or responses of greater intensity (*e.g.,* not for alerts);

iv. Estimated distances between source of disturbance and pinnipeds;

v. Weather conditions (*e.g.,* temperature, percent cloud cover, and wind speed); and

vi. Tide levels and estuary water surface elevation.

(a) All monitoring during pupping season shall include records of any neonate pup observations. SCWA shall coordinate with the Stewards' monitoring program to determine if pups less than one week old are on the beach prior to a water level management event.

6. Reporting

The holder of this Authorization is required to:

(a) Submit a report on all activities and marine mammal monitoring results to the Office of Protected Resources, NMFS, and the West Coast Regional Administrator, NMFS, 90 days prior to the expiration of the IHA if a renewal is sought, or within 90 days of the expiration of the permit otherwise. This report must contain the following information:

i. The number of seals taken, by species and age class (if possible);

ii. Behavior prior to and during water level management events;

iii. Start and end time of activity;

iv. Estimated distances between source and seals when disturbance occurs;

v. Weather conditions (*e.g.,* temperature, wind, etc.);

vi. Haul-out reoccupation time of any seals based on post-activity monitoring;

vii. Tide levels and estuary water surface elevation;

viii. Seal census from bi-monthly and nearby haul-out monitoring; and

ix. Specific conclusions that may be drawn from the data in relation to the four questions of interest in SCWA's Pinniped Monitoring Plan, if possible.

(b) Reporting injured or dead marine mammals:

i. In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, SCWA shall immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS. The report must include the following information:

A. Time and date of the incident;

B. Description of the incident;

C. Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

D. Description of all marine mammal observations in the 24 hours preceding the incident;

E. Species identification or description of the animal(s) involved;

F. Fate of the animal(s); and

G. Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with SCWA to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. SCWA may not resume their activities until notified by NMFS.

i. In the event that SCWA discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), SCWA shall immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS.

The report must include the same information identified in 6(b)(i) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with SCWA to determine whether additional mitigation measures or modifications to the activities are appropriate.

ii. In the event that SCWA discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the activities authorized in the

IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), SCWA shall report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. SCWA shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

iii. Pursuant to sections 6(b)(ii-iii), SCWA may use discretion in determining what injuries (*i.e.,* nature and severity) are appropriate for reporting. At minimum, SCWA must report those injuries considered to be serious (*i.e.,* will likely result in death) or that are likely caused by human interaction (*e.g.,* entanglement, gunshot). Also pursuant to sections 6(b)(ii–iii), SCWA may use discretion in determining the appropriate vantage point for obtaining photographs of injured/dead marine mammals.

7. Validity of this Authorization is contingent upon compliance with all applicable statutes and permits, including NMFS' 2008 Biological Opinion for water management in the Russian River watershed. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if the authorized taking is having a more than a negligible impact on the species or stock of affected marine mammals.

Request for Public Comments

We request comment on our analysis, the draft authorization, and any other aspect of this notice of proposed IHA for SCWA's estuary management activities. Please include with your comments any supporting data or literature citations to help inform our final decision on SCWA's request for an MMPA authorization.

Dated: February 16, 2016.

Perry F. Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–03681 Filed 2–22–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE453

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice; availability of NMFS evaluations of joint state/tribal hatchery plans and request for comment.

SUMMARY: Notice is hereby given that the Washington Department of Fish and Wildlife (WDFW) and the Tulalip Tribes have submitted two Hatchery and Genetic Management Plans to NMFS, to be considered jointly pursuant to the limitation on take prohibitions for actions conducted under Limit 6 of the 4(d) Rule for salmon and steelhead promulgated under the Endangered Species Act (ESA). The plans specify the propagation of early-returning (''early'') winter steelhead in the Skykomish and Snoqualmie River watersheds of Washington State. This document serves to notify the public of the availability for comment of the Proposed Evaluation and Pending Determination of the Secretary of Commerce (Secretary) as to whether implementation of the joint plans will appreciably reduce the likelihood of survival and recovery of ESA-listed Puget Sound steelhead and Puget Sound Chinook salmon. The Proposed Evaluation and Pending Determination may be accessed through the following web address: *http://www.westcoast.fisheries.noaa.gov.*

DATES: Comments must be received at the appropriate address or email mailbox (see **ADDRESSES**) no later than 5 p.m. Pacific time on March 24, 2016.

ADDRESSES: Written comments on the proposed evaluation and pending determination should be addressed to the NMFS Sustainable Fisheries Division, 510 Desmond Dr., Suite 103, Lacey, WA 98503. Comments may be submitted by email. The mailbox address for providing email comments is: *SnohomishSteelheadPlans.wcr@noaa.gov.* Include in the subject line of the email comment the following identifier: Comments on Skykomish/Snoqualmie Steelhead Hatchery Programs. Comments received will also be available for public inspection, by appointment, during normal business hours by calling (503) 230–5418.

FOR FURTHER INFORMATION CONTACT: Tim Tynan at (360) 753–9579 or email: *tim.tynan@noaa.gov.*

SUPPLEMENTARY INFORMATION:

ESA-Listed Species Covered in This Notice

Steelhead (*Oncorhynchus mykiss*): threatened, naturally produced and artificially propagated Puget Sound.

Chinook salmon (*O. tshawytscha*): threatened, naturally produced and artificially propagated Puget Sound.

Background

The WDFW and the Tulalip Tribes have submitted to NMFS plans for two jointly operated hatchery programs in the Skykomish and Snoqualmie River basins. The plans were submitted in November 2014, pursuant to limit 6 of the 4(d) Rule for salmon and steelhead. One of the plans was subsequently resubmitted in February 2016 in revised form in response to NMFS pre-consultation review comments. The hatchery programs would release early winter steelhead that are not included as part of the ESA-listed Puget Sound Steelhead DPS into two tributaries of the Skykomish River and one tributary of the Snoqualmie River. Both programs would release fish that are not native to the watersheds.

As required by the ESA 4(d) rule (65 FR 42422, July 10, 2000, as updated in 70 FR 37160, June 28, 2005), the Secretary is seeking public comment on her pending determination as to whether the joint plans for early winter steelhead hatchery programs in the Skykomish River and Snoqualmie River watersheds would appreciably reduce the likelihood of survival and recovery of ESA-listed Puget Sound steelhead and Puget Sound Chinook salmon.

This 4(d) Rule applies the prohibitions enumerated in section 9(a)(1) of the ESA. NMFS did not find it necessary and advisable to apply the take prohibitions described in section 9(a)(1)(B) and 9(a)(1)(C) to artificial propagation activities if those activities are managed in accordance with a joint plan whose implementation has been determined by the Secretary to not appreciably reduce the likelihood of survival and recovery of the listed salmonids. As specified in limit 6 of the 4(d) Rule, before the Secretary makes a decision on the joint plan, the public must have an opportunity to review and comment on the pending determination.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as she deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000, as updated in 70 FR 37160, June 28, 2005) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. Limit 6 of the updated 4(d) rule (50 CFR 223.203(b)(6)) further provides that the

prohibitions of paragraph (a) of the updated 4(d) rule (50 CFR 223.203(a)) do not apply to activities associated with a joint state/tribal artificial propagation plan provided that the joint plan has been determined by NMFS to be in accordance with the salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000, as updated in 70 FR 37160, June 28, 2005).

Dated: February 17, 2016.

Perry F. Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–03685 Filed 2–22–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE436

Marine Mammals; File No. 19309

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the NMFS National Marine Mammal Laboratory, 7600 Sand Point Way NE., Seattle, WA 98115–6349 (Responsible Party: John Bengtson, Ph.D.), has applied in due form for a permit to conduct research on pinnipeds in Alaska.

DATES: Written, telefaxed, or email comments must be received on or before March 24, 2016.

ADDRESSES: The application and related documents will be available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 19309 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 19309 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Sloan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant requests a five-year permit for takes of bearded (*Erignathus barbatus*), harbor (*Phoca vitulina*), ribbon (*Histriophoca fasciata*), ringed (*Phoca hispida hispida*), and spotted seals (*Phoca largha*) in the North Pacific Ocean, Bering Sea, Arctic Ocean, and coastal regions of Alaska. The purposes of the research are to investigate the foraging ecology, population abundance and trends, population structure, habitat requirements, health, vital rates, and effects of natural and anthropogenic factors on these species. Up to 150, annually, of each ice-associated seal species (bearded, ribbon, ringed, and spotted) and up to 250 harbor seals may be captured, handled, and released for measurement of body condition, collection of tissue samples, deployment of telemetry devices, and other procedures as described in the application. An additional 3,000 of each ice associated seal species and 5,500 harbor seals may be incidentally harassed annually during capture activities or collection of feces and other samples from haul-out substrate. Annual takes by harassment during aerial surveys (manned and unmanned) include 3,200 bearded, 6,000 harbor, 1,750 ribbon, 6,700 ringed, and 4,500 spotted seals. Up to 500 Steller sea lions (*Eumetopias jubatus*) of the Eastern Distinct Population Segment may be taken annually by incidental harassment during harbor seal aerial surveys. Authorization is requested for up to 15 unintentional mortalities of each species (excluding Steller sea lions) over the life of the permit, not to exceed 5 annually.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 16, 2016.

Perry F. Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–03683 Filed 2–22–16; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2012–0057]

Agency Information Collection Activities; Submission for OMB Review; Comment Request—Requirements for Electrically Operated Toys and Children's Articles

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (''PRA'') of 1995 (44 U.S.C. chapter 35), the Consumer Product Safety Commission (''Commission'' or ''CPSC'') announces that the Commission has submitted to the Office of Management and Budget (''OMB'') a request for extension of approval of a collection of information for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children (16 CFR part 1505), approved previously under OMB Control No. 3041–0035. In the **Federal Register** of November 25, 2015 (80 FR 73738), the CPSC published a notice to announce the agency's intention to seek extension of approval of the collection of information. The Commission received no comments. Therefore, by publication of this notice, the Commission announces that CPSC has submitted to the OMB a request for extension of approval of that collection of information, without change.

DATES: Written comments on this request for extension of approval of information collection requirements should be submitted by March 24, 2016.

ADDRESSES: Submit comments about this request by email: *OIRA_submission@omb.eop.gov* or fax: 202–395–6881. Comments by mail should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the CPSC, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503. In addition, written comments that are sent to OMB also should be submitted electronically at *http://*

www.regulations.gov, under Docket No. CPSC–2012–0057.

FOR FURTHER INFORMATION CONTACT: For further information contact: Robert H. Squibb, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov.*

SUPPLEMENTARY INFORMATION: CPSC has submitted the following currently approved collection of information to OMB for extension:

Title: Requirements for Electrically Operated Toys.

OMB Number: 3041–0035.

Type of Review: Renewal of collection.

Frequency of Response: On occasion.

Affected Public: Manufacturers and importers of electrically operated toys and other electrically operated articles.

Estimated Number of Respondents: 40 firms that manufacture or import electrically operated toys and other electrically operated articles have been identified; based on manufacturer and importer records for sales and distribution of inventory, there are approximately 10 models each year per firm for which testing and recordkeeping is required resulting in 400 records (40 firms × 10 models) per year.

Estimated Time per Response: Based on discussion with a trade association for the toy industry, we estimate that the tests required by the regulations can be performed on one model in 16 hours and that four hours of recordkeeping is required per model. In addition, each firm may spend 30 minutes or less per model on labeling requirements.

Total Estimated Annual Burden: 6,400 hours for testing burden (16 hours × 400 records); 1,600 hours for recordkeeping (4 hours × 400 records); 200 hours for labeling (40 firms × ½ hour × 10 models) for a total annual burden of 8,200 hours per year.

General Description of Collection: The regulations in 16 CFR part 1505 establish performance and labeling requirements for electrically operated toys and children's articles to reduce unreasonable risks of injury to children from electric shock, electrical burns, and thermal burns associated with those products. Manufacturers and importers of electrically operated toys and children's articles are required to maintain records for three years on: (1) Material and production specifications; (2) the quality assurance program used; (3) results of all tests and inspections conducted; and (4) sales and distribution of electrically operated toys and children's articles.

Dated: February 18, 2016.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2016–03701 Filed 2–22–16; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2012–0058]

Agency Information Collection Activities; Submission for OMB Review; Comment Request—Safety Standard for Walk-Behind Power Lawn Mowers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (''PRA'') of 1995 (44 U.S.C. chapter 35), the Consumer Product Safety Commission (''Commission'' or ''CPSC'') announces that the Commission has submitted to the Office of Management and Budget (''OMB'') a request for extension of approval of a collection of information relating to testing and recordkeeping requirements in the Safety Standard for Walk-Behind Power Lawn Mowers (16 CFR part 1205), approved previously under OMB Control No. 3041–0091. In the **Federal Register** of November 25, 2015 (80 FR 73735), the CPSC published a notice to announce the agency's intention to seek extension of approval of the collection of information.

One commenter, Outdoor Power Equipment Institute (''OPEI'') stated that the estimated burden is underestimated as it is likely based on an outdated estimate of the U.S. market. According to OPEI data, accounting for 8 member manufacturers, 4.7 million walk-behind (gas) power lawn mowers were shipped in the U.S. during 2015.

CPSC staff's estimate of the estimated reporting burden to industry to comply with the safety standard mainly is tied to the number of manufacturers and importers (25), number of production days in a year (130), and employee time per day per establishment required to conduct a reasonable testing program (3 hours) and preparation of product labels (1 hour). The information provided by OPEI's comment does not address the factors and assumptions leading to estimated burden hours for firms and the industry. The reported shipments of 4.7 million units in 2015 (by 8 OPEI members) would not lead us to conclude that estimated burden hours has been underestimated. In fact, the reported shipments in 2015 are lower than previous years in our possession (*e.g.,* 6.5 million forecast for 2005). If OPEI has information related to the number of affected establishments, annual production days, and hours per production day required for testing and labeling, staff will review that information and revise the estimated information collection burden of the standard, as necessary.

Accordingly, by publication of this notice, the Commission announces that CPSC has submitted to the OMB a request for extension of approval of that collection of information, without change.

DATES: Written comments on this request for extension of approval of information collection requirements should be submitted by March 24, 2016.

ADDRESSES: Submit comments about this request by email: *OIRA_submission@omb.eop.gov* or fax: 202–395–6881. Comments by mail should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the CPSC, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503. In addition, written comments that are sent to OMB also should be submitted electronically at *http://www.regulations.gov,* under Docket No. CPSC–2012–0058.

FOR FURTHER INFORMATION CONTACT: Robert H. Squibb, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov.*

SUPPLEMENTARY INFORMATION: CPSC has submitted the following currently approved collection of information to OMB for extension:

Title: Safety Standard for Walk-Behind Power Lawn Mowers.

OMB Number: 3041–0091.

Type of Review: Renewal of collection.

Frequency of Response: On occasion.

Affected Public: Manufacturers and importers of walk-behind power lawn mowers.

Estimated Number of Respondents: 25 manufacturers and importers of walk-behind power lawn mowers have been identified.

Estimated Time per Response: Walk-behind power lawn mowers are manufactured seasonally to meet demand. They are manufactured during an estimated 130 days out of the year. When they are manufactured, firms are required to test and maintain records of those tests. Three hours daily is estimated for testing and recordkeeping

per firm totaling 390 hours per firm (3 hours × 130 days). In addition, to produce labels and apply labels on the newly manufactured lawn mowers, one hour daily is estimated for each firm during the production cycle for a total of 130 hours per firm (1 hour × 130 days).

Total Estimated Annual Burden: 9,750 hours on testing and recordkeeping (25 firms × 390 hours) and 3,250 hours for labeling (25 firms × 130 hours) for a total annual burden of 13,000 hours per year.

General Description of Collection: In 1979, the Commission issued the Safety Standard for Walk-Behind Power Lawn Mowers (16 CFR part 1205) to address blade contact injuries. Subpart B of the standard sets forth regulations prescribing requirements for a reasonable testing program to support certificates of compliance with the standard for walk-behind power lawn mowers. 16 CFR part 1205, subpart B.

In addition, section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires manufacturers, importers, and private labelers of a consumer product subject to a consumer product safety standard to issue a certificate stating that the product complies with all applicable consumer product safety standards. Section 14(a) of the CPSA also requires that the certificate of compliance must be based on a test of each product or upon a reasonable testing program. The information collection is necessary because these regulations require manufacturers and importers to establish and maintain records to demonstrate compliance with the requirements for testing and labeling to support the certification of compliance.

Dated: February 18, 2016.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2016–03700 Filed 2–22–16; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Establishment of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Establishment of Federal Advisory Committee.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that it is establishing the charter for the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (''the Committee'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: This committee's charter is being established pursuant to section 546 of the National Defense Authorization Act for Fiscal Year 2015 (FY 2015 NDAA), as modified by section 537 of the National Defense Authorization Act for Fiscal Year 2016 (FY2016 NDAA), and in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(a). The Committee's charter and contact information for the Committee's Designated Federal Officer (DFO) can be obtained at *http://www.facadatabase.gov/*.

The Committee provides the Secretary of Defense, through the General Counsel of the Department of Defense, advice on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces. Not later than March 30 of each year, the Committee will submit a report describing the results of its activities during the preceding year to the Secretary of Defense and the Committees on Armed Services of the Senate and House of Representatives.

The Committee will be composed of no more than 20 members who have experience with the investigation, prosecution, and defense of allegations of sexual assault offenses. Members may include Federal and State prosecutors, judges, law professors, and private attorneys, but individuals serving on active duty in the Armed Forces may not be appointed to the Committee. Members who are not full-time or permanent part-time Federal officers or employees will be appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as special government employee members. Members who are full-time or permanent part-time Federal officers or employees will serve as regular government employee members.

All members are appointed to provide advice on behalf of the Government on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official Committee-related travel and per diem, members serve without compensation.

The DoD, as necessary and consistent with the Committee's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Committee, and all subcommittees must operate under the provisions of FACA and the Government in the Sunshine Act. Subcommittees will not work independently of the Committee and must report all their recommendations and advice solely to the Committee for full deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Committee. No subcommittee or any of its members can update or report, verbally or in writing, directly to the DoD or any Federal officers or employees. The Committee's DFO, pursuant to DoD policy, must be a full-time or permanent part-time DoD employee. The DFO or a properly approved Alternate DFO, is required to be in attendance at all Committee/subcommittee meetings for the duration of each and every meeting. The public or interested organizations may submit written statements to Committee membership about the Committee's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Committee. All written statements shall be submitted to the DFO for the Committee, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: February 18, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–03749 Filed 2–22–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2016–HQ–0003]

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Army announces a proposed public information collection and seeks public comment on the provisions 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 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 April 25, 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 the Army Marketing and Research Group, ATTN: Mrs. Crystal G. Deleon, 200 Stovall Street, Hoffman II Room 4N29 or call 703–545–3476.

SUPPLEMENTARY INFORMATION: *Title; Associated Form; and OMB Number:* DA Civilian Employment and Marketing Feedback; Control Number 0702–XXXX.

Needs and Uses: The information collection requirement is necessary to provide the data needed to understand the best marketing strategies to raise awareness of Army Civilian Brand and spark interest in Army civilian employment opportunities with the ultimate goal of filling critical DA occupations.

Affected Public: Individuals or Households.

Annual Burden Hours: 192.

Number of Respondents: 128.

Responses per Respondent: 1.

Annual Responses: 128.

Average Burden per Response: 1.5 Hours.

Frequency: One-Time.

The purpose of this collection is to provide qualitative and quantitative data to the Department of the Army (DA) on the civilian workforce's attitudes, perceptions, and awareness of civilian career opportunities within the Federal Government, and the Army. The DA maintains a listing of professional and technical skill sets that are critical to the Service's needs of today and tomorrow. The collection, compilation, and analysis of the new qualitative and quantitative data is imperative to the DA's marketing and recruitment strategy for informing, identifying, and ultimately hiring those identified with the skill sets necessary for a sustainable DA. Attention will be focused in particular on DA Civilian critical occupations with current or projected shortfalls to set specific marketing objectives, goals, and strategies for these critical skill areas. Information for this study will be collected in two phases. Phase I will be qualitative (focus groups) and Phase II will be quantitative (survey). This is a one-time data collection anticipated to be completed within approximately six months of OMB approval.

The data collected from these activities will be supplemented with reviews of recent Army branding and marketing practices as well as of recent and projected hiring needs into DA Civilian jobs. Respondents for both the focus groups and quantitative study will be individuals currently employed in the private sector in occupations deemed essential by the Army or individuals who are considering careers in these essential occupations. Quota groups will be established to ensure there is an adequate representation of career stage (pre-, early- and mid) among volunteers. Focus group data will be collected via moderator-led discussions. Quantitative study data will be collected via a questionnaire administered online. Participation in the focus groups and quantitative study will be voluntary. The data collection will focus on awareness and knowledge of DA Civilian job opportunities; comparison of DA Civilian vs. private jobs/careers across key dimensions; most important reasons to seek civilian employment in the Army; perceived negative aspects of Army Civilian employment; reactions to facts and marketing concepts concerning Army Civilian employment; and intended behaviors concerning applying for civilian employment in the Army or recommending to others that they do so.

Dated: February 17, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–03653 Filed 2–22–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2016–HQ–0004]

Proposed Collection; Comment Request

AGENCY: PEO Aviation, PM Aviation Systems, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for the Department of the Army announces a proposed public information collection and seeks public comment on the provisions 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 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 April 25, 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 the U.S. Army PEO Aviation, Product Director Aviation Networks and Mission Planning (SFAE–AV–AS–ANMP) ATTN: George C. Goodman Jr. Sparkman Center, Building 5309, Redstone Arsenal, Alabama 35898, Phone (256) 842–4995.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Individual Flight Record and Flight Certificate-Army, DA Form 759 series; Commanders Task List, DA Form 7120–R series; Crew Member Training Record, DA Form 7122–R; Crew Member Grade Slip, DA Form 4507–R series; Certificate For Performance of Hazardous Duty, DA Form 4730; Medical Recommendation For Flying or Special Operational Duty, DD Form 2992; Army Aviator's Flight Record, DA Form 2408–12; Technical Report of U.S. Army Aircraft Accident, DA Form 2397–8; Air Traffic Services (ATS); Individual Air Traffic Control Training and Proficiency Record, DA Form 3479–R and associated forms, OMB Number 0720–XXXX.

Needs and Uses: The information collection requirement is necessary to obtain and retain flying experience, qualifications and training data of each aviator, crew member, Unmanned Aircraft System (UAS) operator, flight surgeon and aeromedical physician assistants in aviation service; and to monitor and manage individual contractor flight and ground personnel records. Leadership uses CAFRS to determine proficiency of Air Traffic Controllers and Air Traffic Control Maintenance Technicians and the reliability of the Air Traffic Control system operations within the Department of the Army. CAFRS is a decision support system for automated mission planning, risk assessment and risk mitigation that supports Mission Command functions within Aviation units. CAFRS supports the Aviation Commander's decision making process required to complete the Aviation Risk Assessment Worksheet (RAW) that provides the assessment tools to match personnel qualifications, operations tempo to aircraft type, and mission needs. The CAFRS application, a sub-system of the Aviation Mission Planning System (AMPS), provides aircrew member flight hours, aircraft currency, qualification and training history in order to accomplish effective risk assessment/risk mitigation throughout the Aviation Mission Planning Process.

Affected Public: Individuals or Households.

Annual Burden Hours: 111.

Number of Respondents: 1,765.

Responses per Respondent: 1.5.

Annual Responses: 2,647.5.

Average Burden per Response: 2.5 Minutes.

Frequency: On Occasion, Weekly, and Daily.

Respondents are contractors. The CAFRS system collection of information manages qualification and training records for aviation personnel. The system provides the Army's senior level leadership visibility over aviation flight operations information to assist in resource, readiness, and personnel management decision-making.

Dated: February 17, 2016.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2016–03671 Filed 2–22–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2016–HQ–0003]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Navy announces a proposed public information collection and seeks public comment on the provisions 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 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 April 25, 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: Commander, Navy Installation Command, Housing Division, 716 Sicard Street SE., Suite 1000, Washington DC 20374–5140, ATTN: HOMES.mil System Manager, or call the HOMES.mil System Manager, at 202–433–3580.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Enterprise Military Housing; OMB Control Number 0703–XXXX.

Needs and Uses: The information collection requirement supports relocation assistance to military members and their families. Data collected include information on community rental housing costs/availability and home finding services. *https://www.Homes.mil/HEAT* allows Service Members to remotely initiate contact with the housing office and request services and housing information. Rental property listing information may also be used to support

the annual DoD survey used to determine Basic Allowance for Housing (BAH) and Overseas Housing Allowance (OHA). Rental listing costs and amenities provide valuable information about the affordability of housing near military installations

Affected Public: Individual or households; Business or other for-profit.

Annual Burden Hours: 11,533.

Number of Respondents: 6,920.

Responses per Respondent: 5.

Annual Responses: 34,600.

Average Burden per Response: 20 minutes.

Frequency: On occasion.

Summary of Information Collection

Community property owners and managers establish an account to publish property listings for Service Members to review. The property owner and manager information allows military housing offices to validate property owners and managers intentions to list properties on the public Web site for renting to service members. Property owner and manager names and contact information, along with information about their rental properties is displayed on the Web site, allowing services members to make contact if interested in their listings.

Information collected on the Web site is also used to create metrics on the use and success of the Web site, *i.e.,* quantitative metrics on rental listings, listing costs and amenities, and metrics on the number of views by page. Listing information may also be used to support the annual DoD survey for the Basic Allowance for Housing (BAH) and the Overseas Housing Allowance (OHA).

Dated: February 17, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–03632 Filed 2–22–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0021]

Agency Information Collection Activities; Comment Request; Streamlined Clearance Process for Discretionary Grants

AGENCY: Office of the Secretary (OS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before April 25, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0021. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E105, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Alfreida Pettiford, 202–245–6110.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Streamlined Clearance Process for Discretionary Grants.

OMB Control Number: 1894–0001.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 1.

Total Estimated Number of Annual Burden Hours: 1.

Abstract: Section 3505(a)(2) of the PRA of 1995 provides the OMB Director authority to approve the streamlined clearance process proposed in this information collection request. This information collection request was originally approved by OMB in January of 1997. This information collection streamlines the clearance process for all discretionary grant information collections which do not fit the generic application process. The streamlined clearance process continues to reduce the clearance time for the U.S. Department of Education's (ED's) discretionary grant information collections by two months or 60 days. This is desirable for two major reasons: It would allow ED to provide better customer service to grant applicants and help meet ED's goal for timely awards of discretionary grants.

Dated: February 18, 2016.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–03746 Filed 2–22–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0140]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Federal Direct Stafford/Ford Loan and Federal Direct Subsidized/ Unsubsidized Stafford/Ford Loan Master Promissory Note

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before March 24, 2016.

ADDRESSES: To access and review all the documents related to the information

collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2015–ICCD–0140. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Jon Utz, 202–377–4040.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Federal Direct Stafford/Ford Loan and Federal Direct Subsidized/Unsubsidized Stafford/Ford Loan Master Promissory Note.

OMB Control Number: 1845–0007.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 5,027,286.

Total Estimated Number of Annual Burden Hours: 2,513,643.

Abstract: The Federal Direct Stafford/Ford Loan (Direct Subsidized Loan) and Federal Direct Unsubsidized Stafford/Ford Loan (Direct Unsubsidized Loan) Master Promissory Note (MPN) serves as the means by which an individual agrees to repay a Direct Subsidized Loan and/or Direct Unsubsidized Loan. An MPN is a promissory note under which a borrower may receive loans for a single or multiple academic years. This revision incorporates changes to information based on statutory and regulatory changes as well as expanding repayment plan information, deleting outdated information and clarifying information through updated charts and language.

Dated: February 18, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–03707 Filed 2–22–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Executive Summit on Marine and Hydrokinetic (MHK) Research and Development

AGENCY: Wind and Water Power Technologies Office, Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of the Executive Summit on Marine and Hydrokinetic Research and Development.

SUMMARY: The Wind and Water Power Technologies Office within the U.S. Department of Energy (DOE) intends to hold an Executive Summit on Marine and Hydrokinetic (MHK) Research and Development (''Summit'') from 9:00 a.m. to 5:30 p.m. in Washington, DC on March 2, 2016. Through this initiative, the Wind and Water Power Technologies Office, together with executive members from the Department of Energy, the national laboratories, and the MHK energy industry, intends to showcase DOE's water power energy investments in the national laboratories and to identify activities ripe for technology transfer.

DATES: DOE will host the Summit from 9:00 a.m. to 5:30 p.m. on Wednesday, March 2, 2016.

ADDRESSES: The Summit will be held at the Newseum, 555 Pennsylvania Ave. NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Alison LaBonte, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585. Telephone: (202) 287–1350. Email: *mhk.summit@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background

The U.S. Department of Energy (DOE) is hosting a summit to target executive members from DOE, the national laboratories, and the marine and hydrokinetic (MHK) energy industry to showcase DOE's MHK investments in the national laboratories and identify activities ripe for technology transfer. By participating in this summit, attendees will have a unique opportunity to hear firsthand about important innovations in the MHK research community, DOE's Small Business Voucher program (Round 2), and DOE's research and development priorities for ocean wave, tidal, current, and river energy.

The Wind and Water Power Technologies Office (WWPTO) has selected subject matter experts from DOE, the National Renewable Energy Laboratory, Sandia National Laboratories, and Pacific Northwest National Laboratory to discuss DOE's MHK initiatives associated with facilitating industry engagement with the national laboratories. In particular, the Summit will hold sessions that discuss cutting-edge department activities that accelerate the deployment of MHK technologies through improved performance, lowered costs, and reduced market barriers. The Summit will also feature a session where industry representatives will discuss how to fulfill industry-wide research priorities, maintain feedback loops throughout the research and development process, and how to engage with private sector partners.

Public Participation

The event is open to the public based upon space availability. DOE will also accept public comments as described above for purposes of better understanding the MHK industry and challenges associated with increased deployment. These comments may be submitted at *mhk.summit@ee.doe.gov.*

Participants should limit information and comments to those based on

personal experience, individual advice, information, or facts regarding this topic. It is not the object of this session to obtain any group position or consensus from the meeting participants. To most effectively use the limited time, please refrain from passing judgment on another participant's recommendations or advice, and instead, concentrate on your individual experiences.

Following the meeting, a summary will be compiled by DOE and posted for public comment. For those interested in providing additional public comment, the summary will be posted at *water.energy.gov*.

Issued on February 17, 2016, in Washington, DC.

José Zayas,

Director, Wind and Water Power Technologies Office, Office of Energy Efficiency and Renewable Energy.

[FR Doc. 2016–03764 Filed 2–22–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FFP Project 92, LLC; Project No. 14276–002; AD13–9–000]

Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations, 18 Code of Federal Regulations (CFR) Part 380, the Office of Energy Projects has reviewed the application for original license for the Kentucky River Lock and Dam No. 11 Hydroelectric Project (FERC Project No. 14276–002). The proposed project would be located on the Kentucky River in Estill and Madison Counties, Kentucky, at the existing Kentucky River Lock and Dam No. 11 which is owned by the Commonwealth of Kentucky and operated by the Kentucky River Authority. The project would not occupy federal land.

Staff prepared an environmental assessment (EA), which analyzes the potential environmental effects of licensing the project, and concludes that licensing the project, with appropriate environmental protection measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice. The Commission strongly encourages electronic filings. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include ''Kentucky River Lock and Dam No. 11 Hydroelectric Project No. 14276–002.''

For further information, contact Sarah Salazar at (202) 502–6863, or by email at *sarah.salazar@ferc.gov.*

Dated: February 12, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–03614 Filed 2–22–16; 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: RP16–601–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 02/10/16 Negotiated Rates—Mercuria Energy Gas Trading LLC (HUB) 7540–89 to be effective 2/10/2016.

Filed Date: 2/10/16.

Accession Number: 20160210–5110.

Comments Due: 5 p.m. ET 2/22/16.

Docket Numbers: RP16–602–000.

Applicants: East Cheyenne Gas Storage, LLC.

Description: Compliance filing ECGS Order No. 587–W Compliance filing 2–10–16 to be effective 4/1/2016.

Filed Date: 2/10/16.

Accession Number: 20160210–5113.

Comments Due: 5 p.m. ET 2/22/16.

Docket Numbers: RP16–603–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: TETLP Feb2016 Cleanup Filing for Rate Schedule FT–1 to be effective 3/14/2016.

Filed Date: 2/11/16.

Accession Number: 20160211–5046.

Comments Due: 5 p.m. ET 2/23/16.

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: February 11, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–03618 Filed 2–22–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL15–79–000]

TransSource, LLC v. PJM Interconnection, LLC; Notice of Amended and Restated Complaint

Take notice that on February 10, 2016, pursuant to Rules 206 and 215 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 and 385.215, TransSource, LLC (Complainant), filed an amended and restated complaint to update its original complaint filed on June 23, 2015 against PJM Interconnection, LLC (Respondent),

alleging that Respondent violated the Federal Power Act (FPA) and Commission's orders implementing the FPA by failing to provide Complainant with open access on a nondiscriminatory basis to the Respondent transmission planning process and to Auction Revenue Rights associated with transmission upgrades Complainant proposed to Respondent, as more fully explained in the amended and restated complaint.

Complainant certifies that copies of the amended and restated complaint were served on the contacts for Respondent as listed on the Commission's list of Corporate Officials. Complainant also served all parties listed on the service list for Docket No. EL15–79–000.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for 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 March 1, 2016.

Dated: February 12, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–03619 Filed 2–22–16; 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: EC16–72–000.

Applicants: Prairie Breeze Wind Energy II LLC, Prairie Breeze Wind Energy III LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act and Request for Waivers, Confidential Treatment, and Expedited Consideration of Prairie Breeze Wind Energy II LLC and Prairie Breeze Wind Energy III LLC.

Filed Date: 2/16/16.

Accession Number: 20160216–5218.

Comments Due: 5 p.m. ET 3/8/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–722–000.

Applicants: Current Power & Gas Inc.

Description: Supplement to January 13, 2016 Current Power & Gas Inc. tariff filing.

Filed Date: 2/9/16.

Accession Number: 20160209–5020.

Comments Due: 5 p.m. ET 3/1/16.

Docket Numbers: ER16–736–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment to ER16–736 re: RTEP Projects Approved by Board in Dec 2015 to be effective 2/11/2016.

Filed Date: 2/12/16.

Accession Number: 20160212–5247.

Comments Due: 5 p.m. ET 3/4/16.

Docket Numbers: ER16–938–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: APS Energy Imbalance Market OATT Revisions to be effective 5/1/2016.

Filed Date: 2/12/16.

Accession Number: 20160212–5255.

Comments Due: 5 p.m. ET 3/4/16.

Docket Numbers: ER16–943–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2016–02–16_SA 2896 METC–WPSC GIA (J392) to be effective 2/17/2016.

Filed Date: 2/16/16.

Accession Number: 20160216–5166.

Comments Due: 5 p.m. ET 3/8/16.

Docket Numbers: ER16–944–000.

Applicants: Quantum Lake Power, LP.

Description: Tariff Cancellation: Notice of Cancellation of Market-Based Rate Tariff to be effective 4/18/2016.

Filed Date: 2/16/16.

Accession Number: 20160216–5190.

Comments Due: 5 p.m. ET 3/8/16.

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: February 16, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–03616 Filed 2–22–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meeting related to the transmission planning activities of the New York Independent System Operator, Inc.

The New York Independent System Operator, Inc. Installed Capacity Working Group and Electric System Planning Working Group Meeting

February 19, 2016, 9:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/calendar/index.jsp.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

New York Independent System Operator, Inc., Docket No. ER13–102.

New York Independent System Operator, Inc., Docket No. ER15–2059.

New York Independent System Operator, Inc., Docket No. ER16–120.

New York Independent System Operator, Inc., Docket No. ER13–1942.

New York Transco, LLC, Docket No. ER15–572.

For more information, contact James Eason, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8622 or *James.Eason@ferc.gov.*

Dated: February 16, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–03620 Filed 2–22–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–528–000]

Equitrans, LP; Notice of Schedule for Environmental Review of the TP–371 Replacement Project

On July 10, 2015, Equitrans, LP (Equitrans) filed an application in Docket No. CP15–528–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities, and permission under Section 7(b) of the Natural Gas Act to abandon in place an existing segment of pipeline. The proposed project, known as the TP–371 Pipeline Replacement Project, would upgrade the existing system to allow for in-line inspection and improve operational efficiency and reliability. No change in the transportation capacity of the existing pipeline system is proposed.

On July 23, 2015, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the project. Among other things, the Notice of Application alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the project.

Schedule for Environmental Review

Issuance of EA February 29, 2016
90-Day Federal Authorization Decision Deadline May 31, 2016

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the project's progress.

Project Description

The project would include construction of 20.9 miles of 20-inch-diameter natural gas pipeline and related facilities, and abandonment of the adjacent 12-inch-diameter pipeline. Minor aboveground facilities would also be constructed, relocated, or abandoned. The project would be located in Armstrong and Indiana Counties, Pennsylvania.

Background

On August 19, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed TP–371 Pipeline Replacement Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries, newspapers, and radio stations. In response to the NOI, the Commission received environmental comments from the Pennsylvania Department of Conservation and Natural Resources, Consol Energy Inc., Allegheny Defense Project, combined comments from the Allegheny Defense Project and the Ohio Valley Environmental Coalition, and one landowner. The primary issues raised by the commentors included impacts on community parks and recreation projects; vegetation; mining properties, and cumulative impacts; unauthorized access of the right-of-way; future upgrades of the Equitrans system; and natural gas production methods.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC Web site (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.*, CP15–528), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: February 12, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–03612 Filed 2–22–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–63–000.

Applicants: High Lonesome Mesa, LLC.

Description: Amendment to January 27, 2016 Application for authorization for disposition of jurisdictional facilities under Section 203 of the FPA of High Lonesome Mesa, LLC.

Filed Date: 2/12/16.

Accession Number: 20160212–5273.

Comments Due: 5 p.m. ET 2/22/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–945–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Notice of Termination by Midcontinent Independent System Operator, Inc. of Service Agreements Nos. 568 and 569 among Northern Indiana Public Service Company and the Indiana Municipal Power Agency under ER16–945.

Filed Date: 2/16/16.

Accession Number: 20160216–5254.

Comments Due: 5 p.m. ET 3/8/16.

Docket Numbers: ER16–946–000.

Applicants: ISO New England Inc.

Description: § 205(d) Rate Filing: Rev. to Schedules 22, 23 & 25 of the OATT Relating to Interconnection Process to be effective 4/17/2016.

Filed Date: 2/16/16.

Accession Number: 20160216–5279.
Comments Due: 5 p.m. ET 3/8/16.

Docket Numbers: ER16–947–000.
Applicants: Big Sandy Peaker Plant, LLC, Wolf Hills Energy, LLC, Middle River Power II, LLC.
Description: Joint Request of Big Sandy Peaker Plant, LLC, Wolf Hills Energy, LLC and Middle River Power II LLC for Waiver and Request for Expedited Consideration.
Filed Date: 2/16/16.
Accession Number: 20160216–5278.
Comments Due: 5 p.m. ET 3/8/16.

Docket Numbers: ER16–948–000.
Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.
Description: Compliance filing: 2016–02–16_SA 2897 OTP–GRE FSA Compliance to be effective 8/26/2015.
Filed Date: 2/16/16.
Accession Number: 20160216–5292.
Comments Due: 5 p.m. ET 3/8/16.

Docket Numbers: ER16–949–000.
Applicants: Escalante Solar I, LLC.
Description: § 205(d) Rate Filing: Tenant In Common and Shared Facilities Agreement to be effective 4/2/2016.
Filed Date: 2/16/16.
Accession Number: 20160216–5301.
Comments Due: 5 p.m. ET 3/8/16.

Docket Numbers: ER16–950–000.
Applicants: Escalante Solar II, LLC.
Description: § 205(d) Rate Filing: Tenant in Common and Shared Facilities Agreement to be effective 4/2/2016.
Filed Date: 2/16/16.
Accession Number: 20160216–5305.
Comments Due: 5 p.m. ET 3/8/16.

Docket Numbers: ER16–951–000.
Applicants: Escalante Solar III, LLC.
Description: § 205(d) Rate Filing: Tenant In Common and Shared Facilities Agreement to be effective 4/2/2016.
Filed Date: 2/16/16.
Accession Number: 20160216–5306.
Comments Due: 5 p.m. ET 3/8/16.

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: February 16, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–03617 Filed 2–22–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14726–000]

Pyramid Lake Paiute Tribe; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On November 3, 2015, the Pyramid Lake Paiute Tribe (Pyramid Lake) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Prosser Creek Hydroelectric Project (project) to be located at the existing Bureau of Reclamation's Prosser Creek Dam on Prosser Creek, near the City of Truckee, Nevada County, California. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Prosser Creek Reservoir has a usable storage capacity of 29,800 acre-feet at a normal maximum elevation of 5,741.2 feet, of which up to 20,000 acre-feet is required for flood control purposes between November and June annually. The proposed project would utilize the existing intake structure in Prosser Creek Reservoir, the two 9.5-foot arched concrete conduits, and the discharge channel on the downstream side of the BOR Prosser Creek Dam. No modifications would be made to these existing structures.

The proposed project would also consist of the following new structures: (1) An approximately 32-foot-wide by 62-foot-long by 33-foot-high powerhouse located on the east side of the primary discharge channel outlet containing two Francis generating units, one smaller 790-kilowatt unit and one larger 2.7-megawatt (MW) unit for a total rated capacity of 3.49 MW; (2) a pressure-rated, concrete, flow-control structure located at the end of the existing low-level outlet that would include control valves to regulate flows to the powerhouse or direct flows to the existing discharge channel during a powerhouse outage; (3) a 48-inch-diameter penstock that conveys water from the existing outlet structures to the powerhouse and directs flow to one or both of the generating units via a common header and control valves; (4) a 50-foot-long tailrace channel extending from the proposed powerhouse to meet the existing outlet channel; (5) a channel training wall leaving the powerhouse on the landside of the tailrace channel; (6) a 650-foot-long, 69-kilovolt (kV) transmission line and electrical substation to interconnect the proposed project to the existing, nearby 69-kV transmission line; (7) and a small parking area at the powerhouse.

Pyramid Lake proposes to develop the proposed project in conformance with the operation of Prosser Creek Dam by the Bureau of Reclamation under the terms of the Truckee River Operating Agreement (TROA) and would generate electricity using the existing flow releases under the terms of the TROA. Pyramid Lake does not propose to alter the timing, condition or the amount of releases from Prosser Creek Reservoir or impair any of the current functions supported by operation of this existing multi-purpose water resources project. The estimated annual generation of the Prosser Creek Hydroelectric Project would be 7.4 gigawatt-hours.

Applicant Contact: Donna Noel, Director of Natural Resources, Pyramid Lake Paiute Tribe, P.O. Box 256, Nixon, Nevada 89424; phone: (775) 574–1000.

FERC Contact: Quinn Emmering; phone: (202) 502–6382.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at

FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14726–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14726) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: February 12, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–03615 Filed 2–22–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2061–099]

Idaho Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to Land Management Plan.

b. *Project No:* 2061–099.

c. *Date Filed:* December 29, 2015.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* Lower Salmon Falls Hydroelectric Project.

f. *Location:* The project is located on the Snake River in Gooding and Twin Falls counties, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* L. Lewis Wardle, Senior Biologist—Licensing Program; *lwardle@idahopower.com;* (208) 388–2964.

i. *FERC Contact:* Krista Sakallaris, (202) 502–6302, *Krista.Sakallaris@ferc.gov*.

j. Deadline for filing comments, motions to intervene, and protests: March 14, 2015.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2061–099.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Request: Idaho Power Company (IPC) filed a five-year compliance report for the Lower Salmon Falls project's approved land management plan as well as proposed updates to the existing plan. Updates include new land-use classification maps based off previously approved changes and modifications to the use classification of private boat docks on conservation and agriculture/grazing land. IPC proposes to change the classification of private boat docks to ''conditional'' in both conservation and agriculture/grazing land-use areas, which are currently listed as allowed and prohibited, respectively. To remain consistent across projects, IPC proposes the modification due to changes in land ownership and land use patterns from open-range grazing to private/rural-residential uses in the project area, as well as at several other IPC projects. IPC states that by listing private boat docks as conditional it would review all applications to ensure the proposal does not have adverse resource effects. Additionally, all dock applications would be required to meet the IPC's existing boat dock standards and applicants would be required to obtain the required state and federal permits and consult with specified resource agencies.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Documents: Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: February 12, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–03613 Filed 2–22–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14728–000]

Pyramid Lake Paiute Tribe; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On November 3, 2015, the Pyramid Lake Paiute Tribe filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Boca Hydroelectric Project (Boca Hydroelectric Project or project) to be located on the Bureau of Reclamation's Boca Dam on the Little Truckee River, near the town of Truckee, Nevada County, California. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Boca Reservoir has a usable storage capacity of 40,900 acre-feet at the normal maximum elevation of 5,601 feet. The proposed project would utilize the existing intake structure in Boca Reservoir and the two 375-foot long, 50-inch steel conduits. The existing 50-inch primary outlet pipes would be modified to remove the existing 42-inch hollow jet valves and to add bifurcations that would connect to the proposed new penstocks.

The proposed project would also consist of the following new facilities: (1) Two new penstocks that connect the existing 50-inch primary outlet pipes to a new 60-inch-diameter penstock via isolation valves to allow flow to be conveyed to the powerhouse from either or both outlet pipes; (2) a 45-foot-long by 45-foot-wide by 40-foot-high powerhouse containing a single Kaplan generating unit rated for 1.6 megawatts at 60 feet of head; (3) a 20 to 40-foot-long tailrace channel that discharges water downstream of the existing outlet channel walls approximately 140 feet from the existing hollow jet valves; (4) a channel training wall consisting of either a sheet pile tied-back channel wall or a concrete cantilever type wall leaving the powerhouse on the landside of the tailrace channel; (5) a step-up transformer installed at the powerhouse generator in order to wheel power onto the grid; (6) a new 700-foot long 12-kilovolt (kV) transmission line to interconnect to an existing 12-kV transmission line owned by Liberty Utilities (the point of interconnection); and (7) appurtenant facilities.

The Pyramid Lake Paiute Tribe proposes to develop the proposed project in conformance with the operation of Boca Dam by the Bureau of Reclamation under the terms of the Truckee River Operating Agreement (TROA) and would generate electricity using the existing flow releases under the terms of the TROA. The Pyramid Lake Paiute Tribe does not propose to alter the timing, condition or the amount of releases from Boca Reservoir or impair any of the current functions supported by operation of this existing multi-purpose water resources project. The estimated annual generation of the Boca Hydroelectric Project would be 3.5 gigawatt-hours.

Applicant Contact: Ms. Donna Noel, Director of Natural Resources, Pyramid Lake Paiute Tribe, P.O. Box 256, Nixon, Nevada 89424; phone: (775) 574–1000.

FERC Contact: Kyle Olcott; phone: (202) 502–8963.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14728–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14728) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: February 12, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–03621 Filed 2–22–16; 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: EC16–52–000.

Applicants: Twin Eagle Resource Management, LLC, TERM Holdings, LLC.

Description: Amendment to December 14, 2015 Application under FPA Section 203 of Twin Eagle Resource Management, LLC, et al.

Filed Date: 2/12/16.

Accession Number: 20160212–5170.

Comments Due: 5 p.m. ET 2/22/16.

Docket Numbers: EC16–70–000.

Applicants: Portsmouth Genco, LLC, Virginia Renewable Power—Portsmouth, LLC.

Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of Portsmouth Genco, LLC, et al.

Filed Date: 2/12/16.

Accession Number: 20160212–5166.

Comments Due: 5 p.m. ET 3/4/16.

Docket Numbers: EC16–71–000.

Applicants: Prairie Breeze Wind Energy III LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act and Request for Waivers and Expedited Action of Prairie Breeze Wind Energy III LLC.

Filed Date: 2/12/16.

Accession Number: 20160212–5168.

Comments Due: 5 p.m. ET 3/4/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2984–025.

Applicants: Merrill Lynch Commodities, Inc.

Description: Notice of Non-Material Change in Status of Merrill Lynch Commodities, Inc.

Filed Date: 2/11/16.

Accession Number: 20160211–5242.

Comments Due: 5 p.m. ET 3/3/16.

Docket Numbers: ER14–543–003.

Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.

Description: Compliance filing: NMPC TSC formula compliance revisions to

OATT Section 14.1 to be effective 7/1/2013.

Filed Date: 2/12/16.

Accession Number: 20160212–5057.

Comments Due: 5 p.m. ET 3/4/16.

Docket Numbers: ER15–1041–004.

Applicants: Prairie Breeze Wind Energy II LLC.

Description: Notification of Change in Facts of Prairie Breeze Wind Energy II LLC.

Filed Date: 2/11/16.

Accession Number: 20160211–5243.

Comments Due: 5 p.m. ET 3/3/16.

Docket Numbers: ER16–236–001.

Applicants: Public Service Company of Colorado.

Description: Tariff Amendment: 2016–2–12_Att O–PSCo–SPS ADIT Formula Deficiency to be effective 1/1/2016.

Filed Date: 2/12/16.

Accession Number: 20160212–5061.

Comments Due: 5 p.m. ET 3/4/16.

Docket Numbers: ER16–239–001.

Applicants: Public Service Company of Colorado.

Description: Tariff Amendment: 20160212_ADIT Deficiency Letter Response to be effective 1/1/2016.

Filed Date: 2/12/16.

Accession Number: 20160212–5105.

Comments Due: 5 p.m. ET 3/4/16.

Docket Numbers: ER16–933–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: GIA and Distribution Service Agmt San Jacinto Project to be effective 1/30/2016.

Filed Date: 2/12/16.

Accession Number: 20160212–5001.

Comments Due: 5 p.m. ET 3/4/16.

Docket Numbers: ER16–934–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Errata to Correct Metadata to Cancellation of SA No. 3249, Queue No. W2–088 to be effective 2/5/2016.

Filed Date: 2/12/16.

Accession Number: 20160212–5021.

Comments Due: 5 p.m. ET 3/4/16.

Docket Numbers: ER16–935–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: GIA & DSA Cameron Ridge II, LLC Cameron Ridge II Project to be effective 1/15/2016.

Filed Date: 2/12/16.

Accession Number: 20160212–5039.

Comments Due: 5 p.m. ET 3/4/16.

Docket Numbers: ER16–936–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2016–02–12_SA 2895 WPSC–WPSC FCA (J392) to be effective 2/13/2016.

Filed Date: 2/12/16.

Accession Number: 20160212–5058.

Comments Due: 5 p.m. ET 3/4/16.

Docket Numbers: ER16–937–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: Revisions to ISO–NE Tariff Related to the Transmission Outage Process to be effective 4/13/2016.

Filed Date: 2/12/16.

Accession Number: 20160212–5144.

Comments Due: 5 p.m. ET 3/4/16.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM16–1–000.

Applicants: Nebraska Public Power District.

Description: Application of Nebraska Public Power District to Terminate Mandatory Purchase Obligation Under the Public Utility Regulatory Policies Act.

Filed Date: 2/12/16.

Accession Number: 20160212–5139.

Comments Due: 5 p.m. ET 3/11/16.

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: February 12, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–03611 Filed 2–22–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0535; FRL–9942–50–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Secondary Lead Smelters (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''NSPS for Secondary Lead Smelters (40 CFR part 60, subpart L) (Renewal)'' (EPA ICR No. 1128.11, OMB Control No. 2060–0080), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through February 29, 2016. Public comments were previously requested via the **Federal Register** (80 FR 32116) on June 5, 2015 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before March 24, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0535, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of

Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is: 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets*.

Abstract: Owners and operators of affected facilities are required to comply with reporting and record keeping requirements for the general provisions of 40 CFR part 60, subpart A, as well as the specific requirements at 40 CFR part 60, subpart L. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with the standards.

Form Numbers: None.

Respondents/affected entities: Secondary lead smelting facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart L).

Estimated number of respondents: 14 (total).

Frequency of response: Initially.

Total estimated burden: 37 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $3,720 (per year); there are neither annualized capital/startup nor operation & maintenance costs.

Changes in the Estimates: In this ICR, there is a decrease in the number of estimated sources from 25 to 14 due to the assumption of a shrinking sector. However, this ICR also modifies the burden item for reading and understanding the rule to include time for all existing sources to re-familiarize themselves with the regulatory requirements every year. As a result, there is no net change in the labor hours compared to the previous ICR. The reduced number of estimated sources also leads to a decrease in the number of responses.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2016–03714 Filed 2–22–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2016–0071; FRL–9942–81–OLEM]

Proposed Information Collection Request; Comment Request; Recordkeeping and Reporting—Solid Waste Disposal Facilities and Practices

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), Recordkeeping and Reporting—Solid Waste Disposal Facilities and Practices; ''(EPA ICR No. 1381.11, OMB Control No. 2050–0122) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through May 31, 2016. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before April 25, 2016.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–RCRA–2015–0682 referencing the Docket ID numbers provided for each item in the text, online using *www.regulations.gov* (our preferred method), by email to *rcra-docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Craig Dufficy, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery, Mail Code 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (703) 308–9037; fax number: (703) 308–8686; email address: *dufficy.craig@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: In order to effectively implement and enforce final changes to 40 CFR part 258 on a State level, owners/operators of municipal solid waste landfills have to comply with the final reporting and recordkeeping requirements. Respondents include owners or operators of new municipal solid waste landfills (MSWLFs), existing MSWLFs, and lateral expansions of existing MSWLFs. The respondents, in complying with 40 CFR part 258, are

required to record information in the facility operating record, pursuant to § 258.29, as it becomes available. The operating record must be supplied to the State as requested until the end of the post-closure care period of the MSWLF. The information collected will be used by the State Director to confirm owner or operator compliance with the regulations under Part 258. These owners or operators could include Federal, State, and local governments, and private waste management companies. Facilities in NAICS codes 9221, 5622, 3252, 3251 and 3253 may be affected by this rule.

Form Numbers: None.

Respondents/affected entities: Business or other for-profit, as well as State, Local, and Tribal governments.

Respondent's obligation to respond: Mandatory, see 40 CFR part 258.29.

Estimated number of respondents: 3,800.

Frequency of response: On occasion.

Total estimated burden: 204,808 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $2,211,000 (per year), includes $1,831,00 annualized capital or operation & maintenance costs.

Changes in Estimates: There is increase of 60 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to the increased number of states adopting the RD&D section (258.4) since the last ICR update.

Dated: February 12, 2016.

Barnes Johnson,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2016–03744 Filed 2–22–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9942–67–OEI]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Courtney Kerwin (202) 566–1669, or email at *kerwin.courtney@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 1688.08; RCRA Expanded Public Participation (Renewal); 40 CFR 270.62, 270.66, 124.31, 124.32, and 124.33; was approved without change on 8/26/2015; OMB Number 2050–0149; expires on 8/31/2018.

EPA ICR Number 2381.03; Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program (Renewal); 40 CFR part 745; was approved without change on 8/27/2015; OMB Number 2070–0181; expires on 8/31/2018.

EPA ICR Number 1715.14; TSCA Section 402 and Section 404 Training and Certification, Accreditation and Standards for Lead-Based Paint Activities and Renovation, Repair, and Painting (Renewal); 40 CFR part 745; was approved without change on 8/27/2015; OMB Number 2070–0155; expires on 8/31/2018.

EPA ICR Number 1669.07; Lead-Based Paint Pre-Renovation Information Dissemination—TSCA sec. 406(b) (Renewal); 40 CFR part 745; was approved without change on 8/27/2015; OMB Number 2070–0158; expires on 8/31/2018.

EPA ICR Number 2205.15; Focus Groups as Used by EPA For Economics Projects (Renewal); was approved without change on 9/29/2015; OMB Number 2090–0028; expires on 9/30/2018.

EPA ICR Number 1608.07; State Program Adequacy Determination: Municipal Solid Waste Landfills (MSWLFs) and Non-Municipal, Non-Hazardous Waste Disposal Units that Receive Conditionally Exempt Small Quantity Generator (CESQG) Hazardous Waste (Renewal); 40 CFR parts 239, 257 and 258; was approved without change on 9/14/2015; OMB Number 2050–0152; expires on 9/30/2018.

EPA ICR Number 0969.10; Final Authorization for Hazardous Waste Management Programs (Renewal); 40 CFR parts 271.5, 271.7, 271.8, 271.20, 271.21, 271.6 and 271.23; was approved without change on 9/14/2015; OMB Number 2050–0041; expires on 9/30/2018.

EPA ICR Number 1057.13; NSPS for Sulfuric Acid Plants (Renewal); 40 CFR part 60, subpart H and A; was approved without change on 9/10/2015; OMB Number 2060–0041; expires on 9/30/2018.

EPA ICR Number 0143.12; Recordkeeping Requirements for Producers, Registrants, and Applicants of Pesticides and Pesticide Devices under Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (Renewal); 40 CFR part 169; was approved without change on 9/10/2015; OMB Number 2070–0028; expires on 9/30/2018.

EPA ICR Number 1049.13; Notification of Episodic Releases of Oil and Hazardous Substances (Renewal); 40 CFR parts 110, 117 and 302; was approved without change on 9/10/2015; OMB Number 2050–0046; expires on 9/30/2018.

EPA ICR Number 1442.22; Land Disposal Restrictions (Renewal); 40 CFR part 268; was approved with change on 9/10/2015; OMB Number 2050–0085; expires on 9/30/2018.

EPA ICR Number 1204.12; Submission of Unreasonable Adverse Effects Information under FIFRA (Renewal); 40 CFR part 159, subpart D; was approved without change on 9/8/2015; OMB Number 2070–0039; expires on 9/30/2018.

EPA ICR Number 2427.03; Aircraft Engines—Supplemental Information Related to Exhaust Emissions (Renewal); 40 CFR part 87; was approved without change on 9/1/2015; OMB Number 2060–0680; expires on 9/30/2018.

Courtney Kerwin,

Acting Director, Collections Strategies Division.

[FR Doc. 2016–03715 Filed 2–22–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

DATE AND TIME: *Thursday, February 25, 2016 at 10:00 a.m.*

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This Meeting Will Be Open To The Public.

ITEMS TO BE DISCUSSED: Draft Advisory Opinion 2015–16: Niger Innis for Congress.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign

language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2016–03787 Filed 2–19–16; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 9, 2016.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Charles W. Ruth, individually and as the sole general partner of ACBT L.P., both of Huntley, Illinois, to individually, and together as a group acting in concert, with ACBT L.P., Helen J. Ruth, Eric L. Ruth, all of Huntley, Illinois, William A. Ruth, Mary H. Ruth, both of Woodstock, Illinois, Emily Ruth Smith, Jonathan R. Smith, both of Lake in the Hills, Illinois, Scott H. Ruth, Marengo, Illinois, Janet L. Smith Trust No. 1 dated December 13, 1994, with Janet L. Smith as trustee, and John J. Smith, all of McHenry, Illinois, and Scott L. Smith,* Royal Oak, Michigan; to acquire voting shares of American Community Financial, Inc., and thereby indirectly acquire voting shares of American Community Bank, both in Woodstock, Illinois.

Board of Governors of the Federal Reserve System, February 18, 2016.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2016–03691 Filed 2–22–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), to approve of and assign OMB numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB number.

DATES: Comments must be submitted on or before April 25, 2016.

ADDRESSES: You may submit comments, identified by *FR 4004* or *FR 4201,* by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov*. Include the OMB control number in the subject line of the message.
- *FAX:* 202–452–3819 or 202–452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW.), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of all comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Reports:

1. Report title: Written Security Program for State Member Banks.

Agency form number: FR 4004.

OMB control number: 7100–0112.

Frequency: On occasion.

Reporters: State member banks.

Number of respondents: 45.

Estimated average hours per response: 0.5 hours.

Estimated annual reporting hours: 23 hours.

Abstract: The board of directors of each state member bank must designate a security officer to assume the responsibility for the development and administration of a written security program within 180 days of opening for business. Each state member bank must develop and implement a written security program for the bank's main office and branches and maintain it in the bank's records. The designated security officer must report at least annually to the bank's board of directors on the implementation, administration, and effectiveness of the written security program. There is no formal reporting form and the information is not submitted to the Federal Reserve.

Legal authorization and confidentiality: This recordkeeping requirement is mandatory pursuant to section 3 of the Bank Protection Act (12 U.S.C. 1882(a)) and Regulation H (12 CFR 208.61). Because written security programs are maintained at state member banks, no issue of confidentiality under the Freedom of Information Act (FOIA) normally arises. However, copies of such documents included in examination work papers would, in such form, be confidential pursuant to exemption 8 of FOIA (5 U.S.C. 552(b)(8)). In addition, the records may also be exempt from disclosure under exemption 4 of FOIA (5 U.S.C. 552(b)(4)).

2. Report title: Risk-Based Capital Guidelines: Market Risk.

Agency form number: FR 4201.

OMB control number: 7100–0314.

Frequency: Varied—some requirements are done at least quarterly and some at least annually.

Reporters: State member banks, bank holding companies, and certain savings and loan holding companies.

Number of respondents: 28.

Estimated burden per respondent: 1,964 hours.

Total estimated annual burden: 54,992 hours.

Abstract: The market risk rule is an important component of the Board's regulatory capital framework (12 CFR 217) that requires banking organizations to measure and hold capital to cover their exposure to market risk. On July 2, 2013, the Federal Reserve adopted a revised regulatory capital framework, including the market risk rule, which was expanded to include certain savings and loan holding companies. The information-collection requirements in the market risk rule provide the most current statistical data available to identify areas of market risk on which to focus for onsite and offsite examinations and allow the Federal Reserve to assess and monitor the levels and components of each reporting institution's risk-based capital requirements for market risk and the adequacy of the institution's capital under the market risk rule. The reporting, recordkeeping, and disclosure requirements are found in sections 12 CFR 217.203–217.210, and 217.212. These requirements enhance risk sensitivity and introduce requirements for public disclosure of certain qualitative and quantitative information about a financial institution's market risk. There are no required reporting forms associated with this information collection.

Legal authorization and confidentiality: The FR 4201 is authorized under 12 U.S.C. 324, 1844(c), and 1467a(b)(2)(A). Information collected pursuant to the reporting requirements of the FR 4201 (specifically, information related to seeking regulatory approval for the use of certain incremental and comprehensive risk models and methodologies under sections 217.208 and 217.209) is exempt from disclosure pursuant to exemption (b)(8) of FOIA (5 U.S.C. 552(b)(8)), and exemption (b)(4) of FOIA (5 U.S.C. 552(b)(4)). Exemption (b)(8) applies because the reported information is contained in or related to examination reports. Exemption (b)(4) applies because the information provided to obtain regulatory approval of the incremental or comprehensive risk models is confidential business information the release of which could cause substantial competitive harm to the reporting company. The recordkeeping requirements of the FR 4201 require banking organizations to maintain documentation regarding certain policies and procedures, trading and hedging strategies, and internal models. These documents would remain on the premises of the banking organizations and accordingly would not generally be subject to a FOIA request. To the extent these documents are provided to the regulators, they would be exempt under exemption (b)(8), and may be exempt under exemption (b)(4). Exemption (b)(4) protects from disclosure ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' The disclosure requirements of the FR 4201 do not raise any confidentiality issues because they require banking organizations to make certain information public.

Board of Governors of the Federal Reserve System, February 18, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–03711 Filed 2–22–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (''OMB'') to extend for an additional three years the current Paperwork Reduction Act (''PRA'') clearance for the FTC's enforcement of the information collection requirements in its regulation ''Duties of Furnishers of Information to Consumer Reporting Agencies'' (''Information Furnishers Rule''), which applies to certain motor vehicle dealers, and its shared enforcement with the Consumer Financial Protection Bureau (''CFPB'') of the furnisher provisions (subpart E) of the CFPB's Regulation V regarding other entities. That clearance expires on August 31, 2016.

DATES: Comments must be filed by April 25, 2016.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Information Furnishers Rule, PRA Comment, P135407,'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/infofurnishersrulepra,* by following the instructions on the web-based form.

If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Monique Einhorn, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, (202) 326–2575, 600 Pennsylvania Ave. NW., CC–8232, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').[1] The Dodd-Frank Act substantially changed the federal legal framework for financial services providers. Among the changes, the Dodd-Frank Act transferred to the CFPB most of the FTC's rulemaking authority for the furnisher provisions of the Fair Credit Reporting Act (''FCRA''),[2] on July 21, 2011.[3] For certain other portions of the FCRA, the FTC retains its rulemaking authority.[4]

The FTC retains rulemaking authority for its Information Furnishers Rule solely for motor vehicle dealers described in section 1029(a) of the Dodd-Frank Act that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.[5]

In addition, the FTC retains its authority to enforce the furnisher provisions of the FCRA and the FTC and CFPB rules issued under those provisions. Thus, the FTC and CFPB have overlapping enforcement authority for many entities subject to the CFPB rule and the FTC has sole enforcement authority for the motor vehicle dealers subject to the FTC rule.

On December 21, 2011, the CFPB issued its interim final FCRA rule, including the furnisher provisions (subpart E) of CFPB's Regulation V.[6] Contemporaneous with that issuance, the CFPB and FTC had each submitted to OMB, and received its approval for, the agencies' respective burden estimates reflecting their overlapping enforcement jurisdiction, with the FTC supplementing its estimates for the enforcement authority exclusive to it regarding the class of motor vehicle dealers noted above. The discussion below continues that analytical framework, as appropriately updated or otherwise refined for instant purposes.

Burden statement:

Under the PRA, 44 U.S.C. 3501–3521, Federal agencies must get OMB approval for each collection of information they conduct or sponsor. ''Collection of information'' includes agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). The FTC is seeking clearance for its assumed share of the estimated PRA burden regarding the disclosure requirements under the FTC and CFPB Rules.

Under section 660.3 of the FTC's Information Furnishers Rule[7] and section 1022.42 of the CFPB Rule,[8] furnishers must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that they furnish to a consumer reporting agency (''CRA'').[9] Section 660.4 of the FTC Rule and section 1022.43 of the CFPB Rule require that entities which furnish information about consumers to a CRA respond to direct disputes from consumers. These provisions also require that a furnisher notify consumers by mail or other means (if authorized by the consumer) within five business days after making a determination that a dispute is frivolous or irrelevant (''F/I dispute'').

The FTC's currently cleared burden totals, post-adjustment for the effects of the Dodd-Frank Act, are 10,607 hours with $453,297 in associated labor costs.[10] Estimated capital/non-labor costs remain listed as $0 because Commission staff maintains its belief that the Rule imposes negligible capital or other non-labor costs, as the affected entities are already likely to have the necessary supplies and/or equipment (*e.g.,* offices and computers) for the information collections within the Rule. The only estimates that FTC staff believes warrant revision are labor costs, for which newer outside data are available to inform them. The details that follow underlie the FTC's existing burden estimates and updated labor cost estimates.

Estimated number of respondents: 3,986[11]

Section 660.3 of FTC Rule/Section 1022.42 of CFPB Rule

A. Burden Hours

Yearly recurring burden of 2 hours for training[12] to help ensure continued compliance regarding written policies and procedures for the accuracy and integrity of the information furnished to a CRA about consumers.

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

[2] 15 U.S.C. 1681 *et seq.*

[3] Dodd-Frank Act, § 1061. This date was the ''designated transfer date'' established by the Treasury Department under the Dodd-Frank Act. *See* Dep't of the Treasury, *Bureau of Consumer Financial Protection; Designated Transfer Date,* 75 FR 57252, 57253 (Sept. 20, 2010); *see also* Dodd-Frank Act, § 1062.

[4] The Dodd-Frank Act does not transfer to the CFPB rulemaking authority for FCRA sections 615(e) (''Red Flag Guidelines and Regulations Required'') and 628 (''Disposal of Records''). *See* 15 U.S.C. 1681s(e); Public Law 111–203, section 1088(a)(10)(E). Accordingly, the Commission retains full rulemaking authority for its ''Identity Theft Rules,'' 16 CFR part 681, and its rules governing ''Disposal of Consumer Report Information and Records,'' 16 CFR part 682. *See* 15 U.S.C. 1681m, 1681w.

[5] *See* Dodd-Frank Act, § 1029(a), (c).

[6] 76 FR 79308 (Dec. 21, 2011).

[7] 16 CFR part 660.

[8] 12 CFR part 1022.

[9] The rule defines a ''furnisher'' as an entity that furnishes information relating to consumers to one or more CRAs for inclusion in a consumer report, but provides that an entity is not a furnisher when it: Provides information to a CRA solely to obtain a consumer report for a permissible purpose under the FCRA; is acting as a CRA as defined in section 603(f) of the FCRA; is an individual consumer to whom the furnished information pertains; or is a neighbor, friend, or associate of the consumer, or another individual with whom the consumer is acquainted or who may have knowledge about the consumer's character, general reputation, personal characteristics, or mode of living in response to a specific request from a CRA.

[10] OMB Control No. 3084–0144.

[11] Given the broad scope of furnishers, it is difficult to determine precisely the number of them that are subject to the FTC's jurisdiction. Nonetheless, Commission staff estimated that the regulations affect approximately 6,133 such furnishers. *See* 74 FR 31484, 31505 n. 56 (July 1, 2009 FTC and Federal financial agencies final rules). It is equally difficult to determine precisely the number of motor vehicle dealers that furnish information related to consumers to a CRA for inclusion in a consumer report. For purposes of estimating its motor vehicle dealer furnisher carve-out, the FTC has assumed that 30% of the 6,133 furnishers, or 1,840 furnishers, constitute the number of motor vehicle dealers over which the FTC retains exclusive jurisdiction under the Dodd-Frank Act. To derive this 30% estimate, Commission staff divided an estimated number of car dealers—55,417 (based on industry data for the number of franchise/new car and independent/used car dealers) by 199,500 (Commission staff's PRA estimate of the number of entities that extend credit to consumers subject to FTC jurisdiction under the FCRA, pre-Dodd-Frank, for the Risk-Based Pricing regulations, as detailed at 75 FR 2724, 2748 n.18 (Jan. 15, 2010)). This came out to 28%. Staff increased this amount to 30% to account for other motor vehicle dealer types (motorbikes, boats, other recreational) also covered within the definition of ''motor vehicle dealer'' under section 1029(a) of the Dodd-Frank Act. The resulting apportionment for motor vehicle dealers was subtracted from the base figure (6,133) to determine the net amount (4,293) subject to 50:50 apportionment (approximately 2,146 each) between the FTC and CFPB. Thus, 1,840 motor vehicle dealers + 2,146 other entities = 3,986 respondents for the FTC's burden calculations.

[12] 74 FR at 31505.

3,986 respondents × 2 hours for training = 7,972 hours

B. Labor Costs

Labor costs are derived by applying appropriate estimated hourly cost figures to the burden hours described above. The FTC assumes that respondents will use managerial and/or professional technical personnel to train company employees in order to foster continued compliance with the information collection requirements in the Information Furnishers Rule and the furnisher provisions of Regulation V.

7,972 hours × $53.38 [13] = $425,545

Section 660.4 of FTC Rule/Section 1022.43 of CFPB Rule

A. Burden Hours

No recurring burden other than that necessary to prepare and distribute F/I notices (estimate: 14 minutes per notice [14]).

1. 21,720 F/I disputes (estimated number received by furnishers under the FTC's jurisdiction [15])
2. Motor vehicle dealer furnisher ''carve-out'' to FTC: Assumed 4% [16] = 869 F/I disputes
3. 21,720 F&I disputes—869 ''carve-out'' = 20,851 respondents for CFPB–FTC split
   a. Divided by 2 = 10,425 F/I disputes, co-jurisdiction estimate
   b. CFPB: 10,425 F/I disputes
   c. FTC: 869 ''carve-out'' + 10,425 additional F/I disputes = 11,294 F/I disputes
   d. FTC: 11,294 F/I disputes × 14 minutes each = 2,635 hours

B. Labor Costs

Labor costs are derived by applying appropriate estimated hourly cost figures to the burden hours described above. The FTC assumes that respondents will use skilled administrative support personnel to provide the required F/I dispute notices to consumers.

2,635 hours × $22.24 [17] = $58,602

Thus, total estimated burden under the above-noted regulatory sections is 10,607 hours and $484,147.

Request for Comment: Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the disclosure requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) how to improve the quality, utility, and clarity of the disclosure requirements; and (4) how to minimize the burden of providing the required information to consumers.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 25, 2016. Write ''Information Furnishers Rule, PRA Comment, P135407'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential'' as provided in Section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c).[18] Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/infofurnishersrulepra,* by following the instructions on the web-based form. When this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Paperwork Comment: FTC File No. P135407'' on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before April 25, 2016. For information on the Commission's privacy policy, including routine uses permitted by the

[13] *http://www.bls.gov/news.release/ocwage.nr0.htm:* ''Occupational Employment and Wages—May 2014,'' Bureau of Labor Statistics, U.S. Department of Labor, released March 25, 2015, Table 1 (''National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2014) (hereinafter, ''BLS Table 1''). *See* mean hourly wage for ''Training and Development Managers.''

[14] 74 FR at 31505.

[15] *Id.* at 31506 n. 58.

[16] FTC staff believes that 4% is a reasonable estimate based on recent data. *See* ''*Key Dimensions and Processes in the U.S. Credit Reporting System: A review of how the nation's largest credit bureaus handle consumer data,''* December 2012, pp. 14, 29, 31, 34. The CFPB report noted that almost 40% of all consumer disputes at the nationwide CRAs, on average, can be linked to collections. It stated that collection trade lines generate significantly higher numbers of consumer disputes than other types of trade lines—specifically, four times higher than auto. These figures seem to suggest that almost 10% of all consumer disputes at the nationwide CRAs, on average, can be linked to auto. When the FTC issued its final Rule, FTC staff estimated that 40% of direct disputes would result in the sending of F/I dispute notices. *See* 74 FR 31506 n.58. The FTC's estimate of 4% is based on taking forty percent of the 10% of all consumer disputes at the nationwide CRAs, on average, linked to auto loans.

[17] The revised figure is an averaging of Bureau of Labor Statistics mean hourly wages for potentially analogous employee types: First-line supervisors of office and administrative support workers ($26.15); accounting and auditing clerks ($18.30); brokerage clerks ($24.10); eligibility interviewers, government programs ($20.41). See BLS Table 1. This averages out to $22.24 per hour, rounded.

[18] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Privacy Act, see *http://www.ftc.gov/ftc/privacy.htm.*

David C. Shonka,

Principal Deputy General Counsel.

[FR Doc. 2016–03718 Filed 2–22–16; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–16OJ]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

The Girl Power Project Efficacy Trial—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

The 60-day **Federal Register** Notice, published on August 12, 2015, was titled ''Efficacy Study of a Mobile Application to Provide Comprehensive and Medically Accurate Sexual Health Information for Adolescent Girls.'' On January 19, 2016, a 30-day **Federal Register** Notice was published under the revised title ''The Girl Power Project Efficacy Trial.'' The burden table in the 30-day Notice was incorrect due to omission of information collection conducted to screen potential study participants for eligibility. This Notice corrects the error and provides an updated estimate of total burden to respondents.

Background and Brief Description

Despite drastic reductions in teen births across all racial and ethnic groups, Black and Latino girls continue to have disproportionately high rates of teen births. Increasing girls' access to medically accurate and comprehensive sexual health information is the first step in sustaining momentum in teen pregnancy reduction among all racial and ethnic groups, and in promoting healthy sexual behaviors, especially among minority girls.

CDC plans to collect the information needed to test the efficacy of a comprehensive and medically accurate mobile application, titled Crush, in increasing adolescent girls' contraception use and clinic visitation for sexual and reproductive health services. The information disseminated via Crush is similar to the sexual health information youth can access via other Web sites, sexual health promotion educational materials or in clinics.

The study will randomize a sample of 1,200 girls, ages 14–18 years, into two groups: the intervention group and the control group. The intervention group will have access to Crush and will receive weekly sexual health information via text to their phones for six months. The control group will have access to a fitness mobile application (''app'') and will receive general health information via text to their phones for six months. Participants are expected to access either app frequently throughout a six month period. As part of the analysis, sexual behavior and key psychosocial factors will be assessed at three points in time: at baseline, and at three- and six-month follow-ups.

Efficacy testing will respond to the following research questions:

1. Does exposure to Crush increase consistent contraception use among participants?
2. Does exposure to Crush increase clinic utilization rate among participants?
3. Is media content more attractive to participants than text-based content?

For research questions 1 and 2, we hypothesize that participants in the intervention group will report increased intent to use effective contraception and utilize clinic services at three and six months post-intervention.

The study will also include a usability testing component to identify the content and features of Crush that are most attractive to participants, the frequency in which Crush was used, and the navigation patterns within Crush. Participants will create an account in the Enrollment Database. This database will host participants' enrollment information, basic demographic information, and will also track their navigation pattern to monitor Crush visitation frequency and visit duration. Navigation data will be used to assess intervention exposure and dosage to specific content areas of Crush. To test real-world utilization of Crush, control group participants will gain access to Crush six months after enrolling into the study, but will not receive weekly text messages. The study will track visitation frequency and duration of each visit. Usability testing will respond to Research Question #3. We hypothesize that participants in the intervention group will spend more time using media features than text-based content.

All information will be collected electronically. This study will collect data through two mechanisms: (1) Self-administered online surveys, and (2) the Crush enrollment database. Interested participants will initially complete screening questions to confirm their eligibility. CDC estimates that 3,000 respondents will be screened in order to reach the target number of 1,200 enrolled study participants. Information collection for enrolled participants consists of three self-administered online surveys at conduct at baseline, three months after baseline, and six months after baseline. Survey questions will assess behavior, attitudes, social norms about sexual behavior, contraception use and clinic utilization, and satisfaction with Crush.

The mobile response surveys will be sent to participants via text message which they can complete on a smartphone. The estimated burden per response is 5–15 minutes. Survey responses will be matched by each participant's unique identifying

number. Each participant will receive up to two survey reminders starting one week after the initial survey link is sent, for two consecutive weeks. There are minor differences in survey content for the control and intervention groups.

Each participant will create a profile in the database upon enrollment. This database will collect initial demographic and contact information, informed consent signatures, and information about the participant's navigation pattern through Crush. Any information entered directly into Crush interactive features will not be stored in the system. The database only collects web analytics data about page visits and duration of each visit by User Identification (ID) and Internet Protocol (IP) address. Web analytics will only be collected from participants navigating Crush and only when they are logged in as users. Web analytics are generated for any Web site and are a standard evaluation mechanism for assessing the traffic patterns on Web pages. This technology permits development of an objective and quantifiable measure that tracks and records participants' exposure to Crush. This study component does not entail any response burden to participants.

Findings will be used to inform the development and delivery of effective health communications.

OMB approval is requested for one year. Participation is voluntary and there are no costs to respondents other than their time. The total estimated annualized burden hours are 802.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs.)
Girls 14–18 years old	Screener Questions	3,000	1	1/60
	Enrollment Questions	1,200	1	5/60
Intervention Group	Baseline Survey	600	1	15/60
	3-Month Survey	480	1	10/60
	6-Month Survey	384	1	15/60
Control Group	Baseline Survey	600	1	15/60
	3-Month Survey	480	1	10/60
	6-Month Survey	384	1	15/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–03687 Filed 2–22–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1637–N]

Medicare Program; Public Meetings in Calendar Year 2016 for All New Public Requests for Revisions to the Healthcare Common Procedure Coding System (HCPCS) Coding and Payment Determinations

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

ACTION: Notice.

SUMMARY: This notice announces the dates, time, and location of the Healthcare Common Procedure Coding System (HCPCS) public meetings to be held in calendar year 2016 to discuss our preliminary coding and payment determinations for all new public requests for revisions to the HCPCS. These meetings provide a forum for interested parties to make oral presentations or to submit written comments in response to preliminary coding and payment determinations. The discussion will be focused on responses to our specific preliminary recommendations and will include all items on the public meeting agenda. As indicated in this notice, we are reorganizing public meeting content under two main headings: (1) Drugs/Biologics, Radiopharmaceuticals/Radiologic Imaging Agents, and (2) Durable Medical Equipment (DME) and Accessories; Orthotics and Prosthetics (O & P); Supplies and Other.

DATES: *Meeting Dates:* The following are the 2016 HCPCS public meeting dates:

1. Tuesday, May 17, 2016, 9:00 a.m. to 5:00 p.m., eastern daylight time (e.d.t.) (Drugs/Biologicals, Radiopharmaceuticals/Radiologic Imaging Agents).

2. Wednesday, May 18, 2016, 9:00 a.m. to 5:00 p.m., e.d.t. (Drugs/Biologicals, Radiopharmaceuticals/Radiologic Imaging Agents).

3. Thursday, May 19, 2016, 9:00 a.m. to 5:00 p.m., e.d.t. (Drugs/Biologicals, Radiopharmaceuticals/Radiologic Imaging Agents).

4. Wednesday, June 1, 2016, 9:00 a.m. to 5:00 p.m., e.d.t. (Durable Medical Equipment (DME) and Accessories; Orthotics and Prosthetics (O & P); Supplies and Other).

5. Thursday, June 2, 2016, 9:00 a.m. to 5:00 p.m., e.d.t. (Durable Medical Equipment (DME) and Accessories; Orthotics and Prosthetics (O & P); Supplies and Other).

Deadlines for Primary Speaker Registration and Presentation Materials: The deadline for registering to be a primary speaker and submitting materials and writings that will be used in support of an oral presentation are as follows:

- May 3, 2016 for the May 17, 2016, May 18, 2016 and May 19, 2016 public meetings.
- May 18, 2016 for the June 1, 2016 and June 2, 2016 public meetings.

Registration Deadline for Attendees that are Foreign Nationals: All Foreign National visitors must present a valid passport as proof of identification. Attendees that are foreign nationals (as described in section IV. of this notice) are required to identify themselves as such, and provide the necessary information for security clearance (as described in section IV. of this notice) to the public meeting coordinator at least 21 business days in advance of the date of the public meeting the individual plans to attend. Therefore, the registration deadlines for attendees that are foreign nationals are as follows:

- April 28, 2016 for the May 17, 2016, May 18, 2016 and May 19, 2016 public meetings.
- May 12, 2016 for the June 1, 2016 and June 2, 2016 public meetings.

Registration Deadlines for all Other Attendees: All individuals who are not foreign nationals who plan to enter the building to attend the public meeting must register for each date that they plan on attending. The registration

deadlines are different for each meeting. Registration deadlines are as follows:

- May 10, 2016 for the May 17, 2016, May 18, 2016 and May 19, 2016 public meetings.
- May 24, 2016 for the June 1, 2016 and June 2, 2016 public meeting dates.

Deadlines for Requesting Special Accommodations: Individuals who plan to attend the public meetings and require sign-language interpretation or other special assistance must request these services at least two weeks in advance of the meeting date, by the following deadlines:

- May 3, 2016 for the May 17, 2016, May 18, 2016 and May 19, 2016 public meetings.
- May 18, 2016 for the June 1, 2016 and June 2, 2016 public meetings.

Requests for Special Accommodation may be made within the on-line registration located at *www.cms.hhs.gov/medhcpcsgeninfo* or by contacting Judi Wallace at (410) 786–3197 or *JudiWallace@cms.hhs.gov* or Nathan Helman at (410) 786–4602 or *NathanHelman@cms.hhs.gov*.

When a request for Special Accommodations is made separate from the on-line registration, it is also necessary to complete the online registration to gain access to the facility.

Deadline for Submission of Written Comments: Written comments and other documentation in response to a preliminary coding or payment determination that are received by no later than the date of the public meeting at which the code request is scheduled for discussion, will be considered in formulating a final coding decision.

ADDRESSES:

Meeting Location: The public meetings will be held in the main auditorium of the central building of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Submission of Written Comments: Written comments may either be emailed to *JudiWallace@cms.hhs.gov* or *NathanHelman@cms.hhs.gov* or sent via regular mail to Judi Wallace or Nathan Helman, HCPCS Public Meeting Coordinators, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop C5–09–14, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Judi Wallace at (410)786–3197 or *JudiWallace@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Congress passed the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554). Section 531(b) of BIPA mandated that we establish procedures that permit public consultation for coding and payment determinations for new durable medical equipment (DME) under Medicare Part B of title XVIII of the Social Security Act (the Act). In the November 23, 2001 **Federal Register** (66 FR 58743), we published a notice providing information regarding the establishment of the public meeting process for DME. The procedures and public meetings announced in this notice for new DME are in response to the mandate of section 531(b) of BIPA. As part of HCPCS reform, we expanded the public meeting forum to include all public requests as of the 2005–2006 coding cycle (70 FR 15340, March 25, 2005).

It is our intent to distribute any materials submitted to us to the HCPCS workgroup members for their consideration. CMS and the HCPCS workgroup members require sufficient preparation time to review all relevant materials. Therefore, we are implementing a 10-page submission limit and firm deadlines for receipt of any presentation materials a meeting speaker wishes us to consider. For this reason, our HCPCS Public Meeting Coordinator will only accept and review presentation materials received by the deadline for each public meeting, as specified in the **DATES** section of this notice.

II. Meeting Registration

A. Required Information for Registration

The following information must be provided when registering:

- Name.
- Company name and address.
- Direct-dial telephone and fax numbers.
- Email address.
- Special needs information.

A CMS staff member will confirm your registration by email.

B. Registration Process

1. Primary Speakers

Individuals must also indicate whether they are the ''primary speaker'' for an agenda item. Primary speakers must be designated by the entity that submitted the HCPCS coding request. When registering, primary speakers must provide a brief written statement regarding the nature of the information they intend to provide, and advise the HCPCS Public Meeting Coordinator regarding needs for audio/visual support. To avoid disruption of the meeting and ensure compatibility with our systems, tapes and disk files are tested and arranged in speaker sequence well in advance of the meeting. We will accept tapes and disk files that are received by the deadline for submissions for each public meeting as specified in the **DATES** section of this notice. Late submissions and updates of electronic materials after our deadline cannot be accommodated.

Please note CMS' page limit for primary speaker presentation materials. The sum of all presentation materials and additional supporting documentation may not exceed 10 pages (each side of a page counts as 1 page). An exception will be made to the 10-page limit *only for relevant studies newly published between the application deadline and the public meeting date,* in which case, we would like a copy of the complete publication as soon as possible. This exception applies only to the page limit and not the submission deadline.

The materials may be emailed or delivered by regular mail to the HCPCS Public Meeting Coordinators as specified in the **ADDRESSES** section of this notice. The materials must be emailed or postmarked no later than the deadline specified in the **DATES** section of this notice. Individuals will need to provide 35 copies if materials are delivered by mail.

2. ''5-Minute Speakers''

To afford the same opportunity to all attendees, 5-minute speakers are not required to register as primary speakers. However, 5-minute speakers must still register as attendees by the deadline set forth under ''Registration Deadlines for all Other Attendees'' in the **DATES** section of this notice. Attendees can sign up only on the day of the meeting to do a presentation of up to 5 minutes. Individuals must provide their name, company name and address, contact information as specified on the sign-up sheet, and identify the specific agenda item that they will address.

C. Additional Meeting/Registration Information

Please note that all of the CMS' 2016 HCPCS public meetings will begin at 9:00 a.m. each day as noted in the **DATES** section of this notice.

The product category reported in the HCPCS code application by the applicant may not be the same as that assigned by us. Prior to registering to attend a public meeting, all participants are advised to review the public meeting agendas at *www.cms.hhs.gov/medhcpcsgeninfo* which identify our category determinations, and the dates each item will be discussed. Draft agendas, including a summary of each

request and our preliminary decision will be posted on our HCPCS Web site at *www.cms.hhs.gov/medhcpcsgeninfo* at least 4 weeks before each meeting.

Additional details regarding the public meeting process for all new public requests for revisions to the HCPCS, along with information on how to register and guidelines for an effective presentation, will be posted at least 4 weeks before the first meeting date on the official HCPCS Web site at *www.cms.hhs.gov/medhcpcsgeninfo.* The document titled ''Guidelines for Participation in Public Meetings for All New Public Requests for Revisions to the Healthcare Common Procedure Coding System (HCPCS)'' will be made available on the HCPCS Web site at least 4 weeks before the first public meeting in 2016 for all new public requests for revisions to the HCPCS. Individuals who intend to provide a presentation at a public meeting need to familiarize themselves with the HCPCS Web site and the valuable information it provides to prospective registrants. The HCPCS Web site also contains a document titled ''Healthcare Common Procedure Coding System (HCPCS) Level II Coding Procedures,'' which is a description of the HCPCS coding process, including a detailed explanation of the procedures used to make coding determinations for all the products, supplies, and services that are coded in the HCPCS.

The HCPCS Web site also contains a document titled ''HCPCS Decision Tree & Definitions'' which illustrates, in flow diagram format, HCPCS coding standards as described in our Coding Procedures document.

A summary of each public meeting will be posted on the HCPCS Web site by the end of August 2016.

III. Presentations and Comment Format

We can only estimate the amount of meeting time that will be needed since it is difficult to anticipate the total number of speakers that will register for each meeting. Meeting participants should arrive early to allow time to clear security and sign-in. Each meeting is expected to begin promptly as scheduled. Meetings may end earlier than the stated ending time.

A. Oral Presentation Procedures

All primary speakers must register as provided under the section titled ''Meeting Registration.'' Materials and writings that will be used in support of an oral presentation should be submitted to the HCPCS Public Meeting Coordinator.

The materials may be emailed or delivered by regular mail to the HCPCS Public Meeting Coordinator as specified in the **ADDRESSES** section of this notice. The materials must be emailed or postmarked no later than the deadline specified in the **DATES** section of this notice. Individuals will need to include 35 copies if materials are delivered by mail.

B. Primary Speaker Presentations

The individual or entity requesting revisions to the HCPCS coding system for a particular agenda item may designate one ''primary speaker'' to make a presentation for a maximum of 15 minutes. Fifteen minutes is the total time interval for the presentation, and the presentation must incorporate any demonstration, set-up, and distribution of material. In establishing the public meeting agenda, we may group multiple, related requests under the same agenda item. In that case, we will decide whether additional time will be allotted, and may opt to increase the amount of time allotted to the speaker by increments of less than 15 minutes.

Individuals designated to be the primary speaker must register to attend the meeting using the registration procedures described under the ''Meeting Registration'' section of this notice and contact one of the HCPCS Public Meeting Coordinators, specified in the **ADDRESSES** section. Primary speakers must also separately register as primary speakers by the date specified in the **DATES** section of this notice.

C. ''5-Minute'' Speaker Presentations

Meeting attendees can sign up at the meeting, on a first-come, first-served basis, to make presentations for up to 5 minutes on individual agenda items. Based on the number of items on the agenda and the progress of the meeting, a determination will be made at the meeting by the meeting coordinator and the meeting moderator regarding how many ''5-minute speakers'' can be accommodated and/or whether the 5-minute time allocation would be reduced, to accommodate the number of speakers.

D. Speaker Declaration

On the day of the meeting, before the end of the meeting, all primary speakers and 5-minute speakers must provide a brief written summary of their comments and conclusions to the HCPCS Public Meeting Coordinator.

Every primary speaker and 5-minute speaker must declare at the beginning of their presentation at the meeting, as well as in their written summary, whether they have any financial involvement with the manufacturers or competitors of any items being discussed; this includes any payment, salary, remuneration, or benefit provided to that speaker by the manufacturer or the manufacturer's representatives.

E. Written Comments From Meeting Attendees

Written comments will be accepted from the general public and meeting registrants anytime up to the date of the public meeting at which a request is discussed. Comments must be sent to the address listed in the **ADDRESSES** section of this notice.

Meeting attendees may also submit their written comments at the meeting. Due to the close timing of the public meetings, subsequent workgroup reconsiderations, and final decisions, we are able to consider only those comments received in writing by the close of the public meeting at which the request is discussed.

IV. Security, Building, and Parking Guidelines

The meetings are held within the CMS Complex which is not open to the general public. Visitors to the complex are required to show a valid Government issued photo identification at the time of entry. As of October, 10, 2015, visitors seeking access to federal agency facilities using their state-issued driver's license or identification cards must present proper identification issued by a state that is compliant with the REAL ID Act of 2005, (Pub. L. 109–13, 119 Statute 302, enacted on May 11, 2005), or a state that has received an extension. What constitutes proper identification and whether a driver's license is acceptable identification for accessing a federal facility may vary, based on which state issued the driver's license. For detailed information, please refer to the Department of Homeland Security (DHS) Web site at *http://www.dhs.gov.* When planning to visit a federal facility, visitors who have further questions about acceptable forms of identification are encouraged to contact the facility to determine acceptable identification. In addition, all Foreign National visitors must present a valid passport as proof of identification.

Visitors will also be subject to a vehicle security inspection before access to the complex is granted. Participants not in possession of a valid identification or who are in possession of prohibited items will be denied access to the complex. Prohibited items on federal property include but are not limited to, alcoholic beverages, illegal narcotics, explosives, firearms or other dangerous weapons (including pocket knives), dogs or other animals except

service animals. Once cleared for entry to the complex participants will be directed to visitor parking by a security officer.

To ensure expedited entry into the building it is recommended that participants have their government ID and a copy of their written meeting registration confirmation readily available and that they do not bring large/bulky items into the building. Participants are reminded that photography on the CMS complex is prohibited. CMS has also been declared a tobacco free campus and violators are subject to legal action. In planning arrival time, we recommend allowing additional time to clear security. Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The invited guests may not enter the building earlier than 45 minutes before the convening of the meeting each day.

Guest access to the complex is limited to the meeting area, the main entrance lobby, and the cafeteria. If a visitor is found outside of those areas without proper escort they may be escorted off of the premises. Also be mindful that there will be an opportunity for everyone to speak and we request that everyone waits for the appropriate time to present their product or opinions. Disruptive behavior will not be tolerated and may result in removal from the meetings and escort from the complex. No visitor is allowed to attach USB cables, thumb drives or any other equipment to any CMS information technology (IT) system or hardware for any purpose at any time. Additionally, CMS staff is prohibited from taking such actions on behalf of a visitor or utilizing any removable media provided by a visitor.

We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a presentation. Special arrangements and approvals are required at least 2 weeks prior to each public meeting to bring pieces of equipment or medical devices. These arrangements need to be made with the public meeting coordinator. It is possible that certain requests made in advance of the public meeting could be denied because of unique safety, security or handling issues related to the equipment. A minimum of 2 weeks is required for approvals and security procedures. Any request not submitted at least 2 weeks in advance of the public meeting will be denied.

Foreign National Visitors are defined as Non-US Citizens, and non-lawful permanent residents, non-resident aliens or non-green-card holders.

Attendees that are foreign nationals must identify themselves as such, and provide the following information for security clearance to the public meeting coordinator by the date specified in the **DATES** section of this notice:

- Building to Visit/Destination.
- Visit start date, start time, end date, end time.
- Visitor full name.
- Gender.
- Visitor Title.
- Visitor Organization/Employer.
- Citizenship.
- Birth Place (City, Country).
- Date of Birth.
- ID Type (Passport or State Department ID).
- Passport issued by Country.
- ID (passport) Number.
- ID (passport) issue date.
- ID (passport) expiration date.
- Visa Type.
- Visa Number.
- Purpose of Visit.

Dated: February 2, 2016.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2016–03703 Filed 2–22–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–4852]

Design Considerations and Premarket Submission Recommendations for Interoperable Medical Devices; Draft Guidance for Industry and Food and Drug Administration Staff; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or Agency) is extending the comment period provided in the notice entitled ''Design Considerations and Pre-market Submission Recommendations for Interoperable Medical Devices; Draft Guidance for Industry and Food and Drug Administration Staff; Availability'' that appeared in the **Federal Register** of January 26, 2016. That notice announced the availability of a draft guidance for industry and FDA staff and requested comments by March 28, 2016. FDA is extending the draft guidance's comment period by 30 days in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period for the draft guidance ''Design Considerations and Premarket Submission Recommendations for Interoperable Medical Devices'' published on January 26, 2016 (81 FR 4303), by an additional 30 days. Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment of this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by April 28, 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–4852 for ''Design Considerations and Pre-market Submission Recommendations for Interoperable Medical Devices.'' 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 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 ''Design Considerations and Pre-market Submission Recommendations for Interoperable Medical Devices'' 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; or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Heather Agler, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5570, Silver Spring, MD 20993–0002, 301–796–6340; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 26, 2016 (81 FR 4303), FDA published a notice announcing the availability of a draft guidance entitled ''Design Considerations and Premarket Submission Recommendations for Interoperable Medical Devices'' with a 60-day comment period to request comments. FDA is extending the comment period for the draft guidance for 30 days, until April 28, 2016. The Agency believes that a 30-day extension will allow adequate time for interested persons to submit comments.

II. 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.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm* or *http://www.regulations.gov.* Persons unable to download an electronic copy of ''Design Considerations and Pre-market Submission Recommendations for Interoperable Medical Devices'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1500015 to identify the guidance you are requesting.

Dated: February 18, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–03696 Filed 2–22–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0173]

Waterpipes and Waterpipe Tobacco; Public Workshop; Establishment of a Public Docket

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; establishment of docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA), Center for Tobacco Products (CTP), is announcing a public workshop to gather scientific information on waterpipes and waterpipe tobacco and to identify areas of research that may inform CTP's regulation of these tobacco products. The workshop will include presentations and panel discussions about the current state of the science, and will focus on product use and design, smoke constituents, environmental impacts, and the impact of marketing these products on population health, including on both users and nonusers. FDA is also opening a public docket to receive data, information, and comments on this topic.

DATES: The public workshop will be held on March 17, 2016, from 8:30 a.m. to 5 p.m. and on March 18, 2016, from 8:30 a.m. to 4 p.m. Individuals who wish to attend the public workshop must register by February 25, 2016. Submit written or electronic comments to Docket No. FDA–2016–N–0173 by April 29, 2016.

ADDRESSES: The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503A), Silver Spring, MD 20993. Entrance for the public workshop participants (non-FDA employees) is

through Building 1 where routine security check procedures will be performed. For parking, transportation, security, and information regarding special accommodations due to a disability, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

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–2016–N–0173 for ''Waterpipes and Waterpipe Tobacco; Public Workshop; Establishment of a Public Docket.'' 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.

FOR FURTHER INFORMATION CONTACT: Caryn Cohen, Office of Science, Center for Tobacco Products, Food and Drug Administration, Document Control Center, Bldg. 71, Rm. G335, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 1–877–287–1373, *workshop.CTPOS@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing a public workshop to gather scientific information and stimulate discussion among scientists about waterpipes and waterpipe tobacco. The workshop will focus on waterpipe tobacco product toxic emissions and exposure to harmful and potentially harmful constituents including: Second hand exposure, design and environmental concerns, prevalence, perception, use pattern, addiction, individual and population health. FDA is interested in gathering scientific information from individuals with a broad range of backgrounds on the scientific topics to be discussed at the workshop. Information related to workshop presentations and discussion topics, including specific questions to be addressed at the workshop, can be found at *http://www.fda.gov/TobaccoProducts/NewsEvents/ucm238308.htm.*

II. Registration To Attend the Workshop

If you wish to attend the workshop in person or by Webcast, you must register by submitting either an electronic or written request no later than February 25, 2016. Please submit electronic requests at *https://www.surveymonkey.com/r/Waterpipes2016.* Persons without Internet access may send written requests for registration to Caryn Cohen (see **FOR FURTHER INFORMATION CONTACT**). Requests for registration must include the prospective attendee's name, title, affiliation, address, email address if available, and telephone number. Registration is free and you may register to either attend in-person or view the live Webcast. Both seating and viewership are limited, so early registration is recommended. FDA may limit the number of registrants from a single organization, as well as the total number of participants, if registration reaches full capacity. For those registrants with Internet access, confirmation of registration will be emailed to you no later March 1, 2016. Onsite registration may be allowed if space is available. If registration reaches maximum capacity, FDA will post a notice closing registration at *http://www.fda.gov/TobaccoProducts/NewsEvents/ucm238308.htm.* If you need special accommodations due to a disability, please contact Caryn Cohen (see **FOR FURTHER INFORMATION CONTACT**) no later than March 10, 2016.

III. Oral Presentations by Members of the Public

This workshop includes a public comment session. Persons wishing to present during the public comment session must make this request at the time of registration and should identify the topic they wish to address from among those topics under consideration.

FDA will do its best to accommodate requests to present. FDA urges individuals and organizations with common interests to consolidate or coordinate their comments, and request a single time for a joint presentation. For those requesters with Internet access, Caryn Cohen (see **FOR FURTHER INFORMATION CONTACT**) will email you regarding your request to speak by March 1, 2016.

IV. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. The Freedom of Information office address is available on the Agency's Web site at *http://www.fda.gov.* It will also be available after the workshop at *http://www.fda.gov/TobaccoProducts/NewsEvents/ucm238308.htm* as soon as the official transcript is finalized.

Dated: February 18, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–03712 Filed 2–22–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[OMHA–1503–N]

Medicare Program; Administrative Law Judge Hearing Program for Medicare Claim and Entitlement Appeals; Quarterly Listing of Program Issuances—October Through December 2015

AGENCY: Office of Medicare Hearings and Appeals (OMHA), HHS.

ACTION: Notice.

SUMMARY: This quarterly notice lists of the OMHA Case Processing Manual (OCPM) manual instructions that were published from October through December, 2015. This manual standardizes the day-to-day procedures for carrying out adjudicative functions, in accordance with applicable statutes, regulations and OMHA directives, and gives OMHA staff direction for processing appeals at the OMHA level of adjudication.

FOR FURTHER INFORMATION CONTACT: Amanda Axeen, by telephone at (571) 777–2705, or by email at *amanda.axeen@hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Medicare Hearings and Appeals (OMHA), a staff division within the Office of the Secretary of the U.S. Department of Health and Human Services (HHS), administers the nationwide Administrative Law Judge hearing program for Medicare claim, organization and coverage determination, and entitlement appeals under sections 1869, 1155, 1876(c)(5)(B), 1852(g)(5), and 1860D–4(h) of the Social Security Act (the Act). OMHA ensures that Medicare beneficiaries and the providers and suppliers that furnish items or services to Medicare beneficiaries, as well as Medicare Advantage Organizations (MAOs) and Medicaid State Agencies, have a fair and impartial forum to address disagreements with Medicare coverage and payment determinations made by Medicare contractors, MAOs, or Part D Plan Sponsors (PDPSs), and determinations related to Medicare eligibility and entitlement, Part B late enrollment penalty, and income-related monthly adjustment amounts (IRMAA) made by the Social Security Administration (SSA).

The Medicare claim, organization and coverage determination appeals processes consist of four levels of administrative review, and a fifth level of review with the Federal district courts after administrative remedies under HHS regulations have been exhausted. The first two levels of review are administered by the Centers for Medicare & Medicaid Services (CMS) and conducted by Medicare contractors for claim appeals, by MAOs and an independent review entity for Part C organization determination appeals, or by PDPSs and an independent review entity for Part D coverage determination appeals. The third level of review is administered by OMHA and conducted by Administrative Law Judges. The fourth level of review is administered by the HHS Departmental Appeals Board (DAB) and conducted by the Medicare Appeals Council. In addition, OMHA and the DAB administer the second and third levels of appeal, respectively, for Medicare eligibility, entitlement, Part B late enrollment penalty, and IRMAA reconsiderations made by SSA; a fourth level of review with the Federal district courts is available after administrative remedies within SSA and HHS have been exhausted.

Sections 1869, 1155, 1876(c)(5)(B), 1852(g)(5), and 1860D–4(h) of the Act are implemented through the regulations at 42 CFR part 405 subparts I and J; part 417, subpart Q; part 422, subpart M; part 423, subparts M and U; and part 478, subpart B. As noted above, OMHA administers the nationwide Administrative Law Judge hearing program in accordance with these statutes and applicable regulations. As part of that effort, OMHA is establishing a manual, the OMHA Case Processing Manual (OCPM). Through the OCPM, the OMHA Chief Administrative Law Judge establishes the day-to-day procedures for carrying out adjudicative functions, in accordance with applicable statutes, regulations and OMHA directives. The OCPM provides direction for processing appeals at the OMHA level of adjudication for Medicare Part A and B claims; Part C organization determinations; Part D coverage determinations; and SSA eligibility and entitlement, Part B late enrollment penalty, and IRMAA determinations.

Section 1871(c) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**.

II. Format for the Quarterly Issuance Notices

This quarterly notice provides the specific updates to the OCPM that have occurred in the 3-month period. A hyperlink to the available chapters on the OMHA Web site is provided below. The OMHA Web site contains the most current, up-to-date chapters and revisions to chapters, and will be available earlier than we publish our quarterly notice. We believe the OMHA Web site list provides more timely access to the current OCPM chapters for those involved in the Medicare claim, organization and coverage determination and entitlement appeals processes. We also believe the Web site offers the public a more convenient tool for real time access to current OCPM provisions. In addition, OMHA has a listserv to which the public can subscribe to receive immediate notification of any updates to the OMHA Web site. This listserv avoids the need to check the OMHA Web site, as update notifications are sent to subscribers as they occur. If accessing the OMHA Web site proves to be difficult, the contact person listed above can provide the information.

III. How To Use the Notice

This notice lists the OCPM chapters and subjects published during the quarter covered by the notice so the

reader may determine whether any are of particular interest. We expect this notice to be used in concert with the previously published notices. The OCPM can be accessed at *http://www.hhs.gov/omha/OMHA_Case_Processing_Manual/index.html.*

IV. OCPM Releases for October Through December 2015

The OCPM is used by OMHA adjudicators and staff to administer the OMHA program. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, and OMHA directives.

The following is a list and description of new OCPM provisions and the subject matter that have been implemented in the covered 3-month period. The full text of current OCPM provisions is available on our Web site at *http://www.hhs.gov/omha/OMHA_Case_Processing_Manual/index.html.*

OCPM Division I: General Matters

Chapter 7, Adjudication Time Frames. This new chapter describes the cases subject to statutory time frames, tolling and waivers of adjudication time frames, and provides instruction on how to handle cases escalated from the Qualified Independent Contractor (QIC) to OMHA and from OMHA to the Medicare Appeals Council.

OCPM Division II: Part A/B Claim Determinations

Chapter 4, Administrative Record. This new chapter describes the minimum organization and exhibiting structure for documents and evidence received in support of Medicare Part A and B requests for hearing filed with OMHA. This chapter standardizes the way that OMHA prepares these files for further processing.

Chapter 7, Scheduling and Notices of Hearing. This new chapter describes the scheduling and notice of hearing process in Medicare Part A and Part B cases and provides guidance on sending amended notices of hearing, rescheduling or cancelling hearings and issuing notices for supplemental hearings.

Chapter 13, Closing the Case. This new chapter describes the necessary administrative steps to finalize and close a Medicare Part A or Part B case. The chapter also provides guidance on mailing the notice of disposition and shipping the case file.

OCPM Division III: Part C Organization Determinations

Chapter 4, Administrative Record. This new chapter describes the minimum organization and exhibiting structure for documents and evidence received in support of Medicare Part C requests for hearing filed with OMHA. This chapter standardizes the way that OMHA prepares these files for further processing.

Chapter 7, Scheduling and Notices of Hearing. This new chapter describes the scheduling and notice of hearing process in Medicare C cases and provides guidance on sending amended notices of hearing, rescheduling or cancelling hearings and issuing notices for supplemental hearings.

Chapter 13, Closing the Case. This new chapter describes the necessary administrative steps to finalize and close a Medicare Part C case. The chapter also provides guidance on mailing the notice of disposition and shipping the case file.

OCPM Division IV: Part D Coverage Determinations

Chapter 4, Administrative Record. This new chapter describes the minimum organization and exhibiting structure for documents and evidence received in support of Medicare Part D requests for hearing filed with OMHA. This chapter standardizes the way that OMHA prepares these files for further processing.

Chapter 7, Scheduling and Notices of Hearing. This new chapter describes the scheduling and notice of hearing process in Medicare D cases and provides guidance on sending amended notices of hearing, rescheduling or cancelling hearings and issuing notices for supplemental hearings.

Chapter 13, Closing the Case. This new chapter describes the necessary administrative steps to finalize and close a Medicare Part D case. The chapter also provides guidance on mailing the notice of disposition and shipping the case file.

OCPM Division V: SSA Determinations

Chapter 4, Administrative Record. This new chapter describes the minimum organization and exhibiting structure for documents and evidence received in support of requests for hearing filed with OMHA following reconsiderations of Medicare eligibility and entitlement, Part B late enrollment penalties, and Part B and Part D IRMAAs issued by SSA. This chapter standardizes the way that OMHA prepares these files for further processing.

Chapter 7, Scheduling and Notices of Hearing. This new chapter describes the scheduling and notice of hearing process for requests for hearing filed following reconsideration of Medicare eligibility and entitlement, Part B late enrollment penalties, and Part B and Part D IRMAAs issued by SSA. The chapter also provides guidance on sending amended notices of hearing, rescheduling or cancelling hearings and issuing notices for supplemental hearings.

Chapter 13, Closing the Case. This new chapter describes the necessary administrative steps to finalize and close a case on appeal at OMHA following reconsideration of Medicare eligibility and entitlement, Part B late enrollment penalties, and Part B and Part D IRMAAs issued by SSA. The chapter also provides guidance on mailing the notice of disposition and shipping the case file.

Dated: February 8, 2016.

Jason M. Green,

Chief Advisor, Office of Medicare Hearings and Appeals.

[FR Doc. 2016–03634 Filed 2–22–16; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Ethology, Addiction and Development.

Date: March 14, 2016.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Wind Cowles, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 3172, Bethesda, MD 20892, *cowleshw@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular Sciences.

Date: March 17–18, 2016.
Time: 7:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.
Contact Person: Margaret Chandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7814, Bethesda, MD 20892, (301) 435–1743, *margaret.chandler@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Endocrinology, Metabolism, Nutrition, and Reproductive Sciences.
Date: March 17, 2016.
Time: 8:00 a.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.
Contact Person: Clara M. Cheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170 MSC 7892, Bethesda, MD 20817, 301–435–1041, *chengc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR15–359: Biomarker Studies for Diagnosing Alzheimer's Disease and Predicting Progression.
Date: March 17, 2016.
Time: 8:00 a.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: Paula Elyse Schauwecker, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5211, Bethesda, MD 20892, *schauweckerpe@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Respiratory Sciences.
Date: March 17–18, 2016.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Ghenima Dirami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 240–498–7546, *diramig@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Behavioral Neuroscience.
Date: March 17–18, 2016.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: The Dupont Circle Hotel, 1500 New Hampshire Ave. NW., Washington, DC 20036.
Contact Person: Kristin Kramer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5205, MSC 7846, Bethesda, MD 20892, (301) 437–0911, *kramerkm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Bioengineering Sciences and Technologies: AREA (R15) Review.
Date: March 17, 2016.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.
Contact Person: Kee Hyang Pyon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7806, Bethesda, MD 20892, *pyonkh2@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Clinical Neurophysiology, Devices, Neuroprosthetics, and Biosensors.
Date: March 17–18, 2016.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.
Contact Person: Cristina Backman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7846, Bethesda, MD 20892, *cbackman@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Risk, Prevention and Health Behavior.
Date: March 17–18, 2016.
Time: 8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: The Westgate Hotel, 1055 2nd Ave., San Diego, CA 92101.
Contact Person: Claire E. Gutkin, Ph.D., MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3106, MSC 7808, Bethesda, MD 20892, 301–594–3139, *gutkincl@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD15–006: Abuse Liability Associated with Reduced Nicotine Content Tobacco Products.
Date: March 17–18, 2016.
Time: 9:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, 301–496–0726, *prenticekj@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Endocrinology, Metabolism, Nutrition and Reproductive Sciences.
Date: March 17, 2016.
Time: 11:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301–435–1154, *dianne.hardy@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cooperative Agreement: Chimpanzee Biomedical Research Program.
Date: March 17, 2016.
Time: 2:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Maribeth Champoux, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, 301–594–3163, *champoum@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Musculoskeletal Diseases and Rehabilitation.
Date: March 17, 2016.
Time: 2:30 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Rajiv Kumar, Ph.D., Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group; NeuroAIDS and other End-Organ Diseases Study Section.
Date: March 18, 2016.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037.
Contact Person: Eduardo A. Montalvo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bioengineering Sciences.
Date: March 18, 2016.
Time: 2:00 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Joseph Thomas Peterson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118,

MSC 7814, Bethesda, MD 20892, 301–408–9694, *petersonjt@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Genetics of Health and Disease.

Date: March 18, 2016.

Time: 4:00 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard A. Currie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1108, MSC 7890, Bethesda, MD 20892, (301) 435–1219, *currieri@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 17, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–03645 Filed 2–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; U01 Application Review.

Date: March 17, 2016.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sheo Singh, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 17, 2016.

Sylvia Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–03652 Filed 2–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Mucosal Immunology Studies Team (MIST) (U01).

Date: March 14–15, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Andrea L. Wurster, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extrarmural Activities, Room 3G33B, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20899823, (240) 669–5062, *wurstera@mail.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: February 17, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–03650 Filed 2–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel—Neural Differentiation, Plasticity, and Regeneration SEP.

Date: March 2, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Joanne T. Fujii, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Implementation Science for HIV/AIDS.

Date: March 4, 2016.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shalanda A. Bynum, Ph.D., MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, Bethesda, MD 20892, 301–755–4355, *bynumsa@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 17, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–03644 Filed 2–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Psycho/Neuropathology, Lifespan Development, and STEM Education.

Date: March 10–11, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Capitol, 550 C Street SW., Washington, DC 20024.

Contact Person: John H. Newman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3222, MSC 7808, Bethesda, MD 20892, (301) 435–0628, *newmanjh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Instrumentation, Environmental, and Occupational Safety.

Date: March 14, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Ross D. Shonat, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7892, Bethesda, MD 20892, 301–435–2786, *ross.shonat@nih.hhs.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; SBIR/STTR: Health Informatics.

Date: March 14, 2016.

Time: 9:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Weijia Ni, Ph.D., Chief/Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3100, MSC 7808, Bethesda, MD 20892, 301–594–3292, *niw@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS Immunology and Pathogenesis Study Section.

Date: March 16, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW., Washington, DC 20037.

Contact Person: Shiv A. Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cell and Molecular Biology.

Date: March 16–17, 2016.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Savvas Makrides, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2200, Bethesda, MD 20892, 301–435–2514, *makridessc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 17, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–03651 Filed 2–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center For Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; NCATS Conference Grants.

Date: March 14, 2016.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Christine A. Livingston, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center For Advancing Translational Sciences (NCATS), National Institutes Of Health, 6701 Democracy Blvd., Democracy 1, Room 1073, Bethesda, MD 20892, (301) 435–1348, *livingsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 17, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–03643 Filed 2–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; 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 NIH Advisory Board for Clinical Research.

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 section 552b(c)(9)(B), Title 5 U.S.C., as amended because the premature disclosure of to discuss personnel matters and the discussions would likely to significantly frustrate implementation of recommendations.

Name of Committee: NIH Advisory Board for Clinical Research.

Date: March 21, 2016.

Open: 10:00 a.m. to 1:40 p.m.

Agenda: To review the FY17 Clinical Center Budget and 2016/2017 Strategic and Operating Plan.

Place: National Institutes of Health, Building 10, CRC Medical Board, Room 4–2551, 10 Center Drive, Bethesda, MD 20892.

Closed: 1:40 p.m. to 3:00 p.m.

Agenda: To review and evaluate to discuss personnel matters and/or issues of which the premature disclosure may affect outcomes.

Place: National Institutes of Health, Building 10, CRC Medical Board, Room 4–2551, 10 Center Drive, Bethesda, MD 20892.

Contact Person: Maureen E Gormley, Executive Secretary, Mark O. Hatfield Clinical Research Center, National Institutes of Health, Building 10, Room 6–2551, Bethesda, MD 20892, (301) 496–2897.

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.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://clinicalcenter.nih.gov/about/welcome/governance/advisoryboard.shtml,* where an agenda and any additional information for the meeting will be posted when available.

Dated: February 17, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–03648 Filed 2–22–16; 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 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 Cancer Institute Special Emphasis Panel, NCI Provocative Questions Review—PQ 7.

Date: March 31, 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 Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W126, Bethesda, MD 20892–8328, 240–276–6348, *lymanc@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Provocative Questions Review—PQ 8.

Date: March 31, 2016.

Time: 2:00 p.m. to 4:00 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 Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W126, Bethesda, MD 20892–8328, 240–276–6348, *lymanc@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Provocative Questions Review—PQ 11.

Date: April 1, 2016.

Time: 1:00 p.m. to 4:00 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 Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W126, Bethesda, MD 20892–8328, 240–276–6348, *lymanc@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Provocative Questions Review—PQ 3.

Date: April 11, 2016.

Time: 10:00 a.m. to 2:00 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 Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W126, Bethesda, MD 20892–8328, 240–276–6348, *lymanc@nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(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: February 17, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–03654 Filed 2–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel.

Date: March 15, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Lee Warren Slice, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 1 Democracy Plaza, 6701 Democracy Blvd., Room 1068, Bethesda, MD 20892, 301–435–0807, *slicelw@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 17, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–03636 Filed 2–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, 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.

Name of Committee: Recombinant DNA Advisory Committee.

Date: March 8–9, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: The NIH Recombinant DNA Advisory Committee (RAC) will review and discuss selected human gene transfer protocols and related data management activities. For more information, please check the meeting agenda at OSP Web site, OBA Meetings Page (available at the following URL: *http://www.osp.od.nih.gov/office-biotechnology-activities/event/2016-03-08-130000-2016-03-10-220000/rac-meeting*).

Place: National Institutes of Health, Building 35, Conference Room 620–630, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Gene Rosenthal, Ph.D., Biotechnology Program Advisor, Office of Biotechnology Activities, Office of the Director, National Institutes of Health, Rockledge 1, Room 750, Bethesda, MD 20892, 301–496–9838.

Information is also available on the Institute's/Center's home page: *http://oba.od.nih.gov/rdna/rdna.html,* where an agenda and any additional information for the meeting will be posted when available.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: February 17, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–03649 Filed 2–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 Heart, Lung, and Blood Institute Special Emphasis Panel; Discovery of Genetic Basis of Monogenic Heart, Lung, Blood, and Sleep Disorders.

Date: March 15, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Keary A. Cope, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892–7924, 301–435–2222, *copeka@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 17, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–03647 Filed 2–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel.

Date: March 28, 2016.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room, 3AN.12N, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Saraswathy Seetharam, Ph.D., Scientific Review Officer, Office Scientific Review, National Institute of General Medical Sciences, National Institutes Health, 45 Center Drive, Room 3AN12C, Bethesda, MD 20892, 301–594–2763, *seetharams@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical

Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 17, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–03637 Filed 2–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: March 7, 2016.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Room 5B01, 6100 Executive Blvd., Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Sherry L Dupere, Ph.D., Chief, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–7510, 301–451–3415, *duperes@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: March 14, 2016.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sherry L Dupere, Ph.D., Chief, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892 –7510, 301–451–3415, *duperes@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Pelvic Floor Disorders—Data Coordinating Center.

Date: March 14, 2016.

Time: 4:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dennis E. Leszczynski, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Exeuctive Blvd., Rm. 5B01, Bethesda, MD 20892, (301) 435–6884, *leszczyd@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Developmental Biology Subcommittee.

Date: March 16–17, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.

Contact Person: Cathy J. Wedeen, Ph.D., Scientific Review Officer, Division of Scientific Review, OD, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6100 Executive Blvd., Room 5B01–G, Bethesda, MD 20892, 301–435–6878, *wedeenc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 17, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–03646 Filed 2–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Phase III Clinical Trials for AD.

Date: March 14, 2016.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maurizio Grimaldi, MD, Ph.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C218, Bethesda, MD 20892, 301–496–9374, *grimaldim2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 17, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–03635 Filed 2–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2013–0915]

RIN 1625–ZA31

Carriage of Conditionally Permitted Shale Gas Extraction Waste Water in Bulk

AGENCY: Coast Guard, DHS.

ACTION: Notice of withdrawal.

SUMMARY: The Coast Guard announces that it has withdrawn the October 30, 2013, proposed policy letter concerning the carriage of shale gas extraction waste water (SGEWW) in bulk via barge. The policy letter proposed a new standardized process and specified conditions under which a barge owner could request and be granted a Certificate of Inspection endorsement or letter allowing the barge to transport SGEWW in bulk. That proposed policy is withdrawn and no new policy is proposed at this time. Barge owners may

continue to request case-by-case approval to transport SGEWW under current regulations by providing recent detailed chemical composition, environmental analyses, and other information for each individual tank barge load. The Coast Guard will consider instituting a standardized process for transporting SGEWW in bulk after it has assessed whether current regulations are inadequate to handle requests for transport of SGEWW in bulk and environmental impacts that may be associated with SGEWW transport by barge.

DATES: The proposed policy letter was withdrawn February 23, 2016.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Dr. Cynthia A. Znati, Office of Design and Engineering Standards, Hazardous Materials Division, U.S. Coast Guard; telephone 202–372–1412, email *HazmatStandards@uscg.mil.*

SUPPLEMENTARY INFORMATION:

General Discussion

This notice is issued under the authority of 5 U.S.C. 552(a). On October 30, 2013, the Coast Guard published a proposed policy letter and requested comments on a new standardized process including the specific carriage conditions for the transport of shale gas extraction waste water (SGEWW) in bulk via barge (78 FR 64905). The proposed policy would have set out a process for performing chemical analyses of each load of SGEWW, a radiation survey of each barge before any personnel entered the barge and before changing from SGEWW to another cargo, and tank venting to prevent accumulation of radon. It also would have described limits on radioactivity concentration and consignment activity (effectively, limits on emission of radiation) for SGEWW cargoes.

We proposed the policy letter in response to the rapid development in recent years of horizontal drilling and hydraulic fracturing (commonly known as ''fracking'') that produce large volumes of shale gas and oil in the northern Appalachian Mountains. This fracking produces large amounts of SGEWW, some of which may contain hazardous materials including radioactive isotopes. Transport of SGEWW by vessel falls under the Coast Guard's existing regulations for bulk liquid hazardous material and requires specific, case-by-case permission. We explain these regulations in more detail, below.

In 2011 a tank barge owner asked the Coast Guard for permission to transport SGEWW by tank barge. Anticipating that this would be the first of many requests, the Coast Guard proposed a standardized national policy to replace the case-by-case process which might have led to delays in processing those requests. (We have not received significant interest from industry, however, which is one of the reasons we are withdrawing the proposed policy.) The notice announcing the policy letter provided a 30-day public comment period. We received 70,115 comments in response to the notice and proposed policy letter. These comments are generally described below, with our responses, in the section titled ''Comments Received.''

We are now withdrawing the proposed policy. This notice officially withdrawing the proposed policy letter is intended to resolve any questions about the status of the proposed policy letter or the existing regulatory process. No new policy is proposed at this time. The Coast Guard will continue to consider requests for permission to transport SGEWW in bulk under our existing regulatory authority described in the next section. We will use experience with individual approvals of SGEWW barge transport to inform any future rulemaking or guidance on this subject.

Carriage of SGEWW Under Existing Regulations

The Coast Guard regulates the carriage of bulk liquid hazardous material by listing, in the Code of Federal Regulations (CFR), permitted cargoes and the safety requirements that vessel owners must meet in order to carry those cargoes; see, for example, the list at Table 1 in 46 CFR part 153. Unlisted cargoes may not be carried without specific permission from the Coast Guard. The regulations provide that vessel owners may request and receive the necessary permission by providing information about each cargo so that the Coast Guard can prescribe necessary safety measures; see, for example, the requirements in 46 CFR 153.900. SGEWW is an unlisted cargo. In order to carry SGEWW on a tank barge, the vessel owner must request permission from the Coast Guard, provide the information about each individual cargo that the Coast Guard needs in order to analyze potential impacts and develop carriage requirements, and then comply with the requirements specified. Although the proposed policy letter would have standardized that information and request process for SGEWW, withdrawal of the policy letter does not change the Coast Guard's authority to consider approving unlisted cargoes on a case-by-case basis under the existing regulations.

Comments Received

Form letters. Of the 70,115 comments the Coast Guard received, 68,747 comments were brief statements in similar format and wording that expressed disapproval of the proposed policy letter and expressed opposition to hydraulic fracturing. Commenters stated concerns that a spill or accident would release toxic chemicals into our rivers and could put our drinking water at risk. The Coast Guard notes the general concerns expressed in these comments, but also notes these comments expressed the writers' general opposition to the proposed policy letter without offering input regarding the substance of transporting SGEWW in bulk as described in the policy. The Coast Guard has no legal authority to permit, prohibit, or place conditions on the practice of fracking itself. The Coast Guard's only authority in this matter is the authority to evaluate the safety of SGEWW as a cargo and set conditions on its carriage by vessel.

Other comments. We also received approximately 1,368 comments that did not employ a form template and are discussed here and below. One submission [1] was signed by representatives of 140 organizations and other entities from various States. This (and comments submitted by others) stated that the Coast Guard should expect wide interest in SGEWW barging and that a rulemaking, rather than a policy letter, is the appropriate approach to this issue. Commenters indicated a rulemaking would more clearly prescribe rules, how to achieve compliance, a consistent and transparent implementation process, an effective means of enforcement, and improved opportunities for public participation. The Coast Guard does not agree that a rulemaking would have provided more transparency or opportunities for public participation than were provided in the public comment period on the proposed policy letter. Detailed information on how to achieve compliance is often better suited to guidance documents such as the withdrawn policy letter. Effective enforcement is already provided via existing regulations prohibiting the carriage of unlisted cargoes without specific permission from the Coast Guard.

The comment also noted that the proposed chemical analysis protocol allows shippers to propose alternatives but those alternatives would not be

[1] Docketed as USCG–2013–0915–0932.

transparent to the general public. Many Coast Guard regulations provide the opportunity to propose alternatives or equivalent methods of compliance for the Coast Guard's approval; for examples see 46 CFR 62.15–1, 114.540, and 110.20–1, among others. Allowing alternatives provides the flexibility to use new technology, including improved safety and pollution prevention equipment. In addition, the Coast Guard consistently explains in its policy letters and other guidance that it will consider alternate methods of compliance with the binding statutory and regulatory requirements. Coast Guard determinations on alternate or equivalent methods of compliance generally are not publicly available because they do not create rights or obligations for anyone other than the requester, and they could contain proprietary information about the alternative requested or approved.

The same group of 140 organizations and entities submitted another comment,[2] stating that the proposed policy letter would result in uncertain or unknown effects or risks to various aspects of the environment and public health. The commenters also thought the proposed policy would result in negative impacts to areas that have unique historical, cultural, and ecological characteristics. The Coast Guard notes the concerns raised in these comments and will carefully consider the environmental impacts of each request to ship SGEWW by barge on a case-by-case basis under existing regulations.

Another submission [3] was made on behalf of 46 organizations in Ohio, Pennsylvania, Michigan, Kentucky, Illinois, New York, and West Virginia. This comment (and comments submitted by others) has similarly stated that the Coast Guard should require chemical analyses of SGEWW barge loads to be submitted to the agency, not merely held by industry. Under the proposed policy, vessel owners would have retained records of the chemical analyses and surveys, but the Coast Guard would have examined those records prior to allowing workers or Coast Guard personnel to enter a barge's tank. Also, by cumulating data from the chemical analyses records we could determine whether hazardous materials had built up within the barge's tank.

Various commenters, including some commenters employing a form template, also said that the Coast Guard's use of a categorical exclusion to preclude more thorough environmental analysis of the proposed policy letter's impact was improper under the National Environmental Policy Act of 1969 [4] (NEPA), and that more environmental analysis of the effects of the proposed policy letter is necessary to assess the likelihood of a spill. The Coast Guard intends to evaluate the environmental impacts under NEPA for each request to ship SGEWW by barge, on a case-by-case basis under existing regulations. This information may be used, as appropriate, to inform any future rulemaking or guidance on this issue.

Finally, the commenters believe the Coast Guard gave inadequate consideration to worker safety hazards and mitigation measures. As described above, however, the Coast Guard would have used the analyses and surveys described in the proposed policy to evaluate the safety of the barge tanks before allowing personnel to enter. In addition, once the chemical components of each individual load of SGEWW were identified, the Coast Guard could have used the regulatory process for unlisted cargoes to prescribe other protocols to mitigate safety risks to workers.

The Coast Guard also received many comments from individuals raising additional varied concerns. Some comments requested an extension of the public comment period, which is unnecessary in light of this withdrawal. Other comments stated that the proposed policy letter unfairly transfers industry costs and risks to society in general; we disagree that Coast Guard decisions on safe transport of SGEWW in bulk by water necessarily transfer costs and risks away from industry, especially as the proposed policy does not affect the creation or disposal of SGEWW, or its transport by truck or rail. We also received comments saying that the Coast Guard provided inadequate information about SGEWW's ultimate destination and the methods for its ultimate disposal; the ultimate destination and disposal of SGEWW was outside the scope of our proposed policy on safely transporting SGEWW. Also, commenters thought that the Coast Guard provided inadequate information about cleanup plans in the event of an SGEWW spill, but environmental liability and cleanup requirements were outside the scope and purpose of the proposed policy. The Coast Guard intends to evaluate requests to ship SGEWW by barge on a case-by-case basis under existing regulations. Any other statutes or regulations found to be applicable under this case-by-case review would be included when developing carriage requirements.

Of the comments received, 21 comments thought the proposed policy letter should be finalized. These commenters suggested that the risk of transporting SGEWW by vessel was lower relative to transport by rail or truck, or that SGEWW is less hazardous than other vessel-borne cargoes such as oil and gasoline. The Coast Guard notes these comments in support of the proposed policy letter.

The Coast Guard appreciates all the comments received. It will continue to study this issue in light of the comments received before taking any further action on this matter. In particular, the Coast Guard will assess whether current regulations are adequate to handle requests for transport of SGEWW in bulk and environmental impacts that may be associated with SGEWW transport by barge.

Dated: February 17, 2016.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2016–03674 Filed 2–22–16; 8:45 am]

BILLING CODE 9110–04–P

[2] Docketed as USCG–2013–0915–1036.

[3] Docketed as USCG–2013–0915–0855.

[4] Codified as 42 U.S.C. 4321 *et seq.*

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2016–0011]

Meeting: Homeland Security Advisory Council

AGENCY: The Office of Public Engagement, DHS.

ACTION: Notice of open teleconference Federal Advisory Committee meeting.

SUMMARY: The Homeland Security Advisory Council (''Council'') will meet via teleconference on March 15, 2016. The meeting will be open to the public.

DATES: The Council conference call will take place from 2:00 p.m. to 4:15 p.m. EST on March 15, 2016. Please note that the meeting may end early if the Council has completed its business.

ADDRESSES: The Council meeting will be held via teleconference. Members of the public interested in participating may do so by following the process outlined below (see ''Public Participation''). Written comments must be submitted and received by Wednesday, March 9, 2016. Comments must be identified by Docket No. DHS–2016–0011 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: HSAC@hq.dhs.gov.* Include Docket No. DHS–2015–0013 in the subject line of the message.

• *Fax:* (202) 282–9207.

• *Mail:* Homeland Security Advisory Council, Department of Homeland Security, Mailstop 0445, 245 Murray Lane SW., Washington, DC 20528.

Instructions: All Submissions received must include the words ''Department of Homeland Security'' and DHS–2016–0011, the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read comments received by the DHS Homeland Security Advisory Council, go to *http://www.regulations.gov,* search ''DHS–2016–0011,'' ''Open Docket Folder'' and provide your comments.

FOR FURTHER INFORMATION CONTACT: Jay Visconti at *HSAC@hq.dhs.gov* or at (202) 447–3135.

SUPPLEMENTAL INFORMATION: Notice of this meeting is given under sec. 10(a) of the Federal Advisory Committee Act (FACA), Public Law 92–463 (5 U.S.C. App.) requiring each FACA committee meeting to be open to the public.

The Council provides organizationally independent, strategic, timely, specific, and actionable advice and recommendations for the consideration of the Secretary of the Department of Homeland Security (DHS) on matters related to homeland security. The Council is comprised of leaders of local law enforcement, first responders, state, local, and tribal government, the private sector, and academia.

The Council will review and deliberate on the U.S. Customs and Border Protection (CBP) Integrity Advisory Panel and DHS Grant Review Task Force final recommendations. The Council will also vote on the issuance of a letter to Secretary Johnson about countering violent extremism.

Public Participation: Members of the public will be in listen-only mode. The public may register to participate in this Council teleconference via the following procedures. Each individual must provide his or her full legal name and email address no later than 5:00 p.m. EST on Wednesday, March 9, 2016 to a staff member of the Council via email to *HSAC@hq.dhs.gov* or via phone (202) 447–3135. The conference call details, the CBP Integrity Advisory Panel report and the DHS Grant Review Task Force report will be provided to interested members of the public after the closing of the public registration period and prior to the start of the meeting.

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities, or to request special assistance during the teleconference contact Jay Visconti (202) 447–3135.

Dated: February 16, 2016.

Sarah E. Morgenthau,

Executive Director, Homeland Security Advisory Council, DHS.

[FR Doc. 2016–03656 Filed 2–22–16; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2016–0014]

Privacy Act of 1974; Department of Homeland Security, U.S. Customs and Border Protection–009 Electronic System for Travel Authorization System of Records

AGENCY: Privacy Office, Department of Homeland Security.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to update and reissue the DHS system of records titled, ''DHS/U.S. Customs and Border Protection (CBP)-009 Electronic System for Travel Authorization (ESTA) System of Records.'' This system of records allows DHS/CBP to collect and maintain records on nonimmigrant aliens seeking to travel to the United States under the Visa Waiver Program and other persons, including U.S. citizens and lawful permanent residents, whose names are provided to DHS as part of a nonimmigrant alien's ESTA application. The system is used to determine whether an applicant is eligible to travel to and enter the United States under the Visa Waiver Program (VWP) by vetting his or her ESTA application information against selected security and law enforcement databases at DHS, including but not limited to TECS (not an acronym) and the Automated Targeting System (ATS). In addition, ATS retains a copy of ESTA application data to identify ESTA applicants who may pose a security risk to the United States. ATS maintains copies of key elements of certain databases in order to minimize the impact of processing searches on the operational systems and to act as a backup for certain operational systems. DHS may also vet ESTA application information against security and law enforcement databases at other federal agencies to enhance DHS's ability to determine whether the applicant poses a security risk to the United States and is eligible to travel to and enter the United States under the VWP. The results of this vetting may inform DHS's assessment of whether the applicant's travel poses a law enforcement or security risk and whether the application should be approved.

DHS/CBP is updating this system of records notice, last published on November 4, 2014 (79 FR 65414), to modify the categories of records in the system to include responses to new questions and additional data elements to assist DHS/CBP in determining eligibility to travel under the VWP. DHS is also modifying the categories of records to remove several data elements that are no longer collected, including date of anticipated crossing, carrier information (carrier name and flight or vessel number), city of embarkation, and any change of address while in the United States. In 2014, DHS/CBP determined that these fields were unnecessary for mission operations. DHS/CBP is also revising the ESTA application to reflect the current quarantinable, communicable diseases specified by any Presidential E.O. under sec. 361(b) of the Public Health Service Act (PHS Act). Lastly, DHS/CBP is making non-substantive, clarifying edits to Routine Use N.

DHS/CBP issued a Final Rule to exempt this system of records from certain provisions of the Privacy Act on August 31, 2009 (74 FR 45070). These regulations remain in effect.

DATES: This updated system will be effective upon the public display of this notice. Although this system is effective upon publication, DHS will accept and consider comments from the public and evaluate the need for any revisions to this notice.

ADDRESSES: You may submit comments, identified by docket number DHS–2016–0014 by one of the following methods:

• *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Fax:* 202–343–4010.

• *Mail:* Karen L. Neuman, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

DOCKET: For access to the docket to read background documents or comments

received, please visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: John Connors, (202) 344–1610, CBP Privacy Officer, Privacy and Diversity Office, 1300 Pennsylvania Ave. NW., Washington, DC 20229. For privacy questions, please contact: Karen L. Neuman, (202) 343–1717, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) is updating and reissuing a current DHS system of records titled, ''DHS/CBP–009 Electronic System for Travel Authorization (ESTA) System of Records.''

In the wake of September 11, 2001, Congress enacted the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. 110–53. sec. 711 of that Act sought to address the security vulnerabilities associated with Visa Waiver Program (VWP) travelers not being subject to the same degree of screening as other international visitors. As a result, sec. 711 required DHS to develop and implement a fully automated electronic travel authorization system to collect biographical and other information necessary to evaluate the security risks and eligibility of an applicant to travel to the United States under the VWP. The VWP is a travel facilitation program that has evolved to include more robust security standards that are designed to prevent terrorists and other criminal actors from exploiting the program to enter the country.

Electronic System for Travel Authorization is a web-based system that DHS/CBP developed in 2008 to determine the eligibility of foreign nationals to travel by air or sea to the United States under the VWP. Using the ESTA Web site, applicants submit biographic information and answer questions that permit DHS to determine eligibility for travel under the VWP. DHS/CBP uses the information submitted to ESTA to make a determination regarding whether the applicant is eligible to travel under the VWP, including whether his or her intended travel poses a law enforcement or security risk. DHS/CBP vets the ESTA applicant information against selected security and law enforcement databases, including TECS (DHS/CBP–011 U.S. Customs and Border Protection TECS, 73 FR 77778, December 19, 2008) and ATS (DHS/CBP–006 Automated Targeting System, 77 FR 30297, May 22, 2012).

The ATS also retains a copy of the ESTA application data to identify ESTA applicants who may pose a security risk to the United States. The ATS maintains copies of key elements of certain databases in order to minimize the impact of processing searches on the operational systems and to act as a backup for certain operational systems. DHS may also vet ESTA application information against security and law enforcement databases at other federal agencies to enhance DHS's ability to determine whether the applicant poses a security risk to the United States or is otherwise eligible to travel to and enter the United States under the VWP. The results of this vetting may inform DHS's assessment of whether the applicant's travel poses a law enforcement or security risk. The ESTA eligibility determination is made prior to a visitor boarding a carrier en route to the United States.

DHS/CBP is updating this system of records notice, last published on November 4, 2014 (79 FR 65414), to modify the categories of records in the system to include responses to new questions and additional data elements to assist DHS/CBP in determining eligibility to travel under the VWP. DHS is also modifying the categories of records to remove several data elements that are no longer collected, including date of anticipated crossing, carrier information (carrier name and flight or vessel number), city of embarkation, and any change of address while in the United States. In 2014, DHS/CBP determined that these fields were unnecessary for mission operations. DHS/CBP is also making non-substantive, clarifying edits to Routine Use N.

On December 18, 2015, the President signed into law the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 as part of the Consolidated Appropriations Act of 2016. To meet the requirements of this new law, DHS is strengthening the security of the VWP through enhancements to the ESTA application and to the Nonimmigrant Visa Waiver Arrival/Departure Record form (Form I–94W). Many of the provisions of the new law became effective on the date of enactment of the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015. The Act generally makes certain nationals of VWP countries ineligible (with some exceptions) from traveling to the United States under the VWP if the applicant is also a national of, or at any time on or after March 1, 2011, been present in Iraq, Syria, a designated state sponsor of terrorism (currently Iran, Sudan, and Syria),[1] or any other country or area of concern as designated by the Secretary of Homeland Security.[2]

Under the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, the Secretary of Homeland Security may waive these new VWP travel restrictions with respect to an alien if the Secretary determines that such a waiver is in the law enforcement or national security interests of the United States. Whether ESTA applicants will receive a waiver will be determined on a case-by-case basis, in accordance with policy and operations guidance. DHS is updating this SORN to include updated questions to the ESTA application and Form I–94W in accordance with the new restrictions in the Act.

DHS has determined that these enhancements to the ESTA application and Form I–94W will help DHS remain compliant with its legal requirements and for the VWP to adapt to the heightened threat environment including the continued increase in the number of foreign fighters from VWP countries participating in the Syria and Iraq conflicts. The newly proposed ESTA data elements, combined with existing data elements, will help the U.S. Government meet the requirements of the VWP Improvement and Terrorist Travel Prevention Act of 2015, mitigate the foreign fighter threat, and facilitate lawful travel under the VWP.

In addition, pursuant to 42 U.S.C. 264(b) and E.O. 13295, as amended on July 31, 2014, DHS/CBP is revising the existing ESTA question on quarantinable communicable diseases. Applicants are inadmissible into the United States if they are determined (1) to have a communicable disease of public health significance; (2) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to

[1] Countries determined by the Secretary of State to have repeatedly provided support for acts of international terrorism are generally designated pursuant to three laws: sec. 6(j) of the Export Administration Act of 1979 (50 U.S.C. 2405); sec. 40 of the Arms Export Control Act (22 U.S.C. 2780); and sec. 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

[2] The Act establishes exceptions to the bar for travel to Iraq, Syria, Iran, and Sudan since March 1, 2011, for individuals determined by the Secretary of Homeland Security to have been present in these countries, ''(i) in order to perform military service in the armed forces of a [VWP] program country; or (ii) in order to carry out official duties as a full time employee of the government of a [VWP] program country.'' 8 U.S.C. 1187(a)(12)(B).

the property, safety, or welfare of the applicant or others; (3) to have a history of a physical or mental disorder associated with behavior which posed a threat to the property, safety, or welfare of the applicant or others and which is likely to recur or lead to other harmful behavior; or (4) to be a drug abuser or addict. The Department of Health and Human Services (HHS) and the Center for Disease Control (CDC) previously issued regulations that defined a ''communicable disease of public health significance'' by only listing eight specific diseases: Active tuberculosis (TB), human immunodeficiency virus (HIV) infection, chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, infectious syphilis, and infectious leprosy (Hansen's disease).

These eight communicable diseases are currently listed on the existing ESTA application. However, HHS/CDC have found that recent experience (including the Ebola outbreak of 2014) demonstrated that a fixed list of diseases does not allow the flexibility to rapidly respond to unanticipated emerging or re-emerging outbreaks of disease. The ability to rapidly respond requires an approach based on prospective risks and consequences instead of a static list that does not reflect the potential for future outbreaks of novel diseases. Therefore, HHS/CDC is adding the following disease categories to the current list of communicable diseases of public health significance:

(1) Quarantinable, communicable diseases specified by Presidential E.O. Order, as provided under sec. 361(b) of the PHS Act;

(2) Any communicable disease that requires notification to WHO of an event that may constitute a public health emergency of international concern, pursuant to the revised IHR of 2005.

Consistent with this new guidance from HHS/CDC regarding communicable diseases, DHS/CBP is revising the ESTA application to reflect the current quarantinable, communicable diseases specified by any Presidential E.O. under sec. 361(b) of the PHS Act. The revised ESTA Application question is as follows: Do you have a physical or mental disorder, or are you a drug abuser or addict, or do you currently have any of the following diseases (communicable diseases are specified pursuant to sec. 361(b) of the PHS Act:

- Cholera;
- Diphtheria;
- Tuberculosis, infection;
- Plague;
- Smallpox;
- Yellow Fever;
- Viral Hemorrhagic Fevers, including Ebola, Lassa, Marburg, Crimean-Congo; and
- Severe acute respiratory illnesses capable of transmission to other persons and likely to cause mortality.

DHS/CBP is also making non-substantive edits to Routine Use N to clarify that DHS/CBP may verify an individual's travel authorization status with that individual's carrier, prior to travel. To do so, DHS/CBP receives Advanced Passenger Information from carriers seventy-two hours in advance of travel to verify the travel authorization status of those passengers. As part of the response, DHS/CBP does not send any personally identification information to the carrier. DHS/CBP only sends a positive or negative response. If DHS/CBP returns a negative response, the carriers must visually confirm a visa permitting travel to the United States.

Consistent with DHS's information sharing mission, information stored in the ''DHS/CBP–009 Electronic System for Travel Authorization System of Records'' may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/CBP may share information stored in ESTA with other federal security and counterterrorism agencies, as well as on a case-by-case basis to appropriate state, local, tribal, territorial, foreign, or international government agencies. This external sharing takes place after DHS determines that it is consistent with the routine uses set forth in this system of records notice.

Additionally, for ongoing, systematic sharing, DHS completes an information sharing and access agreement with partners to establish the terms and conditions of the sharing, including documenting the need to know, authorized users and uses, and the privacy protections for the data.

DHS previously issued a Final Rule to exempt this system of records from certain provisions of the Privacy Act on August 31, 2009 (74 FR 45070). These regulations remain in effect. This updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Given the importance of providing privacy protections to international travelers, and because the ESTA application has generally solicited contact information about U.S. persons, DHS always administratively applied the privacy protections and safeguards of the Privacy Act to all international travelers subject to ESTA. The ESTA falls within the mixed system policy and DHS will continue to extend the administrative protections of the Privacy Act to information about travelers and non-travelers whose information is provided to DHS as part of the ESTA application.

Below is the description of the DHS/U.S. Customs and Border Protection-009 Electronic System for Travel Authorization System of Records System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS:

Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP)–009.

SYSTEM NAME:

DHS/CBP–009 Electronic System for Travel Authorization System (ESTA).

SECURITY CLASSIFICATION:

Unclassified. The data may be retained on classified networks but this does not change the nature and character of the data until it is combined with classified information.

SYSTEM LOCATION:

DHS/CBP maintains records at the CBP Headquarters in Washington, DC and field offices. Records are replicated from the operational system and maintained on the DHS unclassified and classified networks.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include:

1. Foreign nationals who seek to enter the United States by air or sea under the VWP; and,

2. Persons, including U.S. Citizens and lawful permanent residents, whose information is provided in response to ESTA application questions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Visa Waiver Program travelers may seek the required travel authorization by electronically submitting an application consisting of biographical and other data elements via the ESTA Web site. The categories of records in ESTA include:

- Full name (first, middle, and last);
- Other names or aliases, if available;
- Date of birth;
- City and country of birth;
- Gender;
- Email address;
- Telephone number (home, mobile, work, other);
- Home address (address, apartment number, city, state/region);
- Internet protocol (IP) address;
- ESTA application number;
- Country of residence;
- Passport number;
- Passport issuing country;
- Passport issuance date;
- Passport expiration date;
- Department of Treasury Pay.gov payment tracking number (*i.e.*, confirmation of payment; absence of payment confirmation will result in a ''not cleared'' determination);
- Country of citizenship;
- Other citizenship (country, passport number);
- National identification number, if available;
- Address while visiting the United States (number, street, city, state);
- Emergency point of contact information (name, telephone number, email address);
- U.S. Point of Contact (name, address, telephone number);
- Parents' names;
- Current job title;
- Current or previous employer name;
- Current or previous employer street address; and
- Current or previous employer telephone number.

The categories of records in ESTA also include responses to the following questions:

- Do you have a physical or mental disorder, or are you a drug abuser or addict,[3] or do you currently have any of the following diseases (communicable diseases are specified pursuant to sec. 361(b) of the Public Health Service Act):
  - Cholera
  - Diphtheria
  - Tuberculosis, infection
  - Plague
  - Smallpox
  - Yellow Fever
  - Viral Hemorrhagic Fevers, including Ebola, Lassa, Marburg, Crimean-Congo
  - Severe acute respiratory illnesses capable of transmission to other persons and likely to cause mortality
- Have you ever been arrested or convicted for a crime that resulted in serious damage to property, or serious harm to another person or government authority?
- Have you ever violated any law related to possessing, using, or distributing illegal drugs?
- Do you seek to engage in or have you ever engaged in terrorist activities, espionage, sabotage, or genocide?
- Have you ever committed fraud or misrepresented yourself or others to obtain, or assist others to obtain, a visa or entry into the United States?
- Are you currently seeking employment in the United States or were you previously employed in the United States without prior permission from the U.S. government?
- Have you ever been denied a U.S. visa you applied for with your current or previous passport, or have you ever been refused admission to the United States or withdrawn your application for admission at a U.S. port of entry? If yes, when and where?
- Have you ever stayed in the United States longer than the admission period granted to you by the U.S. government?
- Have you traveled to, or been present in, Iraq, Syria, Iran, or Sudan on or after March 1, 2011? If yes, provide the country, date(s) of travel, and reason for travel. Depending on the purpose of travel to these countries, additional responses may be required including:
  - Previous countries of travel;
  - Dates of previous travel;
  - Countries of previous citizenship;
  - Other current or previous passports;
  - Visa numbers;
  - Laissez-Passer numbers;
  - Identity card numbers;
  - Organization, company, or entity on behalf of which you traveled;
  - Official position/title with the organization, company, or entity behalf of which you traveled;
  - Contact information for organization, company, or entity on behalf of which you traveled;
  - Iraqi, Syrian, Iranian, or Sudanese Visa Number;
  - I-Visa, G-Visa, or A-Visa number, if issued by a U.S. Embassy or Consulate;
  - All organizations, companies, or entities with which you had business dealings, or humanitarian contact;
  - Grant number, if applicant's organization has received U.S. government funding for humanitarian assistance within the last five years;
  - Additional passport information (if issued a passport or national identity card for travel by any other country), including country, expiration year, and passport or identification card number;
  - Any other information provided voluntarily in open, write-in fields provided to the ESTA applicant.
- Have you ever been a citizen or national of any other country? If yes, other countries of previous citizenship or nationality? If Iraq, Syria, Iran, or Sudan are selected, follow-up questions are asked regarding status of current citizenship including dual-citizenship information, and how citizenship was acquired.

Applicants who identify Iraq, Syria, Iran, or Sudan as their Country of Birth on ESTA will be directed to follow-up questions to determine whether they currently are a national or dual national of their country of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title IV of the Homeland Security Act of 2002, 6 U.S.C. 201 *et seq.*, the Immigration and Naturalization Act, as amended, including 8 U.S.C. 1187(a)(11) and (h)(3), and implementing regulations contained in part 217, title 8, Code of Federal Regulations; the Travel Promotion Act of 2009, Pub. L. 111–145, 22 U.S.C. 2131.

PURPOSE(S):

The purpose of this system is to collect and maintain a record of nonimmigrant aliens who want to travel to the United States under the VWP, and to determine whether applicants are eligible to travel to and enter the United States under the VWP. The information provided through ESTA is also vetted—along with other information that the Secretary of Homeland Security determines is necessary, including information about other persons included on the ESTA application—against various security and law

[3] Immigration and Nationality Act 212(a)(1)(A). Pursuant to 8 U.S.C. 1182(a), aliens may be inadmissible to the United States if they have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or (ii) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior, or are determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict.

enforcement databases to identify those applicants who pose a security risk to the United States. This vetting includes consideration of the applicant's IP address, and all information provided in response to the ESTA application questionnaire, including free text write-in responses.

The Department of Treasury Pay.gov tracking number (associated with the payment information provided to Pay.gov and stored in the Credit/Debit Card Data System, DHS/CBP–003 Credit/Debit Card Data System (CDCDS) 76 FR 67755 (November 2, 2011)) will be used to process ESTA and third party administrator fees and to reconcile issues regarding payment between ESTA, CDCDS, and Pay.gov. Payment information will not be used for vetting purposes and is stored in a separate system (CDCDS) from the ESTA application data.

DHS maintains a replica of some or all of the data in ESTA on the unclassified and classified DHS networks to allow for analysis and vetting consistent with the above stated uses and purposes and this published notice.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations for the purpose of protecting the vital health interests of a data subject or other persons (*e.g.*, to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantinable disease or to combat other significant public health threats; appropriate notice will be provided of any identified health threat or risk).

I. 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 in the proper performance of the official duties of the officer making the disclosure.

J. To a federal, state, tribal, local, international, or foreign government agency or entity for the purpose of consulting with that agency or entity: (1) To assist in making a determination regarding redress for an individual in connection or program; (2) for the purpose of verifying the identity of an individual seeking redress in connection with the operations of a DHS Component or program; or (3) for the purpose of verifying the accuracy of information submitted by an individual who has requested such redress on behalf of another individual.

K. To federal and foreign government intelligence or counterterrorism agencies or components when DHS becomes aware of an indication of a threat or potential threat to national or international security to assist in countering such threat, or to assist in anti-terrorism efforts.

L. To the Department of State in the processing of petitions or applications for benefits under the Immigration and Nationality Act, and all other immigration and nationality laws including treaties and reciprocal agreements.

M. To an organization or individual in either the public or private sector, either foreign or domestic, when there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, to the extent the information is relevant to the protection of life or property.

N. To the carrier transporting an individual to the United States, prior to travel, in response to a request from the carrier, to verify an individual's travel authorization status.

O. To the Department of Treasury's Pay.gov, for payment processing and payment reconciliation purposes.

P. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

Q. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public

interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

DHS/CBP stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

RETRIEVABILITY:

DHS/CBP may retrieve records by any of the data elements supplied by the applicant.

SAFEGUARDS:

DHS/CBP safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. DHS/CBP has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Application information submitted to ESTA generally expires and is deemed ''inactive'' two years after the initial submission of information by the applicant. In the event that a traveler's passport remains valid for less than two years from the date of the ESTA approval, the ESTA travel authorization will expire concurrently with the passport. Information in ESTA will be retained for one year after the ESTA travel authorization expires. After this period, the inactive account information will be purged from online access and archived for 12 years. Data linked at any time during the 15-year retention period (generally 3 years active, 12 years archived), to active law enforcement lookout records, will be matched by DHS/CBP to enforcement activities, and/or investigations or cases, including ESTA applications that are denied authorization to travel, will remain accessible for the life of the law enforcement activities to which they may become related. NARA guidelines for retention and archiving of data will apply to ESTA and DHS/CBP continues to negotiate with NARA for approval of the ESTA data retention and archiving plan. Records replicated on the unclassified and classified networks will follow the same retention schedule. Payment information is not stored in ESTA, but is forwarded to Pay.gov and stored in DHS/CBP's financial processing system, CDCDS, pursuant to the DHS/CBP–018, CDCDS system of records notice. When a VWP traveler's ESTA data is used for purposes of processing his or her application for admission to the United States, the ESTA data will be used to create a corresponding admission record in the DHS/CBP–016 Non-Immigrant Information System (NIIS). This corresponding admission record will be retained in accordance with the NIIS retention schedule, which is 75 years.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Automated Systems, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Washington, DC 20229.

NOTIFICATION PROCEDURE:

Applicants may access their ESTA information to view and amend their applications by providing their ESTA number, birth date, and passport number. Once they have provided their ESTA number, birth date, and passport number, applicants may view their ESTA status (authorized to travel, not authorized to travel, pending) and submit limited updates to their travel itinerary information. If an applicant does not know his or her application number, he or she can provide his or her name, passport number, date of birth, and passport issuing country to retrieve his or her application number.

In addition, ESTA applicants and other individuals whose information is included on ESTA applications may submit requests and receive information maintained in this system as it relates to data submitted by or on behalf of a person who travels to the United States and crosses the border, as well as, for ESTA applicants, the resulting determination (authorized to travel, pending, or not authorized to travel). However, the Secretary of Homeland Security has exempted portions of this system from certain provisions of the Privacy Act related to providing the accounting of disclosures to individuals because it is a law enforcement system. DHS/CBP will, however, consider individual requests to determine whether or not information may be released. In processing requests for access to information in this system, DHS/CBP will review the records in the operational system and coordinate with DHS to ensure that records that were replicated on the unclassified and classified networks, are reviewed and based on this notice provide appropriate access to the information.

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer and Headquarters Freedom of Information Act (FOIA) Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''FOIA Contact Information.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief FOIA Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, individuals should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records.

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his or her

agreement for you to access his or her records.

Without the above information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

DHS/CBP obtains records from information submitted by travelers via the online ESTA application at *https://esta.cbp.dhs.gov/esta/*.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

No exemption shall be asserted with respect to information maintained in the system as it relates to data submitted by or on behalf of a person who travels to visit the United States and crosses the border, nor shall an exemption be asserted with respect to the resulting determination (authorized to travel, pending, or not authorized to travel). Information in the system may be shared with law enforcement and/or intelligence agencies pursuant to the above routine uses. The Privacy Act requires DHS to maintain an accounting of the disclosures made pursuant to all routines uses. Disclosing the fact that a law enforcement or intelligence agency has sought and been provided particular records may affect ongoing law enforcement activities. As such, pursuant to 5 U.S.C. 552a(j)(2), DHS will claim exemption from Sections (c)(3), (e)(8), and (g) of the Privacy Act of 1974, as amended, as is necessary and appropriate to protect this information. Further, DHS will claim exemption from sec. (c)(3) of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(k)(2) as is necessary and appropriate to protect this information.

Dated: February 17, 2016

Karen L. Neuman

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2016–03867 Filed 2–22–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2015–0083]

The President's National Security Telecommunications Advisory Committee

AGENCY: Department of Homeland Security.

ACTION: Committee management; notice of Federal Advisory Committee Meeting.

SUMMARY: The President's National Security Telecommunications Advisory Committee (NSTAC) will meet via teleconference on Thursday, March 10, 2016. The meeting will be open to the public.

DATES: The NSTAC will meet on Thursday, March 10, 2016, from 2:00 p.m. to 3:00 p.m. Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held via conference call. For access to the conference call bridge, information on services for individuals with disabilities, or to request special assistance to attend, please email *NSTAC@hq.dhs.gov* by 5:00 p.m. on Wednesday, March 9, 2016.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated briefing materials to be discussed at the meeting will be available at *www.dhs.gov/nstac* for review as of Friday, March 4, 2016. Comments may be submitted at any time and must be identified by docket number DHS–2015–0083.

Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting written comments.
- *Email: NSTAC@hq.dhs.gov.* Include the docket number DHS–2015–0083 in the subject line of the email message.
- *Fax:* 703–235–5961, Attn: Helen Jackson.
- *Mail:* Designated Federal Officer, Stakeholder Engagement and Critical Infrastructure Resilience Division, National Protection and Programs Directorate, Department of Homeland Security, 245 Murray Lane, Mail Stop 0604, Arlington, VA 20598–0604.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *www.regulations.gov,* including any personal information provided.

Docket: For access to the docket and comments received by the NSTAC, go to *www.regulations.gov* and enter docket number DHS–2015–0083.

A public comment period will be held during the conference call on Thursday, March 10, 2016, from 2:30 p.m. to 2:40 p.m. Speakers who wish to participate in the public comment period must register in advance by no later than Wednesday, March 9, 2016, at 5:00 p.m. by emailing NSTAC at *NSTAC@hq.dhs.gov.* Speakers are requested to limit their comments to three minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, following the last request for comments.

FOR FURTHER INFORMATION CONTACT: Ms. Helen Jackson, NSTAC Designated Federal Officer, Department of Homeland Security, (703) 235–5321 (telephone).

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix. The NSTAC advises the President on matters related to national security and emergency preparedness (NS/EP) telecommunications policy.

Agenda: The NSTAC will hold a conference call on March 10, 2016, to discuss issues and challenges related to NS/EP communications, which will comprise of discussions with high-level government stakeholders and a review of on-going NSTAC work, including an update on the Big Data Analytics Subcommittee. NSTAC members will also discuss their examination on emergent technologies. In November 2015, the Executive Office of the President requested that the NSTAC examine how emerging information and communications technologies might affect the government's NS/EP missions and capabilities over the next zero-, three-, five-, and seven-year periods. Following the discussion, members will deliberate and vote on the Letter to the President: Emerging Technologies Strategic Vision.

Dated: February 16, 2016.

Helen Jackson,

Designated Federal Officer for the NSTAC, Department of Homeland Security.

[FR Doc. 2016–03657 Filed 2–22–16; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2016–N012]; [FVES59420300000F2 14X FF03E00000]

Michigan Department of Natural Resources; Application for Enhancement of Survival Permit; Proposed Programmatic Candidate Conservation Agreement With Assurances for the Eastern Massasauga Rattlesnake in Michigan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Receipt of application; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce receipt from the Michigan Department of Natural Resources (MDNR) of an application for an enhancement of survival permit under the Endangered Species Act of 1973, as amended. The requested permit would authorize take of eastern massasauga rattlesnake (*Sistrurus catenatus*), resulting from certain land use and conservation activities, should the species be listed as endangered or threatened in the future. The permit application includes a proposed programmatic candidate conservation agreement with assurances (CCAA) between MDNR, the Michigan Department of Military and Veterans Affairs (MDMVA), and the Service. The requested term of the proposed CCAA and permit is 25 years. We are accepting comments on the permit application and the draft CCAA.

DATES: We will accept comments on the application and draft CCAA on or before March 24, 2016.

ADDRESSES: *Document Availability:* This draft CCAA, permit application, and final environmental assessment are available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R3–ES–FWS–R3–ES–2016–0009. Supporting documentation, including the draft CCAA, permit application, and final environmental assessment, are available for public inspection during normal business hours at: U.S. Fish and Wildlife Service, East Lansing Field Office, 3001 Coolidge Rd, # 400, East Lansing, Michigan 48823.

To submit comments on the application and draft CCAA, go to *http://www.regulations.gov.* In the Search box, enter FWS–R3–ES–2016–0009, which is the docket number for this Notice of Availability. Then click on the Search button. Please ensure that you have located the correct document before submitting your comments. You may submit a comment by clicking on ''Comment Now!''

FOR FURTHER INFORMATION CONTACT: Scott Hicks, Field Supervisor, East Lansing Field Office (see **ADDRESSES**); by telephone (517–351–6274), or by facsimile (517–351–1443). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce receipt from the Michigan Department of Natural Resources (MDNR) and Michigan Department of Military and Veterans Affairs (MDMVA) of an application for an enhancement of survival permit (permit) under the Endangered Species Act of 1973, as amended (ESA). The requested permit would authorize take of eastern massasauga rattlesnake (EMR) resulting from certain land use and conservation activities, should the species be listed as endangered or threatened in the future. The permit application includes a proposed programmatic candidate conservation agreement with assurances (CCAA) between MDNR, MDMVA, and the Service. The requested term of the proposed CCAA and permit is 25 years. We are accepting comments on the permit application and the proposed CCAA.

Background

Enhancement of survival permits issued for CCAAs encourage non-Federal landowners to implement conservation measures for species that are, or are likely to become, candidates for Federal listing as endangered or threatened by assuring landowners they will not be subjected to increased property use restrictions if the covered species becomes listed in the future. Application requirements and issuance criteria for enhancement of survival permits issued for CCAAs are in the Code of Federal Regulations (CFR) at 50 CFR 17.22(d) and 17.32(d). Service policy guidance for CCAAs was published in the **Federal Register** on June 17, 1999 (64 FR 32726).

Proposed Programmatic Candidate Conservation Agreement With Assurances

The proposed EMR CCAA is a programmatic agreement between the Service, the MDNR, and the MDVA to further the conservation of the eastern massasauga rattlesnake on non-Federal lands. The purpose of this CCAA is to encourage non-Federal landowners in Michigan to manage their properties in ways that are consistent with the long-term sustainability and persistence of EMR. On September 30, 2015, the Service proposed to list the EMR as a threatened species under the Endangered Species Act (Act). Although there are several factors that are affecting the species' status, loss of habitat continues to be the primary threat to this species, either through development or through changes in habitat structure due to vegetative succession.

Most viable populations of EMR in the State of Michigan occur on land managed by the MDNR and the MDMVA. Implementation of the CCAA will facilitate identification and minimization of threats on these properties. Education and outreach efforts are proposed to raise awareness and increase understanding about the species for all stakeholders, reduce persecution or indiscriminate killing, and promote conservation of the species. The conservation goal of this CCAA on the part of the Service, the MDNR, the MDMVA and other cooperators is to maintain viable populations of EMR on public and private land by reducing threats and managing and restoring habitat for EMR.

Populations of EMR continue to persist throughout most of the species' historical range in Michigan. Therefore, the proposed EMR CCAA framework is based on two categories of management approaches for the species. Both categories contain common measures to conserve EMR, including protections for the species from collection and persecution. The first category encompasses lands considered most important to the long-term sustainability of EMR, which will be managed with strategies designed to protect EMR populations while also creating and restoring suitable habitat needed to sustain EMR populations. The strategies for this category include EMR-protective specifications for wetlands, prescribed fire use, water-level manipulations, vegetation management (*e.g.,* cutting, mowing, use of chemicals), oil/gas/mineral leasing, and forest management. The second category comprises land that is generally not suitable habitat for the species or where EMR management is not be a priority (*e.g.,* campgrounds). The strategies for this category include measures to minimize the potential for human-EMR interactions (*e.g.,* keeping grass mowed in developed areas) as well as measures to help protect individual snakes (*e.g.,* safe relocation methods).

National Environmental Policy Act Determination

As required by NEPA, we previously evaluated potential impacts to the

human environment that could result from issuance of the requested permit for the EMR CCAA, and we do not foresee any significant impacts. We completed an Environmental Assessment and a Finding of No Significant Impact on a Proposal to Implement Candidate Conservation Agreements and Conservation Measures for Eastern Massasaugas in Illinois, Iowa, Michigan, Missouri, Ohio, and Wisconsin (see *http://www.fws.gov/midwest/endangered/permits/enhancement/ccaa/index.html*). Participating in the EMR CCAA is strictly a voluntary action for landowners.

Next Steps

We will evaluate the permit application, associated documents, and comments we receive to determine whether the permit application meets the requirements of the ESA, NEPA, and implementing regulations. If we determine that all requirements are met, we will sign the proposed CCAA and issue a permit under section 10(a)(1)(A) of the ESA to MDNR and MDMVA for take of EMR. We will not make our final decision until after the end of the 30-day public comment period, and we will fully consider all comments we receive during the public comment period.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that the entire comment, including your personal identifying information, may be made available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32), and NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR part 46).

Dated: February 8, 2016.

Lynn M. Lewis,

Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. 2016–03692 Filed 2–22–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2016–N026; FXES11120800000–167–FF08ECAR00]

Endangered and Threatened Wildlife and Plants; Incidental Take Permit Application; Proposed Low-Effect Habitat Conservation Plan and Associated Documents; City of Santee, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Mrs. Rita Cutri (applicant) for a 3-year incidental take permit for the threatened coastal California gnatcatcher pursuant to the Endangered Species Act of 1973, as amended (Act). We are requesting comments on the permit application and on the preliminary determination that the proposed Habitat Conservation Plan qualifies as a ''low-effect'' Habitat Conservation Plan, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. The basis for this determination is discussed in the environmental action statement (EAS) and the associated low-effect screening form, which are also available for public review.

DATES: Written comments should be received on or before March 24, 2016.

ADDRESSES: *Submitting Comments:* You may submit comments by one of the following methods:

- *U.S. Mail:* Field Supervisor, Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008.
- *Fax:* Field Supervisor, 760–431–9624.

Obtaining Documents: To request copies of the application, proposed HCP, and EAS, contact the Service immediately, by telephone at 760–431–9440 or by letter to the Carlsbad Fish and Wildlife Office (see **ADDRESSES**). Copies of the proposed HCP and EAS also are available for public inspection during regular business hours at the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Ms. Karen Goebel, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**); telephone: 760–431–9440. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from Ms. Rita Cutri (applicant) for a 3-year incidental take permit for one covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*, Act). The application addresses the potential ''take'' of the threatened coastal California gnatcatcher in the course of activities associated with the construction of the Cutri residential home project, in the City of Santee, San Diego County, California. A conservation program to avoid, minimize, and mitigate for project activities would be implemented as described in the proposed Habitat Conservation Plan (HCP) by the applicant.

We are requesting comments on the permit application and on the preliminary determination that the proposed HCP qualifies as a ''low-effect'' HCP, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. The basis for this determination is discussed in the environmental action statement (EAS) and associated low-effect screening form, which are also available for public review.

Background

Section 9 of the Act and its implementing Federal regulations prohibit the ''take'' of animal species listed as endangered or threatened. Take is defined under the Act as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct'' (16 U.S.C. 1538). ''Harm'' includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering (50 CFR 17.3). However, under section 10(a) of the Act, the Service may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

The applicant requests a 3-year permit under section 10(a)(1)(B) of the Act. If we approve the permit, the applicant anticipates taking coastal California

gnatcatcher (*Polioptila californica californica*) as a result of permanent impacts to 2.92 acres (ac) of habitat the species uses for breeding, feeding, and sheltering. The take would be incidental to the applicant's activities associated with the construction of the Cutri residential project in the City of Santee, California, and includes in-perpetuity preservation and management of 7.0 ac of coastal California gnatcatcher habitat.

The Cutri residential project proposes to construct a single-family residence on a 9.9-acre parcel in the City of Santee. The project will permanently impact 2.92 ac of coastal California gnatcatcher occupied habitat as a result of clearing and grading activities.

To minimize take of coastal California gnatcatcher by the Cutri residential development project and offset impacts to its habitat, the applicant proposes to mitigate for permanent impacts to 2.92 ac of occupied coastal California gnatcatcher habitat through the dedication of 7.0 ac of coastal California gnatcatcher habitat within an on-site conservation easement and funding long-term management to benefit the species. The applicant's proposed HCP also contains the following proposed measures to minimize the effects of construction activities on the coastal California gnatcatcher:

- Clearing of habitat will not take place during the coastal California gnatcatcher breeding season (defined as February 15–August 31). In the event it is not feasible to clear outside of the breeding season, three pre-construction surveys for nesting birds will be conducted within the week prior to initiating grading activities to ensure construction activities do not occur within 300 feet of an active nest.
- A Service-approved biologist will conduct a training session for the grading contractor and will be present on site during the initial clearing and grubbing activities to ensure that impacts are limited to the project footprint.

Proposed Action and Alternatives

The Proposed Action consists of the issuance of an incidental take permit and implementation of the proposed HCP, which includes measures to avoid, minimize, and mitigate impacts to the coastal California gnatcatcher. If we approve the permit, take of coastal California gnatcatcher would be authorized for the applicant's activities associated with the construction of the Cutri residential development project. In the proposed HCP, the applicant considers alternatives to the taking of coastal California gnatcatcher under the proposed action. Alternative development configuration was considered; however, because of the small size of the project site, further avoidance of impacts to coastal California gnatcatcher habitat could not be achieved. The Applicant also considered the No Action Alternative. Under the No Action Alternative, no incidental take of coastal California gnatcatcher habitat would occur, and no long-term protection and management would be afforded to the species.

Our Preliminary Determination

The Service has made a preliminary determination that approval of the proposed HCP qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1) and as a ''low-effect'' plan as defined by the *Habitat Conservation Planning Handbook* (November 1996).

We base our determination that a HCP qualifies as a low-effect plan on the following three criteria:

(1) Implementation of the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats;

(2) Implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and

(3) Impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination on whether to prepare such additional documentation.

Next Steps

We will evaluate the proposed HCP and comments we receive to determine whether the permit application meets the requirements and issuance criteria under section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of a section 10(a)(1)(B) incidental take permit would comply with section 7 of the Act by conducting an intra-Service consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue a permit. If the requirements and issuance criteria under section 10(a) are met, we will issue the permit to the applicant for incidental take of coastal California gnatcatcher.

Public Comments

If you wish to comment on the permit application, proposed HCP, and associated documents, you may submit comments by any of the methods noted in the **ADDRESSES** section.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).).

G. Mendel Stewart,

Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

[FR Doc. 2016–03717 Filed 2–22–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX16EE000101000]

Agency Information Collection Activities: Request for Comments on the National Spatial Data Infrastructure—Cooperative Agreements Program (NSDI CAP)

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a new information collection, National Spatial Data Infrastructure—Cooperative Agreements Program (NSDI CAP).

SUMMARY: We (the U.S. Geological Survey) are notifying the public that we have submitted to the Office of Management and Budget (OMB) the information collection request (ICR) described below. To comply with the Paperwork Reduction Act of 1995 (PRA) and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this ICR.

DATES: To ensure that your comments on this ICR are considered, OMB must receive them on or before March 24, 2016.

ADDRESSES: Please submit written comments on this information

collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, via email: (*OIRA_SUBMISSION@omb.eop.gov*); or by fax (202) 395–5806; and identify your submission with 'OMB Control Number 1028—New National Spatial Data Infrastructure—Cooperative Agreements Program (NSDI CAP)'. Please also forward a copy of your comments and suggestions on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648–7195 (fax); or *gs-info_collections@usgs.gov* (email). Please reference 'OMB Information Collection 1028—New: National Spatial Data Infrastructure—Cooperative Agreements Program (NSDI CAP) in all correspondence.

FOR FURTHER INFORMATION CONTACT: Brigitta Urban-Mathieux, Federal Geographic Data Committee Office of the Secretariat, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 590, Reston, VA 20192 (mail); 703–648–5175 (phone); or *burbanma@usgs.gov* (email). You may also find information about this ICR at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Respondents are submitting proposals to acquire funding for projects to help build the infrastructure necessary for the geospatial data community to effectively discover, access, share, manage, and use digital geographic data. The National Spatial Data Infrastructure (NSDI) consists of the technologies, policies, organizations, and people necessary to promote cost-effective production, and the ready availability and greater utilization of geospatial data among a variety of sectors, disciplines, and communities. Specific NSDI areas of emphasis include: Metadata documentation, clearinghouse establishment, geospatial data framework development, standards implementation, and geographic information system (GIS) organizational coordination.

We will issue a Request for Proposal (RFP) via Grants.gov. The incoming proposals will be reviewed and scored based on the responses to the questions in the RFP. No questions of a ''sensitive'' nature are asked. We intend to release the project abstracts and names of the primary investigators for awarded/funded projects only.

II. Data

OMB Control Number: 1028—NEW.

Title: National Spatial Data Infrastructure—Cooperative Agreements Program (NSDI CAP).

Type of Request: Approval of new information collection.

Respondent Obligation: Required to obtain or retain benefits.

Frequency of Collection: This is an annual offer.

Description of Respondents: General public, State and Local governments, Tribal nations.

Estimated Total Number of Annual Responses: 60.

Estimated Time per Response: Application: 35 hours; Interim and Final reports: 5 hours each.

Estimated Annual Burden Hours: 2,350 hours.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are no ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Comments: On 08/07/2015, we published a **Federal Register** notice (80 FR 47512) announcing that we would submit this ICR to OMB for approval and soliciting comments. The comment period closed on 10/06/2015. We received no comments.

III. Request for Comments

We again invite comments concerning this ICR as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask us and the OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Ivan DeLoatch,

Executive Director, Federal Geographic Data Committee, Core Science Systems.

[FR Doc. 2016–03680 Filed 2–22–16; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX16CC00G1S3000]

Agency Information Collection Activities: Request for Comments on the USGS Water Use Data and Research Program

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a new information collection, USGS Water Use Data and Research Program.

SUMMARY: We (the U.S. Geological Survey) are notifying the public that we have submitted to the Office of Management and Budget (OMB) the information collection request (ICR) described below. To comply with the Paperwork Reduction Act of 1995 (PRA) and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this ICR.

DATES: To ensure that your comments on this ICR are considered, OMB must receive them on or before March 24, 2016.

ADDRESSES: Please submit written comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, via email: (*OIRA_SUBMISSION@omb.eop.gov*); or by fax (202) 395–5806; and identify your submission with 'OMB Control Number 1028–NEW USGS Water Use Data and Research Program'. Please also forward a copy of your comments and suggestions on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive, MS 807, Reston, VA 20192 (mail); (703) 648–7195 (fax); or *gs-info_collections@usgs.gov* (email). Please reference 'OMB Information Collection 1028–NEW: USGS Water Use Data and Research Program' in all correspondence.

FOR FURTHER INFORMATION CONTACT: Melinda Dalton, Water Availability and Use Science Program, U.S. Geological Survey, 1770 Corporate Drive, Suite

500, Norcross, GA 30095 (mail); 678–924–6637 (phone); or *msdalton@usgs.gov* (email). You may also find information about this ICR at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The USGS is authorized under SECURE Water Act Section 9508 to assist state water resource agencies with improving their water use data collection activities. USGS has implemented the Water Use Date and Research program (WUDR), to work with state water agencies in gathering and analyzing their data, and assists this effort via cooperative agreements. WUDR will be used to improve the collection and reporting of water-use categories by state agencies, including categories of water use that were previously collected by the USGS National Water Use Information program but discontinued due to limited resources. This collection will also be used in reports to Congress on water resources in the nation. Grant funds will be announced and awarded as part of a competitive process that will be guided, annually, by a technical committee whose members will include representatives from the stakeholder community as well as USGS. Water Use Data and Research Program funds will be coordinated with a single agency in each State. Collaboration and coordination with USGS personnel will be required as part of the Grants program. Data must be stored electronically and made available at the 8-digit hydrologic-unit code (HUC–8) and county level in formats appropriate for existing USGS databases. Additionally, methods used for data collection (estimated values, coefficients, etc.) and a description of data quality assurance and control will be required.

II. Data

OMB Control Number: 1028—NEW.

Title: USGS Water Use Data and Research Program.

Type of Request: Approval of new information collection.

Respondent Obligation: Required to obtain or retain benefits.

Frequency of Collection: Annually.

Description of Respondents: State water-resource agencies that collect water-use data.

Estimated Total Number of Annual Responses: We expect 52 respondents to read and complete the application. We expect 15 respondents to submit a mid-term progress report and a final technical report.

Estimated Time per Response: We estimate that it will take 40 hours to prepare the proposal. This includes time to complete the project narrative and to provide any other relevant supporting documents. We estimate that it will take 12 hours in total to prepare the mid-term and final reports.

Estimated Annual Burden Hours: 2,260 hours.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are no ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obliged to respond.

Comments: On July 23, 2015, we published a **Federal Register** notice (80 FR 43792) announcing that we would submit this ICR to OMB for approval and soliciting comments. The comment period closed on September 21, 2015. We received no comments.

III. Request for Comments

We again invite comments concerning this ICR as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask us and the OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Sonya Jones,

Program Coordinator, Water Availability and Use Science Program.

[FR Doc. 2016–03704 Filed 2–22–16; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY910000 L16100000 XX0000]

Notice of Public Meeting; Wyoming Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Wyoming Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting is scheduled for, Wednesday, March 9, 2016, from 8 a.m. to 5 p.m., and Thursday, March 10, 2016, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be conducted at the BLM Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming.

FOR FURTHER INFORMATION CONTACT: Christian Venhuizen, Wyoming Resource Advisory Council Coordinator, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, WY 82009; telephone 307–775–6103; email *cvenhuizen@blm.gov.* Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This 10-member RAC advises the Secretary of the Interior on a variety of management issues associated with public land management in Wyoming. Planned agenda topics for the March meeting (see **DATES**) include discussions on fees for the National Historic Trails Interpretive Center and the Rock Springs RMP revision and follow-up to previous RAC meetings. On Thursday, March 10, the meeting will begin with a public comment period, at 8 a.m. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. If there are no members of the public interested in speaking, the meeting will move promptly to the next agenda item. The public may also submit written comments to the RAC by emailing *cvenhuizen@blm.gov,* with the subject line ''RAC Public Comment'' or by submitting comments during the

meeting to the RAC coordinator. Typed or written comments will be provided to RAC members as part of the meeting's minutes. A conference call will be set up if inclement weather prevents RAC members and BLM staff from conducting a meeting in person. The Rock Springs Field Office (see **ADDRESSES**) will remain the site for the public gallery and for public comments in the case of a conference call.

Dated: February 17, 2016.

Mary Jo Rugwell,

State Director (acting).

[FR Doc. 2016–03719 Filed 2–22–16; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1058 (Second Review)]

Wooden Bedroom Furniture From China; Notice of Commission Determination To Conduct a Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to the Tariff Act of 1930 to determine whether revocation of the antidumping duty order on wooden bedroom furniture from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date.

DATES: Effective: February 5, 2016.

FOR FURTHER INFORMATION CONTACT: Amy Sherman (202–205–3289), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

SUPPLEMENTARY INFORMATION: On February 5, 2016, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). The Commission found that both the domestic and respondent interested party group responses to its notice of institution (80 FR 67417, November 2, 2015) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: February 17, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–03679 Filed 2–22–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

Notice is hereby given that, for a period of 30 days, the United States will receive public comments on a proposed Consent Decree in *United States* v. *Keystone Consolidated Industries, Inc., d/b/a Keystone Steel and Wire Company* (1:16–cv–01057–MMM–JEH), which was lodged with the United States District Court for the Central District of Illinois on February 12, 2016.

The Complaint in this case was filed against Keystone Consolidated Industries, Inc. (''Keystone'') concurrently with the lodging of the proposed Consent Decree. This is a civil action brought pursuant to section 113(b) of the Clean Air Act (''CAA''), as amended, 42 U.S.C. 7413(b), to obtain injunctive relief and civil penalties from Keystone for violations at its integrated steel mini-mill located in Peoria, Peoria County, Illinois, of the Prevention of Significant Deterioration of Air Quality provisions of the CAA, 42 U.S.C. 7470–7492; the Illinois State Implementation Plan; CAA title V, 42 U.S.C. 7661–7661f, and its implementing regulations set forth at 40 CFR part 70; and the Illinois Environmental Protection Act, 415 Ill. Comp. Stat. 5/39.5, through which the State of Illinois administers its Clean Air Act Permit Program pursuant to 42 U.S.C. 7661–7661c. Under the proposed Consent Decree, Keystone will pay a civil penalty of $565,000, install and use a sulfur dioxide continuous emissions monitoring system, comply with specified sulfur dioxide emissions limits at its Arc Shop, make required modifications to each of its baghouse fan motors, develop for EPA approval a preventative maintenance and operation plan for all its emissions, and perform and complete a root cause failure analysis for any extended duration heat.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Keystone Consolidated Industries, Inc.,* D.J. Ref. No. 90–5–2–1–09880. 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 Decree 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 Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $21.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Randall M. Stone,

Acting Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–03741 Filed 2–22–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Filing of Environmental Response Trust Agreement Under the Resource Conservation and Recovery Act

On February 17, 2016, an Environmental Response Trust Agreement (''Agreement'') was filed with the District Court of the U.S. Virgin Islands, Bankruptcy Division—St. Croix, Virgin Islands, in the bankruptcy proceeding entitled *In re HOVENSA L.L.C.*, No. 1–15–10003–MFW (Docket No. 626).

Under the Agreement, tan Environmental Response Trust is being created to implement environmental remediation at the refinery formerly owned by Hovensa L.L.C. (''Hovensa'') in St. Croix, U.S. Virgin Islands, and also to take title to certain property previously owned by Hovensa located at the refinery. The Environmental Response Trust will have access to approximately $72 million to perform the environmental actions. The Court has appointed Project Navigator, Ltd., to act as the Environmental Response Trustee. Under the Agreement, the United States, on behalf of the United States Environmental Protection Agency, has provided a covenant not to sue to the Environmental Response Trust Parties (as that term is defined in the Environmental Response Trust Agreement), pursuant to Sections 3008(a) and 7003 of Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6928(a) and 6973, and sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9606 and 0607, for corrective actions, permit obligations, response actions or response costs related to the former Hovensa refinery.

Pursuant to Section 7003(d) of RCRA, 42 U.S.C. 6973(d), the United States is taking public comment on the covenant not to sue provided by the United States to the Environmental Response Trust Parties in the Agreement. The publication of this notice opens a period for public comment on the covenant not to sue provided by the United States to the Environmental Response Trust Parties in the Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *In re HOVENSA L.L.C.*, D.J. Ref. No. 90–5–2–1–08229/2. All comments must be submitted so that they are received no later than midnight (Eastern Time) March 1, 2016. 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.

Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area.

During the public comment period, the Agreement 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 Agreement 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 $13.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert E. Maher Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–03728 Filed 2–22–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for H–1B Technical Skills Training (H–1B) and the H–1B Jobs and Innovation Accelerator Challenge (JIAC) Grant Programs, Extension With Revisions

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)] (PRA). The PRA helps ensure that respondents can provide requested data in the desired format with minimal reporting burden (time and financial resources), collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the collection of data about H–1B Technical Skills Training (TST), H–1B Jobs and Innovation Accelerator Challenge (JA), and H–1B Ready To Work (RTW) grant programs. Data collection for these grant programs is currently approved under OMB Control No. 1205–0507, expiration March 31, 2016.

If an extension with revisions of this information collection is approved, this data collection will only be applicable for the H–1B TST, JA, and RTW grantees. All future H–1B grantees will not report in accordance with this data collection, and instead will report in accordance with the information collection for WIOA reporting requirements, as applicable.

DATES: Submit written comments to the office listed in the addresses section below on or before April 25, 2016.

ADDRESSES: Send written comments to Ayreen Cadwallader, Division of Strategic Investments, Room C–4518, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–3311 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Email: *dsi@dol.gov.* To obtain a copy of the proposed information collection request (ICR), please contact the person listed above.

FOR FURTHER INFORMATION CONTACT: Megan Baird. *dsi@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In applying for the H–1B TST, JA, and RTW grant programs, grantees agreed to submit participant-level data and quarterly aggregate reports for individuals who receive services through these programs and their partnerships with business-related nonprofit organizations, education and training providers, including community colleges and other community-based organizations, entities involved in administering the workforce investment system established under Title I of WIA, and economic development agencies, among others. The reports include aggregate data on demographic characteristics, types of services received, placements, outcomes, and follow-up status. Specifically, they summarize data on

employment and training services, placement services, and other services essential to successful unsubsidized employment through H–1B programs.

This document requests approval for an extension with revisions of an existing information collection currently approved under OMB Control No. 1205–0507, expiration March 31, 2016. The request will support efforts to meet the (1) reporting, (2) recordkeeping, and (3) program evaluation requirements of the grant programs through an ETA-provided, Web-based Management Information System (MIS), called the HUB Reporting System. The HUB system already exists and is currently in use by the H–1B TST, JA, and RTW grantees.

Grantees will report on a number of leading indicators that serve as predictors of success. These include participant support services necessary to support training and employment activities, attainment of degrees or certificates, placement into post-secondary education or vocational training, on-the-job training (OJT), classroom occupational training, contextualized learning, distance learning, apprenticeships, customized training, including incumbent worker training, and placement into unsubsidized jobs. These measures are also necessary for effective program management and conveying full and accurate information on the performance of these grant programs to policymakers and stakeholders.

This information collection maintains a reporting and record-keeping system for a minimum level of information collection that is necessary to comply with Equal Opportunity requirements, to hold grantees appropriately accountable for the Federal funds they receive, and to allow the Department to fulfill its oversight and management responsibilities.

The information collection for program evaluation includes setting up a Participant Tracking System (PTS) through the MIS to collect baseline information similar to the quarterly reports but at the individual participant level. The baseline data covered by this clearance will enable the evaluation to describe the characteristics of study participants at the time they are randomly assigned to a treatment or control group, ensure that random assignment was conducted properly, create subgroups for the analysis, provide contact information to locate individuals for follow-up surveys, and improve the precision of the impact estimates. Such data will be collected on the basis that the evaluation will consist of an experimental design employing random assignment of participants into treatment and control groups. A Web-based PTS will execute the random assignment procedures and compile baseline data on study sample members. This PTS will assure that participant data will be in a consistent format across sites.

A rigorous program evaluation also requires clear and specific documentation of the services provided to treatment group members in each of the grantee sites and the services available to control group members. This qualitative information will enable the evaluation to describe the program design and operations in each site, interpret the impact analysis results, and identify lessons learned for purposes of program replication. The process study site visits will include semi-structured interviews and focus group discussions with various program stakeholders.

II. Review Focus

The Department is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension with revisions.

Title: H–1B Technical Skills Training (H–1B) and the H–1B Jobs and Innovation Accelerator Challenge (JIAC) grant programs.

OMB Number: 1205–0507.

Affected Public: Existing H–1B TST, JA and RTW grantees, and participants served through these programs.

Estimated Total Annual Respondents: 25,230.

Form/Activity	Total number of respondents	Number of responses per respondent	Total annual response	Average time per response (hours)	Total annual burden hours
Participant Data Collection (including baseline data for evaluation).	25,000 participants	Continual	25,000	2.66	66,500
Quarterly Narrative Progress Report.	85 Grantees	12 (4 times per year)	340	10	3400
Quarterly Performance Report	85 Grantees	12 (4 times per year)	340	10	3400
Site Visit Data Collection	60 total staff	three (once per year)	60	1 hour	60
Totals	25,230		25,740		73,360

Estimated Total Annual Responses: 25,740.

Estimated Total Annual Burden Hours: 73,360.

Total Estimated Annual Other Costs Burden: There are no annual costs, as ETA will be responsible for the annual maintenance costs for the HUB Reporting System, a free, Web-based data collection and reporting system.

We will summarize and/or include in the request for OMB approval of the ICR, the comments received in response to this comment request; they will also become a matter of public record.

Portia Wu,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2016–03682 Filed 2–22–16; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Claim for Medical Reimbursement Form

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) titled, ''Claim for Medical Reimbursement Form,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before March 24, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201601-1240-006* or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Claim for Medical Reimbursement Form information collection. Form OWCP–915 is used to claim reimbursement for out-of-pocket covered medical expenses paid by a beneficiary and must be accompanied by required billing data elements (prepared by the medical provider) and by proof of payment by the beneficiary. Federal Employees Compensation Act section 9, Black Lung Benefits Act section 413, and Energy Employees Occupational Illness Compensation Program Act of 2000 section 3629(c), authorize this information collection. *See* 5 U.S.C. 8103, 30 U.S.C. 936, and 42 U.S.C. 7384t.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1240–0007.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 17, 2015 (80 FR 49279).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0007. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OWCP.

Title of Collection: Claim for Medical Reimbursement Form.

OMB Control Number: 1240–0007.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 10,632.

Total Estimated Number of Responses: 38,480.

Total Estimated Annual Time Burden: 6,388 hours.

Total Estimated Annual Other Costs Burden: $68,879.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: February 12, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–03761 Filed 2–22–16; 8:45 am]

BILLING CODE 4510–CRX–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Uniform Billing Form

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) titled, ''Uniform Billing Form,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before March 24, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the

RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201601-1240-008* or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Uniform Billing Form information collection. The OWCP requires an institutional medical provider that provides services to a beneficiary covered under the Federal Employees' Compensation Act (FECA), Black Lung Benefits Act (BLBA), or Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) to bill using Form OWCP–04 that is based on the industry standard, Form UB–04. The form identifies the beneficiary, the type of services provided, the treated conditions, and the amounts billed. The OWCP requires this information to enable the agency to pay the provider for covered services. FECA section 9, BLBA section 413, and EEOICPA section 3629(c) authorize this information collection. *See* 5 U.S.C. 8103, 30 U.S.C. 936, and 42 U.S.C. 7384t.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1240–0019.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 23, 2015 (80 FR 43800).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0019. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–OWCP.

Title of Collection: Uniform Billing Form.

OMB Control Number: 1240–0019.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 6,277.

Total Estimated Number of Responses: 221,992.

Total Estimated Annual Time Burden: 25,503 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: February 12, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–03736 Filed 2–22–16; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Workforce Investment Act Adult and Dislocated Worker Programs Gold Standard Evaluation

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) revision titled, ''Workforce Investment Act Adult and Dislocated Worker Programs Gold Standard Evaluation,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq*. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before March 24, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201511–1205–003* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments

by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to revise the Workforce Investment Act (WIA) Adult and Dislocated Worker Programs Gold Standard Evaluation information collection. An extension is being requested only for the 30-month follow-up survey, as the remaining collection instruments have fulfilled their purpose. Maintaining those collections would no longer have practical utility. Workforce Investment Act section 172 and Workforce Innovation and Opportunity Act section 172 authorize this information collection. *See* 29 U.S.C. 2917, 3224.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0504. The current approval is scheduled to expire on February 29, 2016; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 14, 2015 (80 FR 48916).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0504. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Workforce Investment Act Adult and Dislocated Worker Programs Gold Standard Evaluation.

OMB Control Number: 1205–0504.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 1,230.

Total Estimated Number of Responses: 1,230.

Total Estimated Annual Time Burden: 615 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: February 16, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–03735 Filed 2–22–16; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Affirmative Decisions on Petitions for Modification Granted in Whole or in Part

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This **Federal Register** Notice notifies the public that MSHA has investigated and issued a final decision on certain mine operator petitions to modify a safety standard.

ADDRESSES: Copies of the final decisions are posted on MSHA's Web site at *http://www.msha.gov/READROOM/PETITION.HTM.* The public may inspect the petitions and final decisions during normal business hours in MSHA's Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202. All visitors are required to check in at the receptionist's desk in Suite 4E401.

FOR FURTHER INFORMATION CONTACT: Barbara Barron at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Introduction

Under section 101 of the Federal Mine Safety and Health Act of 1977, a mine operator may petition and the Secretary of Labor (Secretary) may modify the application of a mandatory safety standard to that mine if the Secretary determines that: (1) An alternative method exists that will guarantee no less protection for the miners affected than that provided by the standard; or (2) the application of the standard will result in a diminution of safety to the affected miners.

MSHA bases the final decision on the petitioner's statements, any comments and information submitted by interested persons, and a field investigation of the conditions at the mine. In some instances, MSHA may approve a petition for modification on the condition that the mine operator complies with other requirements noted in the decision.

II. Granted Petitions for Modification

On the basis of the findings of MSHA's investigation, and as designee of the Secretary, MSHA has granted or partially granted the following petitions for modification:

- *Docket Number:* M–2013–044–C.
FR Notice: 78 FR 59068 (9/25/2013).
Petitioner: Rosebud Mining Company, P.O. Box 1025, Northern Cambria, Pennsylvania 15714.
Mine: Parkwood Mine, MSHA I.D. No. 36–08785, located in Armstrong County, Pennsylvania, and Kocjancic Mine, MSHA I.D. No. 36–09436, located in Jefferson County, Pennsylvania.
Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance), 18.35(a)(5)(i) (Portable (trailing) cables and cords)).

- *Docket Number:* M–2013–059–C.
FR Notice: 79 FR 11141 (2/27/2014).
Petitioner: Kimmel's Mining, Inc., P.O. Box 8, Williamstown, Pennsylvania 17098.

Mine: Williamstown Mine #1, MSHA I.D. No. 36–09435, located in Schuylkill County, Pennsylvania.

Regulation Affected: 30 CFR 75.1202–1(a) (Temporary notations, revisions, and supplements).

• *Docket Number:* M–2014–017–C.
FR Notice: 79 FR 30170 (5/27/2014).
Petitioner: AK Coal Resources, Inc., 1134 Stoystown Rd., Friedens, Pennsylvania 15541.

Mine: North Fork Mine, MSHA I.D. No. 36–10041, located in Somerset County, Pennsylvania.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance), 18.35(a)(5)(i) (Portable (trailing) cables and cords)).

• *Docket Number:* M–2015–007–C.
FR Notice: 80 FR 24280 (4/30/2015).
Petitioner: White Oak Resources LLC, P.O. Box 339, McLeansboro, Illinois 62859.

Mine: White Oak Mine No. 1, MSHA I.D. No. 11–03203, located in Hamilton County, Illinois.

Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

• *Docket Number:* M–2015–010–C.
FR Notice: 80 FR 24285 (4/30/2015).
Petitioner: Coyote Creek Mining Company, LLC, 6502 17th Street SW., Zap, North Dakota 58580.

Mine: Coyote Creek Mine, MSHA I.D. No. 32–01028, located in Mercer County, North Dakota.

Regulation Affected: 30 CFR 77.803 (Fail safe ground check circuits on high-voltage resistance grounded systems).

• *Docket Number:* M–2015–012–C.
FR Notice: 80 FR 28014 (5/15/2015).
Petitioner: Peabody Midwest Mining, LLC, P.O. Box 369, Coulterville, Illinois 62237.

Mine: Gateway North Mine, MSHA I.D. No. 11–03235, located in Randolph County, Illinois.

Regulation Affected: 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance requirements).

• *Docket Number:* M–2015–014–C.
FR Notice: 80 FR 42549 (7/17/2015).
Petitioner: XMV, Inc., 640 Clover Dew Dairy Road, Princeton, West Virginia 24740.

Mine: Mine No. 40, MSHA I.D. No. 46–09298, located in McDowell County, West Virginia.

Regulation Affected: 30 CFR 77.214(a) (Refuse piles; general).

• *Docket Number:* M–2015–018–C.
FR Notice: 80 FR 54596 (9/10/2015).
Petitioner: Macoupin Energy, LLC, P.O. Box 615, 14300 Brushy Mound Road, Carlinville, Illinois 62626.

Mine: Shay No. 1, MSHA I.D. No. 11–00726, located in Macoupin County, Illinois.

Regulation Affected: 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance requirements).

Modification Requested: The petitioner has requested that MSHA amend a previously submitted Proposed Decision and Order (PDO), Docket No.M–1999–056–C to add an additional Getman road grader, Model RDG–1504C, serial number 6718. When this amended PDO, Docket No. M–2015–018–C becomes final, it will supersede PDO Docket No. M–1999–056–C granted on December 3, 1999.

• *Docket Number:* M–2013–002–M.
FR Notice: 78 FR 7460 (2/1/2013).
Petitioner: Specialty Granules, Inc., 1101 Opal Court, Suite 315, Hagerstown, Maryland 21740.

Mine: Annapolis Mine, MSHA I.D. No. 23–00288, located in Iron County, Missouri.

Regulation Affected: 30 CFR 56.13020 (Use of compressed air)

• *Docket Number:* M–2014–019–M.
FR Notice: 79 FR 69135 (11/30/2014).
Petitioner: Sumitomo Metal Mining Pogo LLC, Shaw Creek Road, Delta Junction, Alaska 99737.

Mine: Pogo Mine, MSHA I.D. No. 50–01642, located in Southeast Fairbanks County, Alaska.

Regulation Affected: 30 CFR 57.14207 (Parking procedures for unattended equipment).

• *Docket Number:* M–2014–020–M.
FR Notice: 79 FR 71789 (12/3/2014).
Petitioner: Barrick Goldstrike Mine, Inc., 27 Miles North of Carlin, Carlin, Nevada 89822.

Mine: Arturo Mine, MSHA I.D. No. 26–02767, located in Eureka County, Nevada.

Regulation Affected: 30 CFR 56.6309(b) (Fuel oil requirements for ANFO).

Sheila McConnell,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2016–03724 Filed 2–22–16; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

DATES: All comments on the petitions must be received by the MSHA's Office of Standards, Regulations, and Variances on or before March 24, 2016.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov*. Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 202–693–9441.
3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202-5452, Attention: Sheila McConnell, Acting Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations, and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2016–001–C.

Petitioner: Peabody Energy Company, 12968 Illinois State Route 13, Coulterville, Illinois 62237.

Mine: Gateway North Mine, MSHA I.D. No. 11-03235, located in Randolph County, Illinois.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance).

Modification Request: The petitioner requests a modification of the existing standard to permit the maximum length of trailing cables to be increased to 950 feet for the 480-volt three-phase alternating current Roof Bolting machines. The petitioner states that:

(1) The maximum length of the three-phase trailing cables will be 950 feet.

(2) The 480-volt trailing cables will not be smaller than No. 2 American Wire Gauge (AWG), type SHD–GC.

(3) All circuit breakers used to protect No. 2 AWG type SHD–GC trailing cables exceeding 700 feet in length will have instantaneous trip units calibrated to trip at 800 amperes. The trip setting of these circuit breakers will be sealed or locked so that the setting cannot be changed, and the circuit breakers will have permanent, legible labels. Each label will identify the circuit breaker as being suitable for protecting No. 2 AWG type SHD–GC cables. The label will be legible.

(4) Replacement instantaneous trip units used to protect No. 2 AWG type SHD–GC trailing cables will be calibrated to trip at 800 amperes and this setting will be sealed or locked.

(5) All components that provide short-circuit protection will have sufficient interruption rating in accordance with the maximum calculated fault currents available.

(6) Short-circuit settings must not exceed the setting specified in the approval documentation or 70 percent of the minimum available current, whichever is less.

(7) Any trailing cable that is not in safe operating condition will be removed from service immediately and repaired or replaced.

(8) Each splice or repair in the trailing cables will be made in a workmanlike manner and in accordance with the instructions of the manufacturer of the splice repair kit. The outer jacket of each splice or repair will be vulcanized with flame resistant material or made with material that has been accepted by MSHA as flame resistant.

(9) In the event that mining method or operating procedures cause or contribute to the damage of any trailing cable, the trailing cable will be removed from service immediately, repaired, replaced, and additional precautions will be taken to ensure that, in the future, the cable is protected and maintained in safe operating condition.

(10) During each production day, persons designated by the mine operator will visually examine the trailing cables to ensure the cables are in safe operating condition. The instantaneous settings of the specially calibrated circuit breakers will also be examined to ensure that the seals or locks have not been removed and that they do not exceed the settings stipulated in items 3 and 4.

(11) Permanent warning labels will be installed and maintained on the cover(s) of the power center identifying the location of each sealed short-circuit protective device. The labels will warn miners not to change or alter these short-circuit settings.

(12) All miners who have been designated to examine the integrity of the seals, verify short-circuit settings, and examine trailing cables for defects will receive training under 30 CFR Part 48. The training will include the following:

(a) Mining methods and operating procedures for protecting the trailing cables against damage.

(b) Proper procedures for examining the trailing cables to ensure safe operating condition.

(c) The hazards of setting the short-circuit interrupting devices too high to adequately protect the cables.

(d) How to verify that the circuit interrupting device(s) protecting the trailing cable(s) are properly set and maintained. The procedures as specified in 30 CFR 48.3 for approval of proposed revisions to already approved training plans will apply.

The petitioner asserts that the alternative method will guarantee no less than the same measure of protection for all miners than that of the existing standard.

Sheila McConnell,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2016–03726 Filed 2–22–16; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

DATES: All comments on the petitions must be received by the MSHA's Office of Standards, Regulations, and Variances on or before March 24, 2016.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202–693–9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, Attention: Sheila McConnell, Acting Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations, and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2015–028–C.
Petitioner: Peabody Energy Company, 115 Grayson Lane, Eldorado, Illinois 62930.
Mine: Wildcat Hills Underground Mine, MSHA I.D. No. 11–03156, located in Saline County, Illinois.
Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).
Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of nonpermissible electronic testing or diagnostic equipment in return air outby the last open crosscut. The petitioner states that:

(1) Nonpermissible electronic testing and diagnostic equipment to be used includes: Laptop computers; oscilloscopes; vibration analysis machines; cable fault detectors; point temperature probes; infrared temperature devices; insulation testers (meggers); voltage, current, resistance, and power measurement devices; signal analyzer devices; ultrasonic thickness gauges; electronic component testers; and electronic tachometers. Other testing and diagnostic equipment may be used if approved in advance by the MSHA District Manager.

(2) All nonpermissible testing and diagnostic equipment used in return air outby the last open crosscut will be examined by a qualified person as defined in 30 CFR 75.153 prior to use to ensure the equipment is being maintained in a safe operating condition. The examination results will be recorded in the weekly examination book and made available to MSHA and the miners at the mine.

(3) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible electronic testing and diagnostic equipment in return air outby the last open crosscut.

(4) Nonpermissible electronic testing and diagnostic equipment will not be used if methane is detected in concentrations at or above one percent. When one percent or more methane is detected while the nonpermissible electronic equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment will be withdrawn from return air outby the last open crosscut.

(5) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(6) All electronic testing and diagnostic equipment will be used in accordance with the safe use procedures recommended by the manufacturer.

(7) Qualified personnel who use electronic testing and diagnostic equipment will be properly trained to recognize the hazards and limitations associated with use of the equipment.

The petitioner asserts that under the terms and conditions of this petition for modification, the use of nonpermissible electronic testing and diagnostic equipment will at all times guarantee not less than the same measure of protection afforded by the existing standard.

Sheila McConnell,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2016–03725 Filed 2–22–16; 8:45 am]

BILLING CODE 4520–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2016–016]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide agencies with mandatory instructions for what to do with records when agencies no longer need them for current Government business. The instructions authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records not previously authorized for disposal or to reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: NARA must receive requests for copies in writing by March 24, 2016. Once NARA appraises the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send you these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR); 8601 Adelphi Road; College Park, MD 20740–6001.
Email: request.schedule@nara.gov.
Fax: 301–837–3698.

You must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at Records Management Services (ACNR); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media-neutral unless otherwise specified. An item in a schedule is media-neutral when an agency may apply the disposition instructions to records regardless of the medium in

which it has created or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media-neutral unless the item is specifically limited to a specific medium. (See 36 CFR 1225.12(e).)

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, lists the organizational unit(s) accumulating the records or lists that the schedule has agency-wide applicability (in the case of schedules that cover records that may be accumulated throughout an agency); provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction); and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it also includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of Agriculture, Farm Service Agency (DAA–0145–2014–0005, 2 items, 1 temporary item). Records relating to the number of agency positions and grade levels. Proposed for permanent retention are organizational analysis and planning records related to changes in organizational functions.

2. Department of Agriculture, Farm Service Agency (DAA–0145–2014–0006, 5 items, 3 temporary items). Complaint files of allegations not related to a specific investigation, and routine investigative and audit case files. Proposed for permanent retention are significant investigative and audit case files.

3. Department of Agriculture, Farm Service Agency (DAA–0145–2015–0005, 2 items, 1 temporary item). Agency handbooks and directives for non-originating offices. Proposed for permanent retention are agency handbooks and directives for originating offices.

4. Department of Health and Human Services, Health Resources and Services Administration (DAA–0512–2014–0004, 66 items, 44 temporary items). Comprehensive agency records schedule, including financial records, audit reports, contracts, interagency agreements, memorandums, correspondence files, general subject files, planning records, international affairs records, public health association records, budget records, and legislative affairs records. Proposed for permanent retention are records related to organization management, directives, evaluation plans, information request reports, program delegations of authority, and records related to regulations, national standards for medical services, maternal and child health regulations, health resources reports, legislative histories, and official correspondence.

5. Department of Homeland Security, Bureau of Customs and Border Protection (DAA–0568–2015–0002, 2 items, 2 temporary items). Audio and video recordings activated by law enforcement incidents.

6. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (DAA–0436–2012–0006, 6 items, 4 temporary items). Records related to the manufacture and export of firearms. Proposed for permanent retention are annual reports of statistical data.

7. Department of the Navy, Agency-wide (DAA–NU–2015–0007, 36 items, 30 temporary items). Records related to financial management, including budget evaluations, purchase requests, and related records. Proposed for permanent retention are records on policy, audit reports, appropriation language, program objectives, charters, and financial statements.

8. Department of State, Bureau of Administration (DAA–0059–2015–0017, 1 item, 1 temporary item). Records of the Systematic Review Program Division including copies of documentation supporting declassification review.

9. Department of State, Bureau of Conflict and Stabilization Operations (DAA–0059–2015–0005, 2 items, 2 temporary items). Records of the Office of Policy including background and reference files related to regional and thematic conflicts.

10. Department of State, Bureau of Diplomatic Security (DAA–0059–2015–0013, 4 items, 4 temporary items). Records of the Project Coordination Branch including files related to physical security standards of government facilities.

11. Department of Transportation, Federal Railroad Administration (DAA–0399–2013–0005, 4 items, 3 temporary items). Records related to general agreements, approved loans, and denied loans. Proposed for permanent retention are national and bilateral agreements.

12. Department of the Treasury, Internal Revenue Service (DAA–0058–2016–0001, 7 items, 7 temporary items). Continuing education records for tax professionals to include vendor contract materials such as accreditation files, applications, survey results, and related documents.

13. Department of the Treasury, Internal Revenue Service (DAA–0058–2016–0005, 1 item, 1 temporary item). Foreign financial asset records of individual and corporate taxpayers.

14. Consumer Financial Protection Bureau, Office of the Director (DAA–0587–2013–0003, 5 items, 4 temporary items). Executive Secretary records including working papers, routine correspondence and associated trackers, and non-substantive policy guidance materials. Proposed for permanent retention are high-level Bureau reports.

15. Environmental Protection Agency, Agency-wide (DAA–0412–2013–0021, 5 items, 4 temporary items). Environmental program and project records including records relating to the regulation of pesticides and toxic substances, monitoring of air and water quality, scientific research, and other programs. Proposed for permanent retention are significant environmental program and project records.

16. Federal Communications Commission, International Bureau (DAA–0173–2015–0010, 1 item, 1 temporary item). Master files of an electronic information system used to track broadcast transmission applicants.

17. National Archives and Records Administration, Research Services (N2–36–15–1, 4 items, 4 temporary items). Records of the Department of Homeland Security, Customs and Border Protection, consisting of administrative records related to expenditures for consumable goods and travel expenses for training. These records were accessioned to the National Archives and lack sufficient historical value to warrant continued preservation.

18. National Archives and Records Administration, Research Services (N2–208–16–1, 1 item, 1 temporary item). Residual records of the Office of War Information which are duplicative of other records found in this record group. These records were accessioned to the National Archives but lack sufficient historical value to warrant continued preservation.

19. Securities and Exchange Commission, Agency-wide (DAA–0266–2014–0008, 2 items, 1 temporary item).

Email records of non-senior agency employees. Proposed for permanent retention are email records of senior-level agency officials.

20. Securities and Exchange Commission, Office of Credit Ratings (DAA–0266–2016–0006, 10 items, 7 temporary items). Records related to oversight of nationally recognized statistical rating organizations, including draft rulemaking and official action records, records incidental to the reporting, and internal studies and research projects. Proposed for permanent retention are reports filed with the Commission, final rulemaking and official action records, and external guidance.

Dated: February 12, 2016.

Laurence Brewer,

Director, Records Management Operations.

[FR Doc. 2016–03763 Filed 2–22–16; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: The National Endowment for the Humanities will hold sixteen meetings of the Humanities Panel, a federal advisory committee, during March, 2016. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: The meetings will be held at Constitution Center at 400 7th Street SW., Washington, DC 20506. See **SUPPLEMENTARY INFORMATION** for meeting room numbers.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW., Room 4060, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.* Hearing-impaired individuals who prefer to contact us by phone may use NEH's TDD terminal at (202) 606–8282.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given of the following meetings:

1. DATE: March 8, 2016.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: P002.
This meeting will discuss applications on the subjects of American and British Literature for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

2. DATE: March 9, 2016.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: P002.
This meeting will discuss applications on the subject of World Literature for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

3. DATE: March 10, 2016.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: P002.
This meeting will discuss applications on the subject of Archaeology for the Collaborative Research grant program, submitted to the Division of Research Programs.

4. DATE: March 15, 2016.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: P002.
This meeting will discuss applications on the subject of Archaeology for the Collaborative Research grant program, submitted to the Division of Research Programs.

5. DATE: March 16, 2016.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: P002.
This meeting will discuss applications on the subject of American Studies for the Collaborative Research grant program, submitted to the Division of Research Programs.

6. DATE: March 17, 2016.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: P002.
This meeting will discuss applications on the subjects of the History of Science and the Social Sciences for the Collaborative Research grant program, submitted to the Division of Research Programs.

7. DATE: March 21, 2016.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: P003.
This meeting will discuss applications on the subject of U.S. History for Museums, Libraries, and Cultural Organizations: Implementation Grants, submitted to the Division of Public Programs.

8. DATE: March 22, 2016.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: P002.
This meeting will discuss applications on the subject of American History for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

9. DATE: March 23, 2016.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: P002.
This meeting will discuss applications on the subjects of Philosophy and Religion for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

10. DATE: March 23, 2016.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: P003.
This meeting will discuss applications on the subjects of History and Culture for Media Projects: Production Grants, submitted to the Division of Public Programs.

11. DATE: March 24, 2016.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 4002.
This meeting will discuss applications on the subjects of Museums and Libraries for the Sustaining Cultural Heritage Collections grant program, submitted to the Division of Preservation and Access.

12. DATE: March 25, 2016.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: P002.
This meeting will discuss applications on the subject of World History for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

13. DATE: March 29, 2016.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: P002.
This meeting will discuss applications on the subjects of Philosophy and Religion for the Collaborative Research grant program, submitted to the Division of Research Programs.

14. DATE: March 30, 2016.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: P002.
This meeting will discuss applications on the subjects of World History and Literature for the Collaborative Research grant program, submitted to the Division of Research Programs.

15. DATE: March 31, 2016.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 4002.
This meeting will discuss applications on the subject of Material Culture for the Sustaining Cultural Heritage Collections grant program, submitted to the Division of Preservation and Access.

16. DATE: March 31, 2016.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: P002.
This meeting will discuss applications on the subject of the Arts for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

Because these meetings will include review of personal and/or proprietary

financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated July 19, 1993.

Dated: February 17, 2016.

Elizabeth Voyatzis,

Committee Management Officer.

[FR Doc. 2016–03688 Filed 2–22–16; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–09; NRC–2016–0036]

Fort St. Vrain Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering a license amendment request for the Special Nuclear Materials License SNM–2504 for the Fort St. Vrain (FSV) independent spent fuel storage installation (ISFSI) located in Weld County, Colorado. The NRC staff is issuing an environmental assessment (EA) and finding of no significant impact (FONSI) associated with the proposed action.

DATES: The EA and FONSI referenced in this document are available on February 23, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0036 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–2016–0036. 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 (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: Jean Trefethen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0867, email: *Jean.Trefethen@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering a license amendment request for Special Nuclear Materials License Number SNM–2504 for the FSV ISFSI located in Weld County, Colorado (ADAMS Accession Nos.: ML15069A007, ML15084A014, and ML15331A359, respectively). The applicant, the U.S. Department of Energy (DOE) Idaho Operations Office, is proposing to amend Technical Specifications (TS) 3.3.1, ''Seal Leak Rate,'' to revise the response time to complete some of the corrective actions in TS 3.3.1 if the leak rate limit is exceeded. Also proposed is: (i) Addition of Section 5.5.5, ''Aging Management Program,'' to the TS Table of Contents of Appendix A to license SNM–2504, (ii) clarification to language in Item 6 of Section 5.5.2, ''Essential Programs Control Program,'' and (iii) addition of a notation that the license was renewed. The NRC staff has prepared a final EA as part of its review of this proposed license amendment in accordance with the requirements in part 51 of title 10 of the *Code of Federal Regulations* (10 CFR). Based on the final EA, the NRC has determined that a FONSI is appropriate. The NRC is also conducting a safety evaluation of the proposed license amendment pursuant to 10 CFR part 72, ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater-Than-Class C Waste,'' and the results will be documented in a separate Safety Evaluation Report (SER). If DOE's request is approved, the NRC will issue the license amendment following publication of this final EA and FONSI and completion of the SER.

II. Final Environmental Assessment Summary

The irradiated fuel in the ISFSI is contained in fuel storage containers (FSC), which are sealed with double metal O-ring seals between the FSC body and the lid. TS 3.3.1 in Appendix A of license SNM–2504 requires that the FSC or storage well seal leakage rate not exceed 1×10^3 reference cubic centimeters per second (ref-cm^3/s). The TS requires the licensee to test the leak rate of one FSC from each vault every 5 years. The TS also calls for specific corrective actions to be performed within a specified amount of time if the leak rate limit is exceeded for one or two seals on FSCs or storage wells. If approved, the proposed license amendment would allow DOE to revise the response time to complete the following corrective actions in TS 3.3.1 if the leak rate limit is exceeded: (i) Lengthen the response time for completing corrective actions A.1.1, A.1.2.1, and A.1.2.2 from seven days to 21 days, and (ii) lengthen the response time for completing corrective action A.2 from 30 days to 45 days. In addition, the amendment would include the following changes that are administrative in nature: (i) addition of Section 5.5.5, ''Aging Management Program,'' to the TS Table of Contents of Appendix A to license SNM–2504, (ii) clarification to language in item 6 of section 5.5.2, ''Essential Programs Control Program,'' and (iii) addition of a notation that the license was renewed. As documented in the EA, this portion of the proposed action that includes changes that are administrative in nature meets the categorical exclusion provision in 10 CFR 51.22(c)(11).

The NRC has assessed the potential environmental impacts associated with the proposed action of amending SNM–2504 TS 3.3.1, as well as the no-action alternative, and has documented the results in the final EA (ADAMS Accession No. ML16028A407). The NRC staff performed its environmental review in accordance with the requirements in 10 CFR part 51. In conducting the environmental review, the NRC considered information in the license amendment application; information in the responses to the NRC's requests for additional information (RAIs); and communications with DOE, the Colorado State Historic Preservation Office, the U.S. Fish and Wildlife Service, and the Colorado Department of Public Health and Environment.

As documented in the EA, the NRC staff concluded that the proposed action will not authorize or result in changes to licensed operations, land-disturbing activities, or changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI. The staff also concluded that the radiological or non-radiological impacts from approval of the license amendment request would be small, and the proposed action would not significantly contribute to cumulative impacts. In addition, the staff does not expect that the proposed action would adversely affect any offsite population and, thus, no special circumstances were identified. The Colorado State Historic Preservation Office concurred with the NRC's determination that the proposed action would not affect historic properties, and the U.S. Fish and Wildlife Service concurred with the NRC's determination that the proposed action would not affect listed species or critical habitats. Furthermore, the NRC determined that the proposed action is more favorable than the no-action alternative (denial of the license amendment request), which would require DOE to complete the required corrective actions within the currently specified response times. Therefore, the NRC concluded that the proposed action will not result in a significant effect on the quality of the human environment.

III. Finding of No Significant Impact

Based on its review of the proposed action, in accordance with the requirements in 10 CFR part 51, the NRC has concluded that the proposed action, amendment of NRC Special Nuclear Materials License No. SNM–2504 for the FSV ISFSI located in Weld County, Colorado, will not significantly affect the quality of the human environment. Therefore, the NRC has determined, pursuant to 10 CFR 51.31, that preparation of an environmental impact statement is not required for the proposed action and a FONSI is appropriate.

Dated at Rockville, Maryland, this 16th day of February 2016.

For the Nuclear Regulatory Commission.

Craig G. Erlanger,

Acting Director, Division of Fuel Cycle Safety, Safeguards, and Environmental Review, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2016–03810 Filed 2–22–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293; NRC–2016–0035]

Entergy Nuclear Operations, Inc., Pilgrim Nuclear Power Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition request; receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is giving notice that by petition dated June 24, 2015, as supplemented, David Lochbaum of the Union of Concerned Scientists and others (the petitioners) requested that the NRC take action with regard to the Pilgrim Nuclear Power Station (Pilgrim). The petitioner's requests are included in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Please refer to Docket ID NRC–2016–0035 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–2016–0035. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.*
- *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 (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.

SUPPLEMENTARY INFORMATION: On June 24, 2015, the petitioners requested that the NRC take enforcement action with regard to Pilgrim concerning the current licensing basis on flooding (ADAMS Accession No. ML16029A407). The petitioners requested that the NRC take enforcement action to require that the current licensing basis for Pilgrim explicitly include flooding caused by local intense precipitation or probable maximum precipitation events.

As the basis for this request, the petitioners referred to Pilgrim's flood reevaluation report provided by Entergy Nuclear Operations, Inc. (Entergy, the licensee) to the NRC in a letter dated March 12, 2015 (ADAMS Accession No. ML15075A082). The petitioners state that Pilgrim's reevaluations indicate that the site could experience flood levels from heavy rainfall events nearly ten feet higher than anticipated when the plant was originally licensed. Although existing doors protect important equipment from being submerged and damaged, the petitioners assert that neither regulatory requirements nor enforceable commitments exist that ensure the continued reliability of flood protection features that are currently installed at the site to protect important equipment from being submerged and damaged. The petition states in relevant part ''the petitioners seek to rectify safety shortcoming by revising the current licensing basis to include flooding caused by heavy rainfall events.''

The request is being treated pursuant to Section 2.206 of title 10 of the *Code of Federal Regulations* (10 CFR) of the NRC's regulations. A conference call was held between the petitioner and the Petition Review Board (PRB) on August 5, 2015, to discuss the petition; the transcript of that teleconference is an additional supplement to the petition (ADAMS Accession No. ML15230A017). The PRB has reviewed the petition, and its supplement, and referred the request to the Director of the Office of Nuclear Reactor Regulation. The Director partially granted for review the petitioners' concerns that the current licensing basis be revised to include specific beyond-design-basis flood events at Pilgrim. The parts of the petitioners' concerns not granted for review are the impact of precipitation events on safety-related submerged cables as this was previously reviewed and resolved in a prior 10 CFR 2.206 Director's Decision (ADAMS Accession No. ML13255A191), and the request for an updated site plan of Pilgrim, because this request is outside of the scope of the 10 CFR 2.206 process. The NRC staff will hold the petition until a resolution of ongoing reviews associated with the subject of the petitioners' concerns is achieved.

Dated at Rockville, Maryland, this 11th day of February 2016.

For the Nuclear Regulatory Commission.

William M. Dean,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–03811 Filed 2–22–16; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–78 and CP2016–103; Order No. 3085]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Express, Priority Mail & First-Class Package Service Contract 9 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* February 25, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30–.35, the Postal Service filed a formal request and associated supporting information to add Priority Mail Express, Priority Mail & First-Class Package Service Contract 9 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–78 and CP2016–103 to consider the Request pertaining to the proposed Priority Mail Express, Priority Mail & First-Class Package Service Contract 9 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than February 25, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Kenneth R. Moeller to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–78 and CP2016–103 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than February 25, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–03721 Filed 2–22–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–77 and CP2016–102; Order No. 3084]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Express Contract 32 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* February 25, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30–.35, the Postal Service filed a formal request and associated supporting information to add Priority Mail Express Contract 32 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–77 and CP2016–102 to consider the Request pertaining to the proposed Priority Mail Express Contract 32 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are

[1] Request of the United States Postal Service to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 9 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, February 17, 2016 (Request).

[1] Request of the United States Postal Service to Add Priority Mail Express Contract 32 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, February 17, 2016 (Request).

due no later than February 25, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Katalin K. Clendenin to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–77 and CP2016–102 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than February 25, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–03720 Filed 2–22–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Express Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* February 23, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on February 17, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express Contract 32 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–77, CP2016–102.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–03677 Filed 2–22–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, & First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* February 23, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on February 17, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express, Priority Mail, & First-Class Package Service Contract 9 to Competitive Product List.* Documents are available at *www.prc.gov*, Docket Nos. MC2016–78, CP2016–103.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–03678 Filed 2–22–16; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 7d–1, SEC File No. 270–176, OMB Control No. 3235–0311.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Section 7(d) of the Investment Company Act of 1940 (15 U.S.C. 80a–7(d)) (the ''Act'' or ''Investment Company Act'') requires an investment company (''fund'') organized outside the United States (''foreign fund'') to obtain an order from the Commission allowing the fund to register under the Act before making a public offering of its securities through the United States mail or any means of interstate commerce. The Commission may issue an order only if it finds that it is both legally and practically feasible effectively to enforce the provisions of the Act against the foreign fund, and that the registration of the fund is consistent with the public interest and protection of investors.

Rule 7d–1 (17 CFR 270.7d–1) under the Act, which was adopted in 1954, specifies the conditions under which a Canadian management investment company (''Canadian fund'') may request an order from the Commission permitting it to register under the Act. Although rule 7d–1 by its terms applies only to Canadian funds, other foreign funds generally have agreed to comply with the requirements of rule 7d–1 as a prerequisite to receiving an order permitting those foreign funds' registration under the Act.

The rule requires a Canadian fund that wishes to register to file an application with the Commission that contains various undertakings and agreements by the fund. The requirement of the Canadian fund to file an application is a collection of information under the Paperwork Reduction Act. Certain of the undertakings and agreements, in turn, impose the following additional information collection requirements:

(1) The fund must file with the Commission agreements between the fund and its directors, officers, and service providers requiring them to comply with the fund's charter and bylaws, the Act, and certain other obligations relating to the undertakings and agreements in the application;

(2) the fund and each of its directors, officers, and investment advisers that is not a U.S. resident, must file with the Commission an irrevocable designation of the fund's custodian in the United States as agent for service of process;

(3) the fund's charter and bylaws must provide that (a) the fund will comply with certain provisions of the Act applicable to all funds, (b) the fund will maintain originals or copies of its books and records in the United States, and (c) the fund's contracts with its custodian, investment adviser, and principal underwriter, will contain certain terms, including a requirement that the adviser maintain originals or copies of pertinent records in the United States;

(4) the fund's contracts with service providers will require that the provider perform the contract in accordance with the Act, the Securities Act of 1933 (15

U.S.C. 77a), and the Securities Exchange Act of 1934 (15 U.S.C. 78a), as applicable; and

(5) the fund must file, and periodically revise, a list of persons affiliated with the fund or its adviser or underwriter.

As noted above, under section 7(d) of the Act the Commission may issue an order permitting a foreign fund's registration only if the Commission finds that ''by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions of the (Act).'' The information collection requirements are necessary to assure that the substantive provisions of the Act may be enforced as a matter of contract right in the United States or Canada by the fund's shareholders or by the Commission.

Rule 7d–1 also contains certain information collection requirements that are associated with other provisions of the Act. These requirements are applicable to all registered funds and are outside the scope of this request.

The Commission believes that one foreign fund is registered under rule 7d–1 and currently active. Apart from requirements under the Act applicable to all registered funds, rule 7d–1 imposes ongoing burdens to maintain records in the United States, and to update, as necessary, certain fund agreements, designations of the fund's custodian as service agent, and the fund's list of affiliated persons. The Commission staff estimates that each year under the rule, the active registrant and its directors, officers, and service providers engage in the following collections of information and associated burden hours:

For the fund and its investment adviser to maintain records in the United States: [1]

0 hours: 0 minutes of compliance clerk time.

- For the fund to update its list of affiliated persons:

2 hours: 2 hours of support staff time.

- For new officers, directors, and service providers to enter into and file agreements requiring them to comply with the fund's charter and bylaws, the Act, and certain other obligations:

0.5 hours: 7.5 minutes of director time;
2.5 minutes of officer time;
20 minutes of support staff time.

- For new officers, directors, and investment advisers who are not residents of the United States to file irrevocable designation of the fund's custodian as agent for process of service:

0.25 hours: 5 minutes of director time;
10 minutes of support staff time.

Based on the estimates above, the Commission estimates that the total annual burden of the rule's paperwork requirements is 2.75 hours.[2] We estimate that directors perform 0.21 hours of these burden hours at a total cost of $924,[3] officers perform 0.04 of these burden hours at a total cost of $19.40,[4] and support staff perform 2.5 of these burden hours at a total cost of $142.50.[5] Thus, the Commission estimates the aggregate annual cost of these burden hours associated with rule 7d–1 is $1,085.90.[6]

If a fund were to file an application under the rule, the Commission estimates that the rule would impose initial information collection burdens (for filing an application, preparing the specified charter, bylaw, and contract provisions, designations of agents for service of process, and an initial list of affiliated persons, and establishing a means of keeping records in the United States) of approximately 90 hours for the fund and its associated persons. The Commission is not including these hours in its calculation of the annual burden because no foreign fund has applied under rule 7d–1 to register under the Act in the last three years.

After registration, a Canadian fund may file a supplemental application seeking special relief designed for the fund's particular circumstances. Rule 7d–1 does not mandate these applications. The active registrant last filed a substantive supplemental application in 2013. Therefore, the Commission staff estimates that the rule would impose an additional collection information burden of 5 hours on a fund to comply with the Commission's application process at a cost of $5,928.[7] The staff understands that funds also obtain assistance from outside counsel to comply with the Commission's application process and the cost burden of using outside counsel is set forth below.

Therefore, the Commission estimates the aggregate annual burden hours of the collection of information associated with rule 7d–1 is 7.75 hours, at a cost of $7,013.90.[8] The estimates of burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimates are not derived from a comprehensive or even a representative survey or study of Commission rules and forms.

If a Canadian or other foreign fund in the future applied to register under the Act under rule 7d–1, the fund initially might have capital and start-up costs (not including hourly burdens) of an estimated $20,000 to comply with the rule's initial information collection requirements. These costs include legal and processing-related fees for preparing the required documentation (such as the application, charter, bylaw, and contract provisions, designations for service of process, and the list of affiliated persons). Other related costs would include fees for establishing arrangements with a custodian or other agent for maintaining records in the United States, copying and transportation costs for records, and the

[1] The rule requires an applicant and its investment adviser to maintain records in the United States (which, without the requirement, might be maintained in Canada or another foreign jurisdiction), which facilitates routine inspections and any special investigations of the fund by Commission staff. The registrant and its investment adviser, however, already maintain the registrant's records in the United States and in no other jurisdiction. Therefore, maintenance of the registrant's records in the United States does not impose an additional burden beyond that imposed by other provisions of the Act. Those provisions are applicable to all registered funds and the compliance burden of those provisions is outside the scope of this request.

[2] This estimate is based on the following calculation: (0 + 2 + 0.5 + 0.25) = 2.75 hours.

[3] The director estimates are based on the following calculations: (7.5 minutes + 5 minutes)/60 minutes per hour = 0.21 hours; and 0.21 hours × $4400 per hour = $924. The per hour cost estimate is based on estimated hourly compensation for each board member of $550 and an average board size of 8 members.

[4] The officer estimates are based on the following calculations: 2.5 minutes/60 minutes per hour = 0.04 hours; 0.04 hours × $485 per hour = $19.40. This per hour cost estimate, as well as other internal cost estimates for management and professional earnings, is based on the figure for chief compliance officers found in SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[5] The support staff estimates are based on the following calculations: 2 hours + 20 minutes + 10 minutes = 2.5 hours; and 2.5 hours × $60 per hour = $150. The per hour cost estimate, as well as other internal cost estimates for office salaries, is based on the figure for compliance clerks found in SIFMA's *Management & Professional Earnings in the Securities Industry 2011,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

[6] This estimate is based on the following calculation: $1085.90 = $924 + $19.40 + $142.50.

[7] The staff estimates that, on average, the fund's investment adviser spends approximately 4 hours to review an application, including 3.5 hours by an assistant general counsel at a cost of $426 per hour, 0.5 hours by an administrative assistant, at a cost of $74 per hour, and the fund's board of directors spends an additional 1 hour at a cost of $4,400 per hour for a total of 5 hours, for a total cost of $5,928. This estimate is based on the following calculation: (3.5 hours × $426 per hour) + (0.5 hours × $74 per hour) + (1 hour × $4,400 per hour) = $5,928.

[8] These estimates are based on the following calculations: 2.75 hours + 5 hours = 7.75 hours; $1,085.90 + $5,928 = $7,013.90.

costs of purchasing or leasing computer equipment, software, or other record storage equipment for records maintained in electronic or photographic form.

The Commission expects that a fund and its sponsors would incur these costs immediately, and that the annualized cost of the expenditures would be $20,000 in the first year. Some expenditures might involve capital improvements, such as computer equipment, having expected useful lives for which annualized figures beyond the first year would be meaningful.

These annualized figures are not provided, however, because, in most cases, the expenses would be incurred immediately rather than on an annual basis. The Commission is not including these costs in its calculation of the annualized capital/start-up costs because no fund has applied under rule 7d–1 to register under the Act pursuant to rule 7d–1 in the last three years.

As indicated above, a Canadian or fund may file a supplemental application seeking special relief designed for the fund's particular circumstances. Rule 7d–1 does not mandate these applications. The active registrant filed a substantive supplemental application in the past three years. As noted above, the staff understands that funds generally use outside counsel to prepare the application. The staff estimates that outside counsel spends 10 hours preparing a supplemental application, including 8 hours by an associate and 2 hours by a partner. Outside counsel billing arrangements and rates vary based on numerous factors, but the staff has estimated the average cost of outside counsel as $400 per hour, based on information received from funds, intermediaries and their counsel. The Commission staff therefore estimates that the fund would obtain assistance from outside counsel at a cost of $4,000.[9]

We request written comment on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 17, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03640 Filed 2–22–16; 8:45 am]

BILLING CODE 8011–01–P

[9] This estimate is based on the following calculation: 10 hours × $400 per hour = $4000.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 6h–1, SEC File No. 270–497, OMB Control No. 3235–0555.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 6h–1 (17 CFR 240.6h–1) under the Securities Exchange Act of 1934, as amended (''Act'') (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Section 6(h) of the Act (15 U.S.C. 78f(h)) requires national securities exchanges and national securities associations that trade security futures products to establish listing standards that, among other things, require that: (i) Trading in such products not be readily susceptible to price manipulation; and (ii) the market on which the security futures product trades has in place procedures to coordinate trading halts with the listing market for the security or securities underlying the security futures product. Rule 6h-1 implements these statutory requirements and requires that (1) the final settlement price for each cash-settled security futures product fairly reflect the opening price of the underlying security or securities, and (2) the exchanges and associations trading security futures products halt trading in any security futures product for as long as trading in the underlying security, or trading in 50% or more of the underlying securities, is halted on the listing market.

It is estimated that approximately 1 respondent, consisting of a designated contract market not already registered as a national securities exchange under Section 6(g) of the Exchange Act that seeks to list or trade security futures products, will incur an average burden of 10 hours per year to comply with this rule, for a total burden of 10 hours. At an average cost per hour of approximately $387, the resultant total cost of compliance for the respondents is $3,870 per year (1 respondent × 10 hours/respondent × $387/hour).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 17, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03639 Filed 2–22–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77155; File No. SR–BATS–2016–10]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend the Certificate of Incorporation and Bylaws of the Exchange's Ultimate Parent Company, BATS Global Markets, Inc.

February 17, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 9, 2016, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the certificate of incorporation and bylaws of the Exchange's ultimate parent company, BATS Global Markets, Inc. (the ''Corporation'').

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 16, 2015, the Corporation, the ultimate parent company of the Exchange, filed a registration statement on Form S–1 with the Commission seeking to register shares of common stock and to conduct an initial public offering of those shares, which will be listed for trading on the Exchange (the ''IPO''). In connection with its IPO, the Corporation intends to (i) amend and restate its current certificate of incorporation (the ''Current Certificate of Incorporation'') and adopt these changes as its Amended and Restated Certificate of Incorporation (the ''New Certificate of Incorporation''), and (ii) amend and restate its current bylaws (the ''Current Bylaws'') and adopt these changes as its Amended and Restated Bylaws (the ''New Bylaws''). It is anticipated that the New Certificate of Incorporation and the New Bylaws will become effective (the ''Effective Date'') the moment before the closing of the IPO.

The amendments to the Current Certificate of Incorporation include, among other things, (i) increasing the total number of authorized shares of capital stock of the Corporation, (ii) effecting a conversion and elimination of one class of non-voting common stock and reclassifying the remaining class of non-voting common stock, (iii) establishing a classified board structure, (iv) prohibiting cumulative voting in the election of directors, (v) eliminating the process for action by written consent of stockholders, (vi) revising certain requirements for approval of future amendments to the New Certificate of Incorporation, and (vii) and changing the name of the Corporation from ''BATS Global Markets, Inc.'' to ''Bats Global Markets, Inc.''

The amendments to the Current Bylaws include, among other things, (i) revising the procedures for stockholder proposals and nomination of directors, (ii) revising the authority to call special meetings of the stockholders, (iii) eliminating the process for action by written consent of stockholders, (iv) establishing a classified board structure, (v) revising the requirements for removal of directors, (vi) removing duplicative provisions relating to the indemnification of officers and directors that are contained in the Current Certificate of Incorporation (and are proposed to be maintained in the New Certificate of Incorporation), (vii) revising certain requirements for approval of future amendments to the New Bylaws, (viii) eliminating the authority to make loans to corporate officers, and (ix) changes to reflect the change of the Corporation's name. The amendments to the Corporation's Current Certificate of Incorporation and Current Bylaws are intended primarily to reflect (i) the adoption of provisions more customary for publicly-owned companies, (ii) changes to the Corporation's capital structure, specifically with respect to non-voting common stock, and (iii) stylistic and other non-substantive changes.[3]

The purpose of this rule filing is to submit for Commission approval the New Certificate of Incorporation and the New Bylaws. The changes described herein relate to the certificate of incorporation and bylaws of the Corporation only, not to the governance of the Exchange. The Exchange will continue to be governed by its existing certificate of incorporation and bylaws. The stock in, and voting power of, the Exchange will continue to be directly and solely held by BATS Global Markets Holdings, Inc., an intermediate holding company wholly-owned by the Corporation.

The Corporation was originally formed as BATS Global Markets Holdings, Inc. on August 22, 2013 as a new ultimate holding company for the Exchange as a result of a business combination involving the holding company of the Exchange at the time and Direct Edge Holdings LLC.[4]

[3] Certain of the amendments proposed to be adopted in the New Certificate of Incorporation and New Bylaws were previously approved by the Commission in 2011 as part of proposed amendments to the certificate of incorporation and bylaws of the Exchange's ultimate parent company at the time. *See* Securities Exchange Act Release No. 65646 (October 27, 2011), 76 FR 67783 (November 2, 2011) (SR–BATS–2011–033); Securities Exchange Act Release No. 65728 (November 10, 2011), 76 FR 71411 (November 17, 2011) (SR–BATS–2011–035). Although approved, these amendments were not ultimately implemented.

[4] In connection with the Corporation's combination with Direct Edge Holdings LLC, the existing holding company for the Exchange, BATS Global Markets, Inc., changed its name to BATS Global Markets Holdings, Inc., and became an intermediate holding company between the Exchange and BATS Global Markets, Inc. The ownership structure of the Exchange at the time of the business combination and the Current Certificate of Incorporation and Current Bylaws of the Corporation are further described in the Commission's order approving the Exchange's proposed rule changes in connection with the Corporation's business combination with Direct Edge Holdings LLC. *See* Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR–BATS–2013–059; SR–BYX–2013–039).

1. The New Certificate of Incorporation

a. Capital Stock; Voting Rights

The current capital structure of the Corporation is comprised of 75 million authorized shares of Common Stock, consisting of 55 million shares of Voting Common Stock, 10 million shares of Class A Non-Voting Common Stock and 10 million shares of Class B Non-Voting Common Stock. Article Fourth(a)(i) of the New Certificate of Incorporation would revise this capital structure such that there would be 150 million total authorized shares of capital stock, consisting of 125 million shares designated as Voting Common Stock and a single class of 10 million shares designated as Non-Voting Common Stock (together with Voting Common Stock, ''Common Stock''), as well as 15 million shares of Preferred Stock.

The Corporation's existing Class A Non-Voting Common Stock is currently held by International Securities Exchange Holdings, Inc. (''ISE Holdings''). Pursuant to the Investor Rights Agreement dated January 31, 2014, among the Corporation and its stockholders signatory thereto (the ''Investor Rights Agreement''), and the Current Certificate of Incorporation, ISE Holdings' shares of Class A Non-Voting Common Stock may convert into Voting Common Stock (i) automatically with respect to any shares transferred to persons other than related persons of ISE Holdings; (ii) upon the termination of the Investor Rights Agreement, with such agreement (other than with respect to registration rights) terminating upon the IPO; or (iii) automatically with respect to any shares of Class A Non-Voting Common Stock sold by ISE Holdings in any public offering of the stock of the Corporation. In addition, ISE Holdings' shares of Class A Non-Voting Common Stock may convert into Voting Stock at the option of ISE Holdings, provided that ISE Holdings furnishes to the Corporation a written notice stating that ISE Holdings desires to convert a stated number of shares of Class A Non-Voting Common Stock and the certificates representing such shares.[5]

As a result of these conversion rights, the Corporation expects the Class A Non-Voting Common Stock to convert into Voting Common Stock at the time of the IPO. To effect this conversion, Article Fourth(b)(i) of the New Certificate of Incorporation states that, at the time that the New Certificate of Incorporation becomes effective (the ''Effective Time''),[6] each authorized, issued and outstanding share of Class A Non-Voting Common Stock shall be automatically converted into one share of Voting Common Stock. To simplify the capital structure of the Corporation, Article Fourth(b)(ii) would reclassify each authorized, issued and outstanding share of Class B Non-Voting Common Stock into one share of Non-Voting Common Stock.[7]

Pursuant to Article Fourth(c) of the New Certificate of Incorporation, as proposed to be adopted, all voting power will be vested in Voting Common Stock (except with regard to certain matters relating to the rights of holders of Preferred Stock described below). Specifically, each holder of Voting Common Stock will be entitled to one vote for each share of Voting Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote. Shares of Non-Voting Common Stock are non-voting, except with regard to certain matters that would adversely affect their respective rights as described in the proposed amendments to Article Fourth(c)(ii) of the New Certificate of Incorporation.

Pursuant to Article Fourth(d) of the New Certificate of Incorporation, Non-Voting Common Stock will generally have the conversion features that previously applied to Class B Non-Voting Common Stock under the Current Certificate of Incorporation. Non-Voting Common Stock will be convertible into Voting Common Stock, on a one-to-one basis, following a ''Qualified Transfer,'' as defined in Article Fourth(d)(i).[8] Voting Common Stock will not be convertible into Non-Voting Common Stock.

Except for voting rights and certain conversion features, as described above, Non-Voting Common Stock and Voting Common Stock will generally rank equally and have identical rights and privileges. Because the IPO is expected to be a widely distributed public offering registered pursuant to the Securities Act of 1933 (15 U.S.C. 77a.), the Corporation expects it to be a ''Qualified Transfer,'' for purposes of the conversion feature of the Non-Voting Common Stock,[9] such that any shares of Non-Voting Common Stock sold in the IPO would convert to Voting Common Stock. As a result, purchasers of the Corporation's common stock in the IPO will receive only Voting Common Stock.

Proposed Article Fourth(a)(i) of the New Certificate of Incorporation would increase the Corporation's authorized shares in order to accommodate the reclassification of Class A Non-Voting Common Stock and Class B Non-Voting Common Stock discussed above, while providing sufficient additional authorized shares for future issuances, such as, for example, grants of equity to employees pursuant to a compensation plan.

b. Board of Directors

Article Sixth of the New Certificate of Incorporation would amend certain provisions relating to the Corporation's board of directors to add further specificity and detail, and effect a number of changes to the board of directors of the Corporation.

Article Sixth(a) of the New Certificate of Incorporation would explicitly specify that the business and affairs of the Corporation shall be managed by or under the board of directors and empower the board of the directors to do all such acts and things as may be exercised or done by the Corporation. This provision is intended to restate the power of the Corporation's board in accordance with the General Corporation Law of the State of Delaware, as amended (''Delaware Law'').[10]

[5] *See* Current Certificate of Incorporation, Art. Fourth, para. (c); Investor Rights Agreement, Section 2.2(j).

[6] It is anticipated that the Effective Time will coincide with the date of the closing of the IPO and will occur immediately prior thereto.

[7] The Exchange understands that the existing Class B Non-Voting Common Stock is, and the Non-Voting Common Stock upon conversion will be, held by certain persons subject to restrictions under the Bank Holding Company Act of 1956 on the extent to which they are permitted to own voting stock of the Corporation or certain types of non-voting stock convertible into voting stock of the Corporation.

[8] A ''Qualified Transfer'' is defined as a sale or other transfer of Non-Voting Common Stock by a holder of such shares: (A) In a widely distributed public offering registered pursuant to the Securities Act of 1933 (15 U.S.C. 77a.); (B) in a private sale or transfer in which the relevant transferee (together with its Affiliates, as defined below, and other transferees acting in concert with it) acquires no more than two percent of any class of voting shares (as defined in 12 CFR 225.2(q)(3) and determined by giving effect to any such permitted conversion of transferred shares of Non-Voting Common Stock upon such transfer pursuant to Article Fourth of the New Certificate of Incorporation); (C) to a transferee that (together with its Affiliates and other transferees acting in concert with it) owns or controls more than 50 percent of any class of voting shares (as defined in 12 CFR 225.2(q)(3)) of the Corporation without regard to any transfer of shares from the transferring holder of shares of Non-Voting Common Stock; or (D) to the Corporation. As used above, the term ''Affiliate'' means, with respect to any person, any other person directly or indirectly controlling, controlled by or under common control with such person, and ''control'' (including, with correlative meanings, the terms ''controlled by'' and ''under common control with'') has the meaning set forth in 12 CFR 225.2(e)(1).

[9] *See* New Certificate of Incorporation, Art. Fourth(d)(i).

[10] *See* Delaware Law Section 141(a).

Article Sixth(c) of the New Certificate of Incorporation would establish a ''staggered'' or classified board structure in which the directors would be divided into three classes of equal size, to the extent possible. Only one class of directors would be elected each year, and once elected, directors would serve a three-year term. Directors initially designated as Class I directors would serve for a term ending on the date of the 2017 annual meeting of stockholders, directors initially designated as Class II directors would serve for a term ending on the date of the 2018 annual meeting of stockholders, and directors initially designated as Class III directors would serve for a term ending on the date of the 2019 annual meeting of stockholders. The names and addresses of each of the directors initially classified as Class I, Class II and Class III directors are set forth in Article Sixth(c)(ii) of the New Certificate of Incorporation. The Exchange believes that such a classified board structure is common for publicly-held companies, as it has the effect of making hostile takeover attempts more difficult.

Pursuant to Article Sixth(d) of the New Certificate of Incorporation, cumulative voting in the election of directors will be prohibited. If the Corporation were to permit cumulative voting, stockholders would be entitled to as many votes as are equal to the number of voting shares it holds, multiplied by the number of director seats up for election to the board of directors, and such stockholder may allocate all of its votes to one or more directorial candidates, as the stockholder desires. In contrast, in ''regular'' or ''statutory'' voting (*i.e.,* when cumulative voting is prohibited), stockholders may not vote more than one vote per share to any single director nominee. The Exchange believes that cumulative voting is inappropriate for the ultimate parent company of a national securities exchange, as it would increase the likelihood that a stockholder or group of stockholders holding only a minority of voting shares would be able to exert an outsized influence in the election of directors of the Corporation, relative to its stockholdings in the Corporation. As a result, cumulative voting could undermine the limitations on concentrations of ownership or voting included in both the Current Certificate of Incorporation and New Certificate of Incorporation.[11]

[11] *See* Current Certificate of Incorporation, Art. Fifth; New Certificate of Incorporation, Art. Fifth.

c. Transfer, Ownership and Voting Restrictions

The transfer, ownership and voting restrictions set forth in Article Fifth of the Corporation's Current Certificate of Incorporation would be retained in the New Certificate of Incorporation. Article Fifth of the Corporation's Current Certificate of Incorporation provides that for so long as the Corporation controls, directly or indirectly, a national securities exchange, subject to certain exceptions, (i) no person, either alone or together with its ''Related Persons'' (as defined therein), may own, directly or indirectly, of record or beneficially, shares constituting more than 40 percent of any class of the Corporation's capital stock, (ii) no member of such a national securities exchange, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, shares constituting more than 20 percent of any class of the Corporation's capital stock, and (iii) no person, either alone or together with its Related Persons, at any time, may, directly, indirectly or pursuant to any of various arrangements, vote or cause the voting of shares or give any consent or proxy with respect to shares representing more than 20 percent of the voting power of the Corporation's then issued and outstanding capital stock.

In the case of shares of the Corporation purportedly transferred in violation of the limitations contained in Article Fifth, in addition to other remedies provided under Article Fifth(d),[12] Article Fifth(e) of the Current Certificate of Incorporation provides that the Corporation may redeem the shares sold, transferred, assigned, pledged, or owned in violation of Article Fifth for a price equal to the fair market value of those shares.

These limitations and remedies are designed to prevent any stockholder from exercising undue influence over the Corporation's national securities exchange subsidiaries. As a result, these limitations and remedies would be retained in the New Certificate of Incorporation. However, in the case of the redemption of shares purportedly transferred in violation of Article Fifth, the Current Certificate of Incorporation does not specify the manner of determining the fair market value. In order to enhance this remedy and provide clarity in the event that it is necessary to enforce it, Article Fifth(e) of the New Certificate of Incorporation is proposed to be amended to provide that the fair market value would be determined as the volume-weighted average price per share of the Common Stock during the five business days immediately preceding the date of the redemption.

[12] Article Fifth(d) of the Current Certificate of Incorporation provides that purported transfers that would result in a violation of the ownership limitations are not recognized by the Corporation to the extent of any ownership in excess of the limitation.

d. Future Amendments to the Certificate of Incorporation

Article Twelfth of the Current Certificate of Incorporation requires that any proposed amendment to the Current Certificate of Incorporation be approved by the board of directors of the Corporation, submitted to the Board of Directors of the Exchange and filed with, or filed with and approved by, the Commission, if required under Section 19 of the Act. Provided that these conditions are satisfied, the Current Certificate of Incorporation can be amended in any manner permitted by Delaware Law, which today generally allows for the amendment of a certificate of incorporation by the affirmative vote of the majority of the outstanding stock entitled to vote thereon. Pursuant to proposed Article Fourteenth(a) of the New Certificate of Incorporation, certain provisions of the New Certificate of Incorporation would only be able to be amended upon the affirmative vote of not less than 66⅔ percent of the total voting power of the Corporation's outstanding securities entitled to vote generally in the election of directors, voting together as a single class. These provisions include Article Fourth(c) and (d), relating to voting rights and conversion of Non-Voting Common Stock, and Articles Fifth through Thirteenth, relating to limitations on transfer, ownership and voting, board of directors, duration of the Corporation, adopting, amending or repealing bylaws, indemnification and limitation of director liability, meetings of stockholders, forum selection, compromise or other arrangement, Section 203 opt-in (discussed below), and amendments to the certificate of incorporation, respectively.

The purpose of this supermajority requirement, which the Exchange believes is common among public companies, is to deter actions being taken that the Corporation believes may be detrimental to the Corporation, including any actions that could detrimentally affect the Corporation's ability to comply with its unique responsibilities under the Act as the ultimate parent of four registered national securities exchanges. The purpose for limiting the application of the supermajority voting requirement to

certain specified provisions of the certificate of incorporation is to focus such requirement on the most critical provisions of the certificate of incorporation.

e. Other Amendments

The New Certificate of Incorporation will amend and restate various other provisions of the Current Certificate of Incorporation in a manner that the Exchange believes are intended to reflect provisions that are more customary for publicly-owned companies organized under Delaware Law. In particular:

• *Preferred Stock.* Pursuant to proposed Article Fourth(a) of the New Certificate of Incorporation, the Corporation will have the authority to issue 15 million shares of Preferred Stock, par value $0.01 per share (the ''Preferred Stock''), which the Corporation's board of directors may, by resolution from time to time, issue in one or more classes or series by filing a certificate of designation pursuant to Delaware Law, fixing the terms and conditions of such class or series of Preferred Stock. The Preferred Stock may be used by the Corporation to raise capital or to act as a safety mechanism for unwanted takeovers. Pursuant to Article Sixth(f) of the New Certificate of Incorporation, should the Corporation issue Preferred Stock and the holders of Preferred Stock have the right to vote separately or as a class to elect directors, the features of such directorships shall be governed by the terms of the resolution adopted by the board of directors, rather than the features otherwise applicable under Article Sixth.

• *Stockholder Meetings.* Article Tenth of the Current Certificate of Incorporation permits action to be taken by the stockholders of the Corporation, without a meeting, by written consent as permitted by Delaware Law. The New Certificate of Incorporation would amend Article Tenth to provide that any action required or permitted to be taken at any meeting of the stockholders may be taken only upon the vote of stockholders at a meeting of the stockholders in accordance with Delaware Law and the New Certificate of Incorporation, and may not be taken by written consent without a meeting, subject to the rights of the holders of any class or series of Preferred Stock then outstanding. Proposed Article Tenth(a) would establish a requirement for the Corporation to hold annual meetings of stockholders for director elections and other business, while Proposed Article Tenth(b) would permit special meetings to be called only upon a resolution of a majority of the board of directors (except that when holders of Preferred Stock have the right to elect directors, such holders may call a special meeting). Provisions providing for annual meetings and special meetings are currently contained only in the Current Bylaws.[13]

• *Forum Selection.* The New Certificate of Incorporation would add a new Article Eleventh, designating the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain actions or proceedings, such as derivative actions brought on behalf of the Corporation or actions asserting a claim of breach of fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or to its stockholders. Among other things, this provision prevents similar actions from being brought in multiple jurisdictions and helps ensure that any litigation will be handled by the court that is most experienced in applying Delaware Law. Article Eleventh also provides that any person or entity acquiring an interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to this exclusive forum provision.

• *Section 203.* The New Certificate of Incorporation would add Article Thirteenth, providing that the Corporation will be governed by Section 203 of Delaware Law. In general, Section 203 prohibits a publicly-held Delaware corporation from engaging in a business combination with anyone who owns at least 15 percent of its common stock. This prohibition lasts for a period of three years after that person has acquired the 15 percent ownership. The corporation may, however, engage in a business combination if it is approved by its board of directors before the person acquires the 15 percent ownership or later by its board of directors and two-thirds of the stockholders of the public corporation. The restrictions contained in Section 203 do not apply if, among other things, the corporation's certificate of incorporation contains a provision expressly electing not to be governed by Section 203. Unless opted-out, Section 203 provides Delaware corporations with a defense to unwanted corporate takeovers.

The New Certificate of Incorporation also removes various references to the Investor Rights Agreement, as the provisions of that agreement, other than certain registration rights, is expected to terminate upon the occurrence of the IPO.[14] The New Certificate of Incorporation additionally makes various non-substantive, stylistic changes throughout. For example, the New Certificate of Incorporation would amend the name of the Corporation from ''BATS Global Markets, Inc.'' to ''Bats Global Markets, Inc.''

2. The New Bylaws

a. Registered Office

Article I of the Current Bylaws designates the initial registered office of the Corporation in the State of Delaware as 1209 Orange Street in the City of Wilmington, County of New Castle, Delaware and the initial registered agent at that address as The Corporation Trust Company. Section 1.01 of the New Bylaws would amend Article I to state that the registered office will continue to be located at the same location and to further provide the board of directors with the authority to designate another location from time to time. This will provide the board of directors with the flexibility to change the registered office in the future if it believes that such a change is necessary. In addition, Section 1.01 of the New Bylaws would provide that the registered agent will continue to be The Corporation Trust Company.

b. Annual Meeting of Stockholders

Section 2.02(a) of the Current Bylaws requires that an annual meeting of stockholders for the purpose of election of directors and for such other business as may lawfully come before the meeting occur on the third Tuesday of January, or such other time as the board of directors may designate. The New Bylaws remove the reference to the third Tuesday of January from Section 2.02(a) and authorize the board of directors to determine the place, date and time of the annual meeting.

Section 2.02(b) of the Current Bylaws specifies the procedures for stockholders to properly bring matters before the annual meeting, including specifying that stockholders provide timely notice to the Corporation of the business desired to be brought before the meeting. To be considered timely, Section 2.02(b) of the Current Bylaws states that the stockholder's notice must be delivered to the Corporation no earlier than the ninetieth day or later than the sixtieth day prior to the first anniversary of the preceding year's annual meeting. The New Bylaws

[13] Current Bylaws, Sections 2.02 and 2.03.

[14] *See* Investor Rights Agreement, Section 10 (providing that the rights and obligations of each stockholder party to the agreement shall terminate, to the extent not previously terminated, upon the occurrence of ''Qualified Public Offering,'' as defined therein, except that certain registration rights shall survive such termination).

modify the acceptable time period so that the stockholder's notice must be delivered to the Corporation no earlier than the one hundred and fiftieth day or later than the one hundred and twentieth day prior to the first anniversary of the preceding year's annual meeting. In the event that no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than thirty days, the New Bylaws generally require that the stockholder's notice be delivered no earlier than the one hundred and twentieth day or later than the seventieth day prior to such annual meeting.

Section 2.02(b) of the Current Bylaws specifies what must be contained in the stockholder's notice. In addition to the requirements contained in the Current Bylaws, Section 2.02(b) of the New Bylaws would require that the stockholder's notice (i) disclose the text of the proposal, (ii) disclose the beneficial owner on whose behalf the proposal is being made, (iii) disclose all arrangements or understandings between the stockholder and any other person pursuant to which the proposal is being made, (iv) disclose all agreements, arrangements or understandings (including derivative positions) to create or mitigate loss or manage the risk or benefit of share price changes, or increase or decrease the voting power of the stockholder or any beneficial owner with respect to the securities of the Corporation, (v) provide a representation as to whether the stockholder or any beneficial owner intends, or is part of a group that intends, to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of the Corporation needed to approve or adopt the proposal, or otherwise solicit proxies from stockholders in support of the proposal, and (vi) provide such other information relating to any proposed item of business as the Corporation may reasonably require to determine whether such proposed item of business is a proper matter for stockholder action.

Section 2.02(c) of the Current Bylaws specifies the procedures for stockholders to properly nominate persons for the board of directors, including that the stockholder provide timely notice to the Corporation. In addition to the requirements contained in the Current Bylaws, Section 2.02(c) of the New Bylaws would require that the stockholder's notice (i) disclose all agreements, arrangements or understandings (including derivative positions) to create or mitigate loss or manage the risk or benefit of share price changes, or increase or decrease the voting power of the stockholder, beneficial owner or any such nominee with respect to the securities of the Corporation, (ii) provide a representation that such stockholder is a stockholder entitled to vote at such meeting and intends to appear in person or by proxy at the meeting and to bring such nomination or other business before the meeting, and (iii) provide a representation as to whether the stockholder or any beneficial owner intends, or is part of a group that intends, to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of the Corporation needed to elect each such nominee, or otherwise solicit proxies from stockholders in support of the nomination.

The additional disclosure requirements being added to Sections 2.02(b) and 2.02(c) are intended to assure that stockholders asked to vote on a stockholder proposal or stockholder nominee are more fully informed in their voting and are able to consider any proposals or nominations along with the interests of those stockholders or the beneficial owners on whose behalf such proposal or nomination is being made.

The New Bylaws would further include a new Section 2.02(d), which would require that a stockholder proposal or a stockholder nomination be disregarded if the stockholder (or a qualified representative) does not appear at the annual or special meeting to present the proposal or nomination, notwithstanding that proxies may have been received and counted for purposes of determining a quorum. A ''qualified representative'' would include a duly authorized officer, manager or partner of the stockholder, or such other person authorized in writing to act as such stockholder's proxy. The purpose of this requirement is to assure that the stockholders' time at meetings is used efficiently and only serious stockholder proposals and nominations are considered.

The New Bylaws would also add Section 2.02(e), which would require that a stockholder, in addition to (and in no way limiting) all requirements set forth in Section 2.02 with respect to proposals or nominations, must also comply with all applicable requirements of the Act and the rules and regulations promulgated thereunder.

New Section 2.02(f) of the New Bylaws would note that, notwithstanding anything to the contrary in the New Bylaws, the notice requirements with respect to business proposals or nominations would be deemed satisfied if the stockholder submitted a proposal in compliance with Rule 14a–8 of the Act [15] and the proposal has been included in a proxy statement prepared by the Corporation to solicit proxies of the meeting of stockholders. This provision would assure that, in addition to proposals that meet the requirements of Section 2.02(b) of the New Bylaws, the Corporation would comply with the provisions of the Act and the rules promulgated thereunder with respect to the inclusion of stockholder proposals in its proxy statement.

c. Special Meetings of Stockholders

Section 2.03 of the Current Bylaws permits a special meeting of the stockholders to be called by any of (i) the chairman of the board of directors, (ii) the chief executive officer, (iii) the board of directors pursuant to a resolution passed by a majority of the board, or (iv) the stockholders entitled to vote at least 10 percent of the votes at the meeting. The New Bylaws would amend Section 2.03, consistent with Article Tenth(b) of the New Certificate of Incorporation, to only permit a special meeting of the stockholders to be called by the board of directors pursuant to a resolution adopted by the majority of the board. Additionally, whenever any holders of Preferred Stock have the right to elect directors pursuant to the New Certificate of Incorporation, such holders may call, pursuant to the terms of a resolution adopted by the board, a special meeting of the holders of such Preferred Stock. These amendments are designed to prevent any stockholder from exercising undue control over the operation of the Exchange by circumventing the board of directors of the Corporation through a special meeting of the stockholders.

d. Quorum; Vote Requirements

Section 2.05 of the Current Bylaws describe the quorum and voting requirements for the transaction of business at all meetings of stockholders of the Corporation. As the New Charter establishes two classes of stock, voting common stock and non-voting common stock, the New Bylaws would amend Section 2.05 to clarify that a majority of the voting power (the Voting Common Stock) is generally required for a quorum for the transaction of business, rather than a majority of all outstanding shares. The New Bylaws would also amend Section 2.05 to conform to Section 216 of Delaware Law to track the requirement of a majority of votes ''present in person or represented by

[15] 17 CFR 240.14a–8.

proxy'' for a quorum where a separate vote by class or classes or series is required. In addition, Section 2.05 of the New Bylaws would also be amended to clarify that abstentions and broker non-votes shall not be counted as votes cast. Under Delaware Law, abstentions and broker non-votes are not shares authorized to vote and are not considered votes cast on any matter.[16] This amendment conforms the provisions of Section 2.05 to Delaware Law and is intended to eliminate ambiguity in the counting of abstentions and broker non-votes.

e. Adjournment of Meetings

Section 2.06 of the Current Bylaws outlines certain requirements relating to the adjournment of stockholder meetings, including that any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the voting power of the shares casting votes, excluding abstentions. The New Bylaws would amend Section 2.06 such that only the chairman of the meeting or the board of directors would be permitted to adjourn a stockholder meeting. The authority to adjourn a stockholder meeting resting solely with the board of directors or the chairman is common among publicly-held companies. Furthermore, this amendment would provide the Corporation with flexibility to postpone a stockholder vote if it determines necessary and would prevent stockholders from adjourning a meeting if the board of directors and chairman desire to continue with the meeting.

f. Voting Rights

Section 2.07 of the Current Bylaws describes the rights of stockholders of the Corporation to vote their shares at a meeting of stockholders. The New Bylaws would amend Section 2.07 to further clarify that any share of stock of the Corporation held by the Corporation shall have no voting rights, except when such shares are held in a fiduciary capacity. The Current Bylaws do not address voting rights with respect to shares of stock of the Corporation held by the Corporation. This amendment is consistent with Delaware Law and removes ambiguity as to the voting rights of shares of stock of the Corporation held by the Corporation.[17]

g. Action Without a Meeting

Section 2.10(a) of the Current Bylaws permits certain actions to be taken by written consent of stockholders if signed by the holders of outstanding stock representing not less than the number of votes necessary to authorize or take such action at a meeting where all shares entitled to vote were present and voted. However, Section 2.10(c) of the Current Bylaws provides that no action by written consent may be taken following an initial public offering of the common stock of the Corporation. The New Bylaws would amend Section 2.10 to prohibit at all times actions taken by written consent of stockholders without a meeting, subject to the rights of any holders of Preferred Stock. This change is consistent with proposed changes contained in Article Tenth(c) of the New Certificate of Incorporation and would simplify Section 2.10 of the New Bylaws, given that the New Bylaws would become effective the moment before the closing of the IPO.

h. Number of Directors and Classified Board Structure

Section 3.01 of the Current Bylaws stipulates that the board of directors of the Corporation shall consist of 15 members, or such other number of members as determined from time to time by resolution of the board of directors. Under the New Bylaws, Section 3.01 would be amended to state that the board of directors shall consist of one or more directors, with the exact number of directors to be determined by resolution adopted by the majority of the board of directors. In addition, Section 3.01 of the New Bylaws would, consistent with proposed Article Sixth(c) of the New Certificate of Incorporation, establish a classified board structure in which the directors would be divided into three classes of equal size, to the extent possible. Only one class of directors would be elected each year, and once elected, directors would serve a three-year term. The Exchange believes that such a classified board structure is common for publicly-held companies, as it has the effect of making hostile takeover attempts more difficult.

i. Vacancies and Resignation

Section 3.03 of the Current Bylaws provides that vacancies on the board of directors resulting from death, resignation, removal or other causes, and any newly created directorships resulting from any increase in the number of directors, shall be filled by a majority vote of the directors then in office, even if less than a quorum, unless the board of directors determines by resolution that any such vacancies or newly created directorships should be filled by stockholders. Once elected, the director would hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified. Section 3.03 of the New Bylaws would adopt a substantially similar approach. Specifically, it would provide that vacancies or new directorships shall, except as otherwise required by law, be filled solely by a majority of the directors then in office (although less than a quorum) or by the sole remaining director, and each director so elected shall hold office for a term that shall coincide with the term of the class to which such director shall have been elected. The New Bylaws would also amend Section 3.03 to provide that if there are no directors in office, then an election of directors may be held in accordance with Delaware Law.

Section 3.04 of the Current Bylaws addresses the resignation of directors. For example, Section 3.04 provides that when one or more directors resign from the board of directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective. This provision would be retained in the New Bylaws, but it would be moved to Section 3.03. In addition, as is effectively the case under Section 3.04 of the Current Bylaws, Section 3.03 of the New Bylaws would provide that any director so chosen shall hold office as provided in the filling of other vacancies.

j. Removal of Directors

Section 3.05 of the Current Bylaws provides that the board of directors or any director may be removed, with or without cause, by the affirmative vote of at least 66⅔ percent of the voting power of all then-outstanding shares of voting stock of the Corporation. The New Bylaws would amend Section 3.05 to provide that directors may only be removed for cause with the affirmative vote of a simple majority of the holders of voting power of all then-outstanding securities of the Corporation generally entitled to vote in the election of directors, voting together as a single class.

The purpose of this amendment is to align the Corporation's requirements for removal of directors with Section 141(k)(1) of Delaware Law, which

[16] *See, e.g., Berlin* v. *Emerald Partners,* 552 A.2d 482 (Del. 1988).

[17] *See* Delaware Law Section 160(c).

generally provides that, in the case of a corporation with a classified board, a simple majority of stockholders may remove any director, but only for cause, unless the certificate of incorporation provides otherwise.

k. Committees of Directors

Sections 3.10(a) and (b) of the Current Bylaws permit the board of directors to appoint an executive committee with certain enumerated powers of the board, as well as other committees permitted by law. The New Bylaws would amend Section 3.10(a) to eliminate specific reference to an executive committee and authorize the board to designate one or more committees that may exercise the power of the board to the extent permitted in the resolution designating the committee. This amendment would enhance the board's flexibility to create those committees it deems necessary and most efficient for the functioning of the board. Section 3.10(a) would be further amended to provide that no committee would have the power to (i) approve, adopt or recommend to the stockholders any matter required by Delaware Law to be submitted for stockholder approval, or (ii) adopt, amend or repeal any bylaw. These amendments are being made to assure that the full board of directors considers and passes upon these significant corporate decisions.

Section 3.10(c) of the Current Bylaws describes the requirements for committee meetings. The New Bylaws would amend Section 3.10(c) to require that each committee keep regular minutes of its meetings and report the same to the board of directors of the Corporation when required. This amendment is being made to assure that matters addressed during committee meetings are recorded in the corporate records of the Corporation and are available to be communicated to the full board of directors of the Corporation.

l. Preferred Stock Directors

The New Bylaws would add new Section 3.12 to clarify that whenever the holders of one or more classes or series of Preferred Stock have the right to elect one or more directors (a ''Preferred Stock Director''), pursuant to the New Certificate of Incorporation, the provisions of Article III of the New Bylaws relating to the election, term of office, filling of vacancies, removal, and other features of directorships would not apply to the Preferred Stock Directors. Rather, such features would be governed by the applicable provisions of the New Certificate of Incorporation. This amendment is consistent with proposed Article Sixth(f) of the New Certificate of Incorporation with respect to the rights of holders of Preferred Stock, should any class or series of Preferred Stock be issued with director voting rights in the future.

m. Officers

Section 4.01 of the Current Bylaws provides that the officers of the Corporation shall include, if and when designated by the board of directors, the chairman of the board of directors, the chief executive officer, the president, one or more vice presidents and certain other employees. The New Bylaws would amend Section 4.01 to remove the chairman of the board of directors from the list of potential officers of the Corporation. Similarly, the New Bylaws would also remove Section 4.02(b) of the Current Bylaws, which describes the duties of the chairman of the board of directors. These changes would be made to reflect the fact that the chairman of the board of directors does not serve in an officer role in the Corporation.

n. Form of Stock Certificates

The New Bylaws would amend Section 6.01 of the Current Bylaws to state that the shares of the Corporation shall be represented by certificates, unless the board of directors provides by resolution that some or all of any class or series of stock be uncertificated. Except as otherwise provided by law, holders of certificated and uncertificated shares of the same class and series would have identical rights and obligations. Pursuant to Section 6.03(d) of the New Bylaws, the board will also have the power to make rules for issuance, transfer and registration of certificated or uncertificated shares, and the issuance of new certificates in lieu of those lost or destroyed. The New Bylaws further amend Section 6.01 to provide that the Corporation will not have the power to issue a certificate in bearer form. These amendments are intended to align the bylaws of the Corporation with standard provisions for Delaware public companies.

o. Fixing Record Dates

Section 6.04 of the Current Bylaws provides the procedures for fixing a record date for determining the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof. In general, a determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting. However, Section 6.04(a) of the Current Bylaws also permits the board of directors to fix a new record date for the adjourned meeting. The New Bylaws would amend Section 6.04(a) to clarify that the board of directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting in its discretion or as required by Delaware Law. In such case, the board of directors would be permitted to fix the same date or an earlier date as the record date for stockholders entitled to notice of such adjourned meeting. The New Bylaws would also remove Section 6.04(b) of the Current Bylaws, which relates to the fixing of a record date for determining the stockholders entitled to consent to corporate action in writing without a meeting. This provision would be removed because the New Bylaws would remove the ability of stockholders to authorize or take corporate action by written consent.

p. Indemnification

Article X of the Current Bylaws contains certain provisions for the indemnification of directors, officers, employees and certain other agents of the Corporation. The New Bylaws will eliminate such provisions in their entirety. These provisions are being eliminated because provisions regarding indemnification are already contained in Article Ninth of the Current Certificate of Incorporation and will remain in Article Ninth of the New Certificate of Incorporation.

q. Notices

Article XI of the Current Bylaws contains provisions governing the delivery of notices to stockholders and directors. Section 11.01(b) of the Current Bylaws, for example, states that notices to directors may be given through U.S. mail, facsimile, telex or telegram, except that such notice, other than one which is delivered personally, must be sent to such address as such director shall have filed in writing with the secretary of the Corporation, or, in the absence of such filing, to the last known post office address of such director. The corresponding section of the New Bylaws, Section 10.01(b), would be revised to additionally permit notice to directors to be given through electronic mail, in addition to the other forms of delivery currently permitted. The Exchange believes that it has become customary to deliver business communications through electronic mail. The remainder of the notice provisions would not be substantively amended in the New Bylaws.

r. Future Bylaws Amendments

Article Eighth of the Current Certificate of Incorporation (as proposed

to be maintained in the New Certificate of Incorporation) provides that the bylaws may be adopted, amended or repealed by the board of directors or by action of the stockholders, in accordance with the procedures set out in the bylaws. Article XII of the Current Bylaws permits the bylaws to be amended or repealed *only* by action of the stockholders holding 70 percent of the shares entitled to vote. Article XI of the New Bylaws would amend Article XII to provide that the bylaws may be altered, adopted, amended or repealed *either* by a majority of the board of directors, or by the stockholders with the affirmative vote of not less than 66⅔ of the total voting power then entitled to vote at a meeting of stockholders, unless a higher percentage is required under the New Certificate of Incorporation. The New Certificate of Incorporation does not include a higher percentage, so the threshold set forth in the New Bylaws would govern. The Current Bylaws require a vote of at least 70 percent of the total stockholder voting power in order to maintain consistency with the threshold that was separately agreed to in the Investor Rights Agreement.[18] As noted above, the Investor Rights Agreement is expected to terminate upon the IPO, except with respect to certain registration rights provisions, so the 70 percent threshold is no longer contractually necessary to maintain.[19] The requirement to obtain 70 percent stockholder approval for any amendments to the Corporation's bylaws was practical while the Corporation was closely-held. However, the Exchange believes that it is customary for amendments to a publicly-held corporation's bylaws to be predominantly a matter for the corporation's board of directors, both as a matter of convenience, and to make unwanted corporate takeovers more difficult. As a result, the New Bylaws require that, should the stockholders wish to amend the Corporation's bylaws, a supermajority of 66⅔ percent would be required. The threshold reduction from 70 percent to 66⅔ is intended to be consistent with other publicly-held companies.

In addition to the board of directors and stockholder approval requirements, Article XI of the New Bylaws would maintain the provisions contained in Article XII of the Current Bylaws requiring that, for so long as the Corporation will control a national securities exchange registered with the Commission under Section 6 of the Act, before any amendment to the New Bylaws may become effective, the amendment must be submitted to the board of directors of such exchange, and if required by Section 19 of the Act,[20] filed with or filed with and approved by the Commission.

s. Loans to Officers

Article XIII of the Current Bylaws authorizes the Corporation to lend money to or guarantee obligations of any officer of the company under certain circumstances. In order to comply with Section 13(k)(1) of the Act,[21] which will apply to the Corporation after the IPO, the New Bylaws eliminate this authority.

t. Other Amendments

The New Bylaws also remove references to the Investor Rights Agreement, as the provisions of that agreement, other than certain registration rights, is expected to terminate upon the occurrence of the IPO.[22] In addition, the New Bylaws make various non-substantive, stylistic changes throughout. For example, as with the New Certificate of Incorporation, the New Bylaws would reflect a change in the name of the Corporation from ''BATS Global Markets, Inc.'' to ''Bats Global Markets, Inc.''

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and rules and regulations thereunder that are applicable to a national securities exchange and, in particular, with the requirements of Section 6(b)(1) of the Act, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.[23] In particular, the New Certificate of Incorporation is consistent with Section 6(b)(1) of the Act because it would retain the limitations on ownership and total voting power that currently exist and would adopt super-majority requirements for certain amendments to the New Certificate of Incorporation. These provisions would help prevent any stockholder, including any member of the Exchange along with its Related Persons, from exercising undue control over the operation of the Exchange. In addition, Sections 2.03 and 2.10(c) of the New Bylaws would prohibit the ability of the stockholders to call a special meeting of the stockholders and to act by written consent. Therefore, as with the New Certificate of Incorporation, the New Bylaws would help prevent any stockholder from exercising undue control over the operation of the Exchange and assure that the Exchange is able to carry out its regulatory obligations under the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Indeed, the Exchange believes that the proposed rule change would enhance competition. The other major operators of registered national securities exchanges are currently public companies, with the access to the public markets that this facilitates. The amendments to the Corporation's certificate of incorporation and bylaws will facilitate the Corporation's IPO, facilitating capital formation and allowing the Corporation to better compete with other public companies operating national securities exchanges and other markets.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited or received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[18] *See* Investor Rights Agreement, Section 4.3(d).

[19] *See supra* note 14 and accompanying text.

[20] 15 U.S.C. 78s.

[21] 15 U.S.C. 78m(k)(1).

[22] *See supra* note 14 and accompanying text.

[23] 15 U.S.C. 78f(b).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2016–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2016–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2016–10 and should be submitted on or before March 15, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03663 Filed 2–22–16; 8:45 am]

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[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of AI Document Services, Inc., Creative Edge Nutrition, Inc. and Interactive Health Network; Order of Suspension of Trading

February 19, 2016.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of AI Document Services, Inc. because of questions concerning the accuracy and adequacy of publicly available information about the company, including, among other things, the control of the company and trading in its securities. AI Document Services, Inc. is a Delaware corporation with its principal offices in Atlanta, Georgia and its common stock is quoted on OTC Link (previously ''Pink Sheets'') operated by OTC Markets Group, Inc. (''OTC Link'') under the ticker symbol AIDC.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Creative Edge Nutrition, Inc. because of questions concerning the accuracy and adequacy of publicly available information about the company, including, among other things, the control of the company and trading in its securities. Creative Edge Nutrition, Inc. is a Nevada corporation with its principal offices in Beverly Hills, California and its common stock is quoted on OTC Link under the ticker symbol FITX.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Interactive Health Network because of questions concerning the accuracy and adequacy of publicly available information about the company, including, among other things, the control of the company and trading in its securities. Interactive Health Network is a Nevada corporation with its principal offices in Reno, Nevada and its common stock is quoted on OTC Link under the ticker symbol IGRW.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on February 19, 2016, through 11:59 p.m. EST on March 3, 2016.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2016–03847 Filed 2–19–16; 4:15 pm]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Friday, February 26, 2016 at 12:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Stein, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: February 19, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–03936 Filed 2–19–16; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77171; File No. SR–BATS–2015–101]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Adopt Rule 8.17 To Provide a Process for an Expedited Suspension Proceeding and Rule 12.15 To Prohibit Disruptive Quoting and Trading Activity

February 18, 2016.

I. Introduction

On November 6, 2015, BATS Exchange, Inc. (''BATS'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new BATS Rule (''Rule'') 12.15, which would prohibit certain disruptive quoting and trading activities on the Exchange, and new Rule 8.17, which would permit BATS to conduct a new Expedited Client Suspension Proceeding when it believes proposed Rule 12.15 has been violated.[3] On November 17, 2015, the Exchange filed Amendment No. 1 to the proposal.[4] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on November 24, 2015.[5] On January 6, 2016, pursuant to Section 19(b)(2) of the Act,[6] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[7] The Commission received four comment letters on the proposal and a response to the comments from the Exchange.[8] The Commission also received a recommendation regarding the proposed rule change from the Office of the Investor Advocate (''OIAD'').[9] This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change

The Exchange states that, in order to fulfill certain of its responsibilities as a registered national securities exchange and self-regulatory organization, it has developed a comprehensive regulatory program that includes automated surveillance of trading activity that is operated directly by Exchange staff and by staff of the Financial Industry Regulatory Authority (''FINRA'') pursuant to a Regulatory Services Agreement.[10] According to the Exchange, under this regulatory program, it can often take several years to resolve cases involving disruptive and potentially manipulative or improper quoting and trading activity even though, in some cases, the improper activity is able to be identified in real-time or near real-time.[11] As a result, the Exchange states that Exchange members (''Members'') responsible for such conduct, or responsible for their customers' conduct, are allowed to continue the disruptive quoting and trading activity on the Exchange and other exchanges during the entirety of such lengthy investigations and enforcement processes.[12] In the Notice, the Exchange provides examples of recent cases in which this has occurred.[13]

The Exchange believes that a lengthy investigation and enforcement process is generally necessary and appropriate to afford the subject Member adequate due process.[14] However, it also believes ''that there are certain obvious and uncomplicated cases of disruptive and manipulative behavior or cases where the potential harm to investors is so large that the Exchange should have the authority to initiate an expedited suspension proceeding in order to stop the behavior from continuing on the Exchange.'' [15] The Exchange further states that it should have such authority if a Member is engaging in or facilitating disrupting quoting and trading activity, and the Member has received sufficient notice with an opportunity to respond, but such activity has not ceased.[16]

The Exchange therefore has proposed to adopt new Rule 12.15, which would expressly prohibit two specific types of disruptive quoting and trading activities, and new Rule 8.17, which would permit the Exchange to conduct an Expedited Client Suspension Proceeding when it believes new Rule 12.15 has been violated.[17]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As discussed in Section II, this proposed rule change is a revised version of a prior filing, BATS–2015–57, which the Exchange withdrew on November 6, 2015. *See* Securities Exchange Act Release No. 76393 (November 9, 2015), 80 FR 70851 (November 16, 2015) (BATS–2015–57) (notice of withdrawal of BATS–2015–57). BATS filed BATS–2015–101 in order to address certain issues raised by comments submitted with respect to BATS–2015–57.

[4] Amendment No. 1 amended and replaced the original proposal in its entirety.

[5] *See* Securities Exchange Act Release No. 76470 (November 18, 2015), 80 FR 73247 (''Notice'').

[6] 15 U.S.C. 78s(b)(2).

[7] *See* Securities Exchange Act Release No. 76841, 81 FR 1457 (January 12, 2016). The Commission designated February 22, 2016 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[8] *See* letters from: R.T. Leuchtkafer to Brent J. Fields, Secretary, Commission, dated December, 14, 2015 (''Leuchtkafer Letter II''); Samuel F. Lek, Chief Executive Officer, Lek Securities Corporation, dated December 28, 2015 (''Lek Letter III''); G.T. Spaulding to Brent J. Fields, Secretary, Commission, dated December, 28, 2015 (''Spaulding Letter''); R.T. Leuchtkafer to Brent J. Fields, Secretary, Commission, dated February 2, 2016 (''Leuchtkafer Letter III''); and response letter regarding SR–BATS–2015–101 from Anders Franzon, SVP Associate General Counsel, BATS, to Brent J. Fields, Secretary, Commission, dated January 21, 2016 (''BATS Response Letter II''). In addition, the Commission received comments regarding the prior filing, SR–BATS–2015–57, which this proposal revises and replaces. *See* comment letters regarding SR–BATS–2015–57 from: Teresa Machado B., dated August 19, 2015 (''Machado Letter''); Samuel F. Lek, Chief Executive Officer, Lek Securities Corporation, dated September 3, 2015 (''Lek Letter I''); R.T. Leuchtkafer to Brent J. Fields, Secretary, Commission, dated September, 4, 2015 (''Leuchtkafer Letter I''); Mary Ann Burns, Chief Operating Officer, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission, dated September, 9, 2015 (''FIA Letter''); and Samuel F. Lek, Chief Executive Officer, Lek Securities Corporation, dated September 18, 2015 (''Lek Letter II''). The Exchange submitted a response to these comments in conjunction with its withdrawal of SR–BATS–2015–57 and filing of this proposal. *See* response letter regarding SR–BATS–2015–57 from Anders Franzon, VP and Associate General Counsel, BATS, to Brent J. Fields, Secretary, Commission, dated November 6, 2015 (''BATS Response Letter I''). The comments pertaining to the current proposal, the comments pertaining to SR–BATS–2015–57, and the Exchange's responses to the comments are all summarized below.

[9] *See* Memorandum to the Commission from Rick A. Fleming, Office of the Investor Advocate, Commission, dated December 15, 2015 (''OIAD Recommendation''). As discussed in more detail below, the Commission has carefully considered the OIAD Recommendation. The OIAD was established pursuant to Section 915 of the Dodd Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, sec. 911, 124 Stat. 1376, 1822 (July 21, 2010) (the ''Dodd-Frank Act''). The Dodd-Frank Act authorizes the Investor Advocate, among other things, to identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations and to propose to the Commission changes in the regulations or orders of the Commission that may be appropriate to promote the interests of investors.

[10] *See* Notice, *supra* note 5, at 73247–48.

[11] *Id.* at 73248.

[12] *Id.*

[13] *Id.* The Exchange notes that these cases involved allegations of wide-spread market manipulation, and in each case, the conduct involved a pattern of disruptive quoting and trading activity indicative of manipulative layering or spoofing. *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] The Exchange notes that it currently has authority to prohibit and take action against manipulative trading activity, including disruptive quoting and trading activity, pursuant to its general market manipulation rules, including Rule 3.1. *Id.* at 73250.

Proposed Rule 12.15

Proposed Rule 12.15 would state that no Member shall engage in or facilitate disruptive quoting and trading activity—as described in Interpretations and Policies .01 and .02 of proposed Rule 12.15—on the Exchange, including acting in concert with other persons to affect such activity.[18]

Proposed Interpretation and Policy .01 would describe the quoting and trading activities prohibited by proposed Rule 12.15 and state that, for purposes of proposed Rule 12.15, disruptive quoting and trading activity shall include a frequent pattern of two fact scenarios, defined as ''Disruptive Quoting and Trading Activity Type 1'' and ''Disruptive Quoting and Trading Activity Type 2,'' respectively. Disruptive Quoting and Trading Activity Type 1 would entail a frequent pattern in which the following facts are present: (1) A party enters multiple limit orders on one side of the market at various price levels (the ''Displayed Orders''); (2) following the entry of the Displayed Orders, the level of supply and demand for the security changes; (3) the party enters one or more orders on the opposite side of the market of the Displayed Orders (the ''Contra-Side Orders'') that are subsequently executed; and (4) following the execution of the Contra-Side Orders, the party cancels the Displayed Orders. Disruptive Quoting and Trading Activity Type 2 would entail a frequent pattern in which the following facts are present: (1) A party narrows the spread for a security by placing an order inside the national best bid and offer (''NBBO''); and (2) the party then submits an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the party.

Proposed Interpretation and Policy .02 would state that, for purposes of proposed Rule 12.15, disruptive quoting and trading activity shall include a frequent pattern in which the facts listed in Interpretation and Policy .01 are present. Proposed Interpretation and Policy .02 would also state that, unless otherwise indicated, the order of the events indicating the pattern does not modify the applicability of proposed Rule 12.15. Further, proposed Interpretation and Policy .02 would state that disruptive quoting and trading activity includes a pattern or practice in which all of the quoting and trading activity is conducted on the Exchange as well as a pattern or practice in which some portion of the quoting or trading activity is conducted on the Exchange and the other portions of the quoting or trading activity are conducted on one or more other exchanges.

Proposed Rule 8.17

Under proposed Rule 8.17, the Exchange could initiate an Expedited Client Suspension Proceeding when it believes that proposed Rule 12.15 has been violated. An Expedited Client Suspension Proceeding could result in the Exchange issuing a ''suspension order,'' under which a Respondent to the proceeding that was provided with advanced notice could be (1) ordered to cease and desist from the violative trading activity under proposed Rule 12.15 and/or ordered to cease and desist from providing access to the Exchange to a client engaging in the violative trading activity under proposed Rule 12.15, and (2) suspended from the Exchange unless and until it takes or refrains from taking the act or acts described in the suspension order.[19]

Paragraph (a) of proposed Rule 8.17 would govern the initiation of an Expedited Client Suspension Proceeding. With the prior written authorization of the Exchange's Chief Regulatory Officer (''CRO'') or such other senior officers as the CRO may designate, the Office of General Counsel or Regulatory Department of the Exchange may initiate an Expedited Client Suspension Proceeding. The Exchange would initiate an Expedited Client Suspension Proceeding by serving a notice on a Member or associated person of a Member (''Respondent''), and the notice would be effective upon service.[20] The notice would state whether the Exchange is requesting the Respondent to be required to take action or to refrain from taking action, and would be accompanied by the following: (1) A declaration of facts, signed by a person with knowledge of the facts contained therein, that specifies the acts that constitute the alleged violation; and (2) a proposed order that contains the required elements of a suspension order (except the date and hour of the order's issuance).[21]

Paragraph (b) of proposed Rule 8.17 would govern the appointment of a Hearing Panel to preside over an Expedited Client Suspension Proceeding and the recusal or disqualification of a Hearing Officer from the Hearing Panel under certain circumstances. Proposed Rule 8.17(b)(1) would require the assignment of a Hearing Panel as soon as practicable after the Exchange initiates an Expedited Client Suspension Proceeding.[22] Proposed Rule 8.17(b)(2) would provide for the recusal or disqualification of a Hearing Officer in the event he or she has a conflict of interest or bias or other circumstances exist where his or her fairness might reasonably be questioned. The proposed rule would permit a Hearing Officer to recuse himself or herself and also permit a party to the proceeding to file a motion to disqualify a Hearing Officer. Proposed Rule 8.17(b) would require a recusal and disqualification proceeding to be held under such circumstances, which would be conducted in accordance with current Rule 8.6(b).[23] However, proposed Rule 8.17(b) would provide for shorter timeframes within which a motion to disqualify a Hearing Officer must be filed and within which the Exchange may respond to that motion than those set forth in Rule 8.6(b).[24] The Exchange states that proposed Rule 8.17(b) provides for these shorter time periods due to the compressed schedule pursuant to which an Expedited Client Suspension Proceeding would operate.[25]

Under paragraph (c) of proposed Rule 8.17, a hearing would be held no later than 15 days after service of the notice initiating the Expedited Client Suspension Proceeding, unless

[18] The Exchange believes that it is necessary to extend the prohibition of proposed Rule 12.15 to situations when persons are acting in concert to avoid a potential loophole where disruptive quoting and trading activity is simply split between several brokers or customers. *See* Notice, *supra* note 5, at 73250.

[19] *See* proposed Rule 8.17(d)(2).

[20] Under proposed Rule 8.17, relevant documents (*e.g.,* notice, the suspension order) may be served via personal service or overnight commercial carrier. *See* proposed Rules 8.17(a)(2), 8.17(c)(2), 8.17(d)(4), and 8.17(e).

[21] *See* proposed Rule 8.17(a)(3).

[22] The Hearing Panel would be appointed in accordance with current Rule 8.6(a), which states, among other things, that a Hearing Panel for general disciplinary proceedings shall be comprised of three hearing officers appointed by the Chief Executive Officer of the Exchange. *See* Rule 8.6(a). Rule 8.6(a) further states that each Hearing Panel shall be comprised of: (1) A professional hearing officer, who shall serve as Chairman of the Hearing Panel, (2) a hearing officer who is an Industry member, as such term is defined in the Exchange's By-Laws, and (3) a hearing officer who is a Member Representative member, as such term is defined in the Exchange's By-Laws. *Id.*

[23] *See* Rule 8.6(b). Rule 8.6(b) sets forth the Exchange's standard for the impartiality of Hearing Officers for general disciplinary proceedings and the process for removing a Hearing Officer due to bias or conflict of interest. *Id.*

[24] Under proposed Rule 8.17(b)(2), a motion seeking disqualification of a Hearing Officer would be required to be filed no later than five days after the announcement of the Hearing Panel, and the Exchange would be permitted to file a brief in opposition to that motion no later than five days after service thereof. Rule 8.6(b) provides for a 15-day period to file a motion to disqualify a Hearing Officer and a 15-day period for the Exchange to respond.

[25] *See* Notice, *supra* note 5, at 73249.

otherwise extended by the Chairman of the Hearing Panel with the consent of the parties to the proceeding for good cause shown. In the event of a recusal or disqualification of a Hearing Officer, the hearing would be held no later than five days after a replacement Hearing Officer is appointed. A notice of the date, time, and place of the hearing would be required to be served on the parties to the proceeding no later than seven days before the hearing, unless otherwise ordered by the Chairman of the Hearing Panel. Proposed Rule 8.17(c) would also govern the conduct of the hearing by including provisions addressing the authority of the Hearing Officers, the testimony of witnesses, the submission of additional information to the Hearing Panel, the requirement that a transcript of the proceeding be created (and the details related to availability of and corrections to such transcript), and the creation and maintenance of the record of the proceeding. Proposed Rule 8.17(c) would also provide that the Hearing Panel may issue a suspension order without further proceedings if the Respondent fails to appear at the hearing, and that the Hearing Panel may dismiss the Expedited Client Suspension Proceeding if the Exchange fails to appear at the hearing.

Under paragraph (d) of proposed Rule 8.17, the Hearing Panel would be required to issue a written decision stating whether a suspension order would be imposed. The Hearing Panel would be required to issue the decision no later than ten days after receipt of the hearing transcript, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the parties to the proceeding for good cause shown. Pursuant to proposed Rule 8.17(d)(1), a suspension order would be imposed if the Hearing Panel finds: (1) by a preponderance of the evidence that the alleged violation specified in the notice has occurred and (2) that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

Proposed Rule 8.17(d)(2) would set forth the content, scope, and form of a suspension order. Specifically, the suspension order would be limited to: (1) ordering a Respondent to cease and desist from violating proposed Rule 12.15; and/or (2) ordering a Respondent to cease and desist from providing access to the Exchange to a client of Respondent that is causing violations of proposed Rule 12.15.[26] The suspension order would be required to set forth the alleged violation and the significant market disruption or other significant harm to investors that is likely to result without the issuance of an order, to describe, in reasonable detail, the act or acts the Respondent is to take or refrain from taking, and to suspend the Respondent unless and until such action is taken or refrained from.[27] Under proposed Rules 8.17(d)(3) and 8.17(d)(4), a suspension order would be effective upon service and remain effective and enforceable unless modified, set aside, limited, or revoked pursuant to proposed Rule 8.17(e).[28]

Paragraph (e) of proposed Rule 8.17 would provide that, at any time after the Respondent is served with a suspension order, a party to the Expedited Client Suspension Proceeding may apply to the Hearing Panel to have the order modified, set aside, limited, or revoked. Further, under proposed Rule 8.17(e), the Hearing Panel would be required to respond to any such request in writing within ten days after receipt of the request, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the parties to the proceeding for good cause shown. In addition, proposed Rule 8.17(e) would state that an application to modify, set aside, limit or revoke a suspension order would not stay the effectiveness of the suspension order. In the Notice, the Exchange explains that if any part of a suspension order is modified, set aside, limited, or revoked, proposed Rule 8.17(e) would grant the Hearing Panel discretion to leave the cease and desist part of the order in place while, for example, removing the suspension component.[29]

Finally, paragraph (f) of proposed Rule 8.17 would state that sanctions issued under proposed Rule 8.17 would constitute final and immediately effective disciplinary sanctions imposed by the Exchange, that the right to have any action under proposed Rule 8.17 reviewed by the Commission would be governed by Section 19 of the Act,[30] and that the filing of an application for review would not stay the effectiveness of a suspension order unless the Commission otherwise orders.

In the Notice, the Exchange notes that the issuance of a suspension order would not alter the Exchange's ability to further investigate the matter and/or later sanction the Member pursuant to the Exchange's standard disciplinary process for supervisory violations or other violations of Exchange rules or the Act.[31] In addition, in the Notice, the Exchange acknowledges that its proposed authority to issue a suspension order is a powerful measure that should be used very cautiously.[32] Consequently, according to the Exchange, the proposed rules have been designed to ensure that the Expedited Client Suspension Proceedings are used to address only the most clear and serious types of disruptive quoting and trading activity and that the interests of Respondents are protected.[33] In addition, the Exchange believes that it would use this authority in limited circumstances, when necessary to protect investors, other Members, and the Exchange.[34]

Summary of Differences Between BATS–2015–57 and the Current Proposal

As noted above, this proposal revises and replaces a prior proposal, BATS–2015–57, which the Exchange withdrew in order to address certain comments.[35] In conjunction with that withdrawal and replacement, the Exchange submitted a comment response letter that, among other things, explained the main differences between the prior proposal and the current proposal (the letter also addressed certain comments on BATS–2015–57, as described below).[36] As set forth in that letter, the current proposal replaces the terms ''Layering'' and ''Spoofing'' originally used in proposed Rule 12.15 of BATS–2015–57 with the terms ''Disruptive Quoting and Trading Activity Type 1'' and ''Disruptive Quoting and Trading Activity Type 2,'' respectively, and conforms related terminology in proposed Rules 8.17 and 12.15.[37] Because the Exchange also believes that a suspension order issued under proposed Rule 8.17 is enforceable against the subject Member and no additional process is required to discipline the violation of such an order, the current proposal omits subparagraph (f) of proposed Rule 8.17 of BATS–2015–57, which had provided a process for sanctioning violations of a

[26] *See supra* note 18 and accompanying text.

[27] The suspension order would also include the date and hour of its issuance. *See* proposed Rule 8.17(d)(2)(D).

[28] *See infra.*

[29] *See* Notice, *supra* note 5, at 73249. In addition, the Exchange also explains that, with its broad modification powers under the proposed rule, the Hearing Panel would maintain the discretion to impose conditions upon the removal of a suspension. *Id.*

[30] 15 U.S.C. 78s.

[31] *See* Notice, *supra* note 5, at 73251.

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *See supra* note 3.

[36] *See* BATS Response Letter I, *supra* note 8.

[37] *Id.* at 5; *also compare* BATS–2015–57 *with* BATS–2015–101.

suspension order,[38] and also make a conforming change to what is now Rule 8.17(f) of BATS–2015–101. In addition, the current proposal modifies subparagraph (d)(2)(C) of proposed Rule 8.17 to clarify that a suspension order would suspend the Respondent from access to the Exchange unless and until there is compliance with the cease and desist provisions of the order.[39]

III. Summary of Comments

The Commission received four comments from three different commenters on this proposal and a comment response letter from the Exchange.[40] The Commission also received five comment letters from four different commenters on BATS–2015–57,[41] as well as a comment response letter from the Exchange.[42] One of the commenters on this proposal, who also commented twice on BATS–2015–57,[43] opposes the proposal.[44] Another commenter on this proposal, who also commented on BATS–2015–57,[45] is critical of the scope of the defined trading activities prohibited under proposed Rule 12.15.[46] Two commenters on BATS–2015–57 (who did not also comment on this proposal) supported the prior proposal overall,[47] but one of them suggested a clarifying amendment.[48] Additionally, the OIAD submitted to the public comment file its recommendation that the Commission approve this proposal.[49] The comment letters received with respect to BATS–2015–57 and this proposal, as well as the Exchange's responses, are summarized below, followed by a summary of the OIAD Recommendation.

Proposed Definitions of ''Spoofing'' and ''Layering'' in BATS–2015–57 and ''Disruptive Quoting and Trading Activity'' in the Current Proposal

Most of the critical commentary on BATS–2015–57 centered on proposed Rule 12.15's description of the ''layering'' and ''spoofing'' activity that would be prohibited.[50] One commenter who supported BATS–2015–57 expressed broad agreement with the proposed descriptions of such activity, but believed that the descriptions should be amended to require a manipulative intent element.[51] This commenter noted prior definitions of ''spoofing'' put forth by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'') and in Commodity Futures Trading Commission guidance, which definitions include an intent element.[52] According to this commenter, the omission of such an intent element raised a concern because it ''is the cornerstone of existing disruptive trading rules'' and ''has historically been an important factor in sanctioning market participants for fraudulent and manipulative trading practices as it prevents legitimate, good faith actions from being wrongly penalized.'' [53] This commenter stated that, without the intent requirement, proposed Rule 12.15, and its description of prohibited layering activity in particular, could be construed to prohibit a broad range of legitimate conduct such as market making activity.[54]

Another commenter who was opposed to BATS–2015–57 stated that the proposed descriptions of the prohibited ''layering'' and ''spoofing'' activity in BATS–2015–57 were overbroad and would encompass legitimate trading activity in which trading algorithms regularly engage, and that narrows spreads, adds depth and liquidity to the market, provides price improvement, and reduces costs for investors.[55] The commenter stated that prohibiting such trading activity would be anti-competitive and would serve to eliminate risk to market participants engaged in front-running strategies because they would be provided with a free stop-loss on their trades.[56] This commenter addressed each element of the proposed ''layering'' and ''spoofing'' descriptions in BATS–2015–57 and offered its view as to why each individual element encompassed legitimate trading activity or was otherwise problematic.[57] The commenter further asserted that courts have held that an alleged manipulator must inject false information into the market with scienter, and that orders do not become manipulative merely because another trader speculates about them incorrectly.[58] The commenter also argued that the proposed descriptions of ''layering'' and ''spoofing'' were unacceptably vague.[59] According to the commenter, by using the words ''include,'' ''frequent,'' ''pattern,'' and ''multiple,'' the proposed descriptions in BATS–2015–57 left open-ended exactly what conduct would be prohibited.[60]

Another commenter also criticized the proposed descriptions of the prohibited ''layering'' and ''spoofing'' activity under that proposal, but instead expressed concern that the proposed descriptions were too narrow and would have given ''spoofers and layerers a roadmap around exchange surveillance, and a near-perfect defense if they're somehow roped into an enforcement action.'' [61] This commenter noted that other definitions of layering and spoofing, such as that put forth by the Dodd-Frank Act, ''define spoofing or layering (collectively, 'spoofing') as a matter of the spoofer's intent without detailing exactly where and how orders are placed or at what prices.'' [62] According to this commenter, by being specific in proposed Rule 12.15, the proposed descriptions of the prohibited ''layering'' and ''spoofing'' activity would have excluded certain kinds of improper trading activity.[63] The commenter asserted that BATS should instead adopt principles-based language against spoofing.[64] The commenter also

[38] *See* BATS Response Letter I, *supra* note 8, at 5.

[39] *Id.* In Amendment No. 1, the Exchange relocated this provision addressing suspension from the Exchange from subparagraph (d)(2)(A) of proposed Rule 8.17 to subparagraph (d)(2)(C) of proposed Rule 8.17.

[40] *See supra* note 8.

[41] *Id.*

[42] *Id.* As noted above, the Exchange submitted its response letter in conjunction with its withdrawal of BATS–2015–57 and filing of BATS–2015–101. *Id.*

[43] *See* Lek Letters I and II, *supra* note 8.

[44] *See* Lek Letter III, *supra* note 8.

[45] *See* Leuchtkafer Letter I, *supra* note 8.

[46] *See* Leuchtkafer Letters II and III, *supra* note 8. *See also* Spaulding Letter, *supra* note 8 (appearing to be critical of the proposal).

[47] *See* FIA Letter, *supra* note 8; Machado Letter, *supra* note 8.

[48] *See* FIA Letter, *supra* note 8.

[49] *See* OIAD Recommendation, *supra* note 9.

[50] *See* FIA Letter, *supra* note 8, at 3–4; Leuchtkafer Letter I, *supra* note 8; Lek Letter I, *supra* note 8, at 1–6, Lek Letter II, *supra* note 8. As noted above, in the current proposal, the Exchange changed the labels of the activities prohibited under proposed Rule 12.15 from ''Layering'' and ''Spoofing'' to ''Disruptive Quoting and Trading Activity Type 1'' and ''Disruptive Quoting and Trading Activity Type 2,'' respectively. The Exchange did not make any other substantive changes to the definitions or descriptions of the activities prohibited under proposed Rule 12.15, and accordingly, the Commission believes that the comments received regarding proposed Rule 12.15 under BATS–2015–57 are appropriate to consider with respect to the current proposal.

[51] *See* FIA Letter, *supra* note 8, at 1, 4. The other supportive commenter stated that a biotech company in which the commenter is an investor has been subject to spoofing and layering, as well as naked short attacks, which is severely harming *bona fide* investors. *See* Machado Letter, *supra* note 8.

[52] *See* FIA Letter, *supra* note 8, at 2–3.

[53] *Id.* at 3–4.

[54] *Id.* at 4 n.13.

[55] *See* Lek Letter I, *supra* note 8, at 1, 7.

[56] *See* Lek Letter I, *supra* note 8, at 1, 6; Lek Letter II, *supra* note 8.

[57] *See* Lek Letter I, *supra* note 8, at 2–6.

[58] *See* Lek Letter I, *supra* note 8, at 2; Lek Letter II, *supra* note 8.

[59] *See* Lek Letter I, *supra* note 8, at 2–4.

[60] *Id.*

[61] *See* Leuchtkafer Letter I, *supra* note 8, at 1. *See also* Leuchtkafer Letter III, *supra* note 8, at 2–3.

[62] *See* Leuchtkafer Letter I, *supra* note 8, at 2.

[63] *Id.* at 3, 6.

[64] *Id.* at 6. In addition, the commenter criticized certain market making practices that the commenter attributed to high-frequency traders, and suggested that these practices are anti-competitive and

expressed concern that other exchanges might copy BATS's definitions of spoofing and layering.[65]

In response to the above critiques of the proposed definitions of ''spoofing'' and ''layering'' in BATS–2015–57, the Exchange stated in its response letter for BATS–2015–57 that it agrees that the harmful practices of spoofing and layering are defined by an intent element.[66] According to the Exchange, the prior proposal's definitions of the prohibited ''layering'' and ''spoofing'' activity under proposed Rule 12.15 were intended to include an intent element by requiring a ''frequent pattern'' of such activity.[67] The Exchange stated that a ''frequent pattern'' of such activity evidences manipulative intent,[68] and offered the observation that such a ''frequent pattern'' is typically the key factor indicating intent in spoofing and layering cases.[69] The Exchange also acknowledged the concern that the proposed ''layering'' and ''spoofing'' definitions in the prior proposal could be read to exclude other spoofing and layering practices.[70] The Exchange stated that it did not intend to provide universal definitions of layering and spoofing activity, but rather to identify and prohibit ''certain patterns and practices that are hallmarks of the most egregious spoofing and/or layering conduct.'' [71]

Nevertheless, the Exchange recognized commenters' concerns that certain non-spoofing or non-layering trading activity could fall within the previously proposed definitions of ''layering'' and ''spoofing'' while, at the same time, certain manipulative layering or spoofing activity could fall outside those proposed definitions.[72] The Exchange stated that, because the purpose of BATS–2015–57 was ''not to provide a precise definition of layering and spoofing, but to protect market participants from the harm caused by a [Member's] refusal to cease obvious disruptive market practices,'' the Exchange modified the defined terms in proposed Rule 12.15 under the current proposal to replace the defined terms ''layering'' and ''spoofing'' with the terms ''Disruptive Quoting and Trading Activity Type 1'' and ''Disruptive Quoting and Trading Activity Type 2,'' respectively.[73] The Exchange stated its belief that this terminology change advances its objective of protecting market participants from harmful and manipulative trading behavior, and also alleviates commenters' concerns regarding the prior definitions of ''layering'' and ''spoofing'' [74] According to the Exchange, the terminology change also highlights that proposed Rule 8.17 is ''designed to halt a very specific, readily identifiable type of illegal trading activity rather than an attempt to define and punish layering and spoofing in every conceivable context.'' [75]

The commenter who opposed the prior proposed rule change in BATS–2015–57 submitted a comment letter on the current proposal, again in opposition.[76] In this comment letter, the commenter repeats many of the same criticisms set forth in the commenter's first letter submitted in opposition to BATS–2015–57,[77] asserting that ''the currently proposed rule has all the flaws of the original proposal.'' [78] The commenter also repeats its criticism from its second comment letter to BATS–2015–57 that the proposed rule change is intended to eliminate competition for high-frequency traders (''HFTs'')—whom the commenter claims ''control'' the Exchange—at the expense of institutional investors by eliminating trading strategies that add risk to front-running strategies of HFTs.[79] The commenter claims that the Exchange is advocating ''the ability for HFTs to detect institutional buying interest and to be able to front-run institutional orders risk free.'' [80] In its comment response letter for the current proposal, the Exchange incorporates, by reference, the statements in its comment response letter for BATS–2015–57 addressing the commenter's criticisms of BATS–2015–57 that are duplicative of the commenter's criticism of the current proposal.[81] The Exchange also states that the trading activity it seeks to curtail under the proposal is ''not acceptable 'competitive' conduct'' and that there is no risk that the proposed Expedited Client Suspension Proceeding ''could be used to prohibit an isolated series of coincidental transactions,'' as asserted by the commenter.[82]

Additionally, one of the commenters critical of the proposed definitions of ''layering'' and ''spoofing'' under BATS–2015–57 submitted a comment letter to BATS–2015–101 that reprises much of the same criticism set forth in the commenter's letter in opposition to BATS–2015–57 and again centers on the Exchange's descriptions and definitions of the prohibited trading activities in proposed Rule 12.15.[83] The commenter argues that the Exchange should not define the prohibited activity in ''narrow, prescriptive terms'' and that the proposed definitions of the violative activity are inconsistent with the ''principles-based'' definitions of what the commenter characterizes as ''[a]ll other definitions of spoofing that [the commenter] could find that regulators (including BATS) have set down over the years.'' [84] The commenter reiterates its view that the Exchange should include principle-based language in its proposed rule and suggests specific rule language in this regard, which includes an intent element,[85] and expresses renewed concern that BATS's ''deeply flawed and superficial proposal could quickly become the surveillance and enforcement spoofing standard for the equity markets.'' [86]

In response to this comment letter, the Exchange explains that ''[d]efining layering and spoofing in all of its possible permutations is not the

contribute to market complexity. *Id.* at 3–5. The commenter also questioned how such market making activity can be distinguished from spoofing in certain contexts. *Id.* at 4–6. The commenter further questioned why BATS has proposed to expedite action in cases of spoofing or layering but not in cases of other types of manipulative trading, like marking the close or wash trading. *Id.* at 1.

[65] *Id.* at 1; *see also id.* at 6.

[66] *See* BATS Response Letter I, *supra* note 8, at 6.

[67] *Id.*

[68] *Id.*

[69] *Id.* at 6 n.12.

[70] *Id.* at 7.

[71] *Id.* The Exchange also argued, in response to one commenter's assertions that elements of the proposed definitions violated the Act, that since spoofing and layering are fraudulent and manipulative practices prohibited by the Act, the previously proposed rules prohibiting those practices comport with Section 6(b)(5) of the Act and advance the Act's purposes. *Id.* at 11.

[72] *Id.* at 7.

[73] *Id.*

[74] *Id.*

[75] *Id.* at 7–8.

[76] *See* Lek Letter III, *supra* note 8.

[77] *Compare* Lek Letter I, *supra* note 8, *with* Lek Letter III, *supra* note 8.

[78] *See* Lek Letter III, *supra* note 8, at 1.

[79] *Id.* at 1–2. *Compare* Lek Letter II *supra* note 8, *with* Lek Letter III, *supra* note 8.

[80] *See* Lek Letter III, *supra* note 8, at 2. The commenter states that HFTs ''seek to buy stock ahead of the institution, bid up the price, and re-sell the stock back to the institution at a higher level'' and argues that HFTs ''therefore seek regulatory protections and advocate rules that would eliminate trading strategies that add such risk to their front running strategies.'' *Id.*

[81] *See* BATS Response Letter II, *supra* note 8, at 10.

[82] *Id.* (responding to Lek Letter III).

[83] *Compare* Leuchtkafer Letter II, *supra* note 8, *with* Leuchtkafer Letter I, *supra* note 8.

[84] *See* Leuchtkafer Letter II, *supra* note 8, at 1–2.

[85] *Id.* at 8.

[86] *Id.* at 3. The commenter also renews its critique of certain market making practices that the commenter attributes to HFTs, and again suggests that these practices are anti-competitive and contribute to market complexity, and questions how such market making activity can be distinguished from spoofing in certain contexts. *Id.* at 3–8. In addition, the commenter asserts that it is unaware of any spoofing or layering case in which the Exchange independently discovered the violative conduct at issue. *Id.* at 1–2.

purpose of this filing.'' [87] Rather, the Exchange states that the filing is meant to ''supplement existing prohibitions against layering and spoofing with an expedited objective prohibition that will stop harmful manipulative activity while the Exchange conducts necessary extensive and time-consuming investigations and enforcement.'' [88] The Exchange reiterates that principles-based prohibitions of layering and spoofing already exist and explains, however, that investigations of ''principles-based'' rules violations involving suspected layering and spoofing conduct are lengthy due to the fact that enforcement of those violations requires proof of subjective fraudulent intent of the actor, which the Exchange states is ''usually very difficult to prove and requires a thorough and lengthy investigation and enforcement process.'' [89] The Exchange asserts that, during the course of such an investigation, it does not currently have the ability to stop obvious and flagrant manipulative trading.[90] The Exchange states that if the current proposal is ultimately approved and implemented, the Exchange will continue conducting its current enforcement process, and represents that it would only seek an expedited suspension when—after multiple requests to a Member for an explanation of activity—it continues to see the same pattern of manipulation from the same Member and the source of the activity is the same or has been previously identified as a frequent source of disruptive quoting and trading activity.[91] Therefore, according to the Exchange, principles-based enforcement and the proposed rule change are complementary in practice, not mutually exclusive.[92]

In response to the Exchange's letter, the commenter submitted an additional comment, in which the commenter states that the Exchange misread certain its criticisms of the current proposal.[93] The commenter cites to the Exchange's statement in the Exchange's response letter that the commenter ''advocates that the Exchange *must* adopt 'principle-based' language *instead* of the Exchange's current proposal.'' [94] Rather, according to the commenter, its position is that the Commission should require the Exchange ''to *also* include in its rulebook a clearly articulated principle rather than *only* a prescriptive checklist, particularly when so far as [the commenter] can tell [the Exchange] hasn't yet independently detected the proscribed behavior on its markets and hasn't documented any current enforcement proceedings its proposal could expedite in the future.'' [95] In addition, this commenter asserts that the Exchange misinterpreted its point regarding past cases of improper quoting and trading activity that the Exchange cites as support for the proposal; the commenter asserts that its point is that those are not cases in which the Exchange independently discovered the violative layering or spoofing conduct at issue.[96]

Expedited Suspension Proceedings Under Proposed Rule 8.17

One commenter that was supportive of BATS–2015–57 believed that the Exchange's proposed investigation, notice, and hearing processes described in connection with proposed Rule 8.17 under BATS–2015–57 were reasonable.[97] This commenter also suggested that the Exchange could amend proposed Rule 8.17 to require a lower burden of proof in Expedited Client Suspension Proceedings, which the commenter asserted would still allow the Exchange to institute a process to quickly put a stop to the manipulative behavior targeted by the proposal ''without drastically expanding the Exchange's definition of prohibited layering and spoofing to include completely unintentional conduct.'' [98]

Another commenter criticized the procedural components of the proposed rules as set forth in BATS–2015–57.[99] The commenter argued that the Exchange has no jurisdiction to compel Members to deny access to clients that the Exchange judges to have been involved in layering or spoofing, and that such affected clients would be denied due process as they are not entitled to be heard as part of the Expedited Client Suspension Proceeding.[100] In response to this argument, in its first response letter, the Exchange stated that its rules ''unquestionably confer jurisdiction to the Exchange to discipline its Members for a Member's client's violations of the Act and the Exchange's Rules,'' [101] and the Exchange referenced Rule 8.1 in this regard.[102] The Exchange further stated that ''jurisdiction over a Member for a client's actions is not only permissible—it is essential for the effective regulation of the Exchange.'' [103] The Exchange also asserted that, because a Member has ultimate responsibility for its clients' actions and because proposed Rule 8.17 imposes discipline on a Member—not its client—for the client's violations, it is sufficient if due process is afforded to the Member.[104] The Exchange noted, however, that nothing in the proposal prevents a Member's client from participating in an expedited suspension hearing and, in fact, the Exchange stated that it would welcome such participation at the hearing.[105]

The same commenter also argued that the proposed expedited proceeding set forth in BATS–2015–57 was not a fair disciplinary process under the Act because it did not provide adequate time for discovery.[106] In response to this point, the Exchange contended that the proposed expedited client suspension hearing is governed by and consistent with Section 6(d)(2) of the Act and, therefore, provides the due process required by the Act.[107] In addition, the Exchange noted that it intends to initiate such a proceeding only after an initial investigation into the allegedly improper trading activity, including contacting the responsible member to request an explanation for the activity and any relevant additional information.[108] Further, the Exchange noted that discovery would continue after the entry of a suspension order, and that, under proposed Rule 8.17, a Member subject to a suspension order

[87] *See* BATS Response Letter II, *supra* note 8, at 9 n.9.

[88] *Id.*

[89] *Id.* at 8–9.

[90] *Id.* at 8.

[91] *Id.* at 6, 8–9. The Exchange explains that, currently, when Exchange surveillance staff identifies a pattern of potentially disruptive quoting and trading activity, the staff conducts an initial analysis and investigation of that activity. *Id.* After the initial investigation, the Exchange then contacts the Member responsible for the orders that caused the activity to request an explanation of the activity as well as any additional relevant information, including the source of the activity. *Id.* The Exchange represents that it will continue this practice if the Commission approves the proposal. *Id.*

[92] *Id.* at 9.

[93] *See* Leuchtkafer Letter III, *supra* note 8, at 2. *See also* Leuchtkafer Letter II, *supra* note 8.

[94] *See* Leuchtkafer Letter III, *supra* note 8, at 2 (emphasis in original).

[95] *Id.* (emphasis in original).

[96] *Id.* at 1.

[97] *See* FIA Letter, *supra* note 8, at 2.

[98] *Id.* at 4.

[99] *See* Lek Letter I, *supra* note 8, at 6–7. This commenter also submitted a comment letter on the current proposal that repeats these criticisms, to which the Exchange responded by incorporating by reference the statements in its comment response letter for BATS–2015–57. *See* Lek Letter III, *supra* note 8, at 7–8; BATS Response Letter II, *supra* note 8, at 10.

[100] *See* Lek Letter I, *supra* note 8, at 6.

[101] *See* BATS Response Letter I, *supra* note 8, at 8–9.

[102] *Id.* at 9. *See also* Rule 8.1 (setting forth the Exchange's disciplinary jurisdiction).

[103] *See* BATS Response Letter I, *supra* note 8, at 9.

[104] *Id.*

[105] *Id.*

[106] *See* Lek Letter I, *supra* note 8, at 6.

[107] *See* BATS Response Letter I, *supra* note 8, at 10.

[108] *Id. See also* BATS Response Letter II, *supra* note 8, at 6.

that discovers information that it believes to be exculpatory may apply at any time to the Hearing Panel to have the suspension order modified, set aside, limited, or revoked.[109] According to the Exchange, ''[p]roposed Rule 8.17 merely places the burden on the Subject Member to show that it has halted its harmful practice or its client's harmful practice before being permitted to resume activity on the Exchange rather than requiring the market to bear the harm of manipulative conduct during the time-consuming discovery process.'' [110]

Recommendation of the OIAD

As noted above, the OIAD submitted to the public comment file its recommendation to the Commission that the Commission approve this proposal.[111] In its recommendation, the OIAD states that it supports ''the Exchange's efforts to promptly initiate and quickly resolve obvious and uncomplicated matters the Exchange believes involve disruptive and manipulative trading activity.'' [112] The OIAD believes that ''[e]ven if limited to a small number of cases, such disruptive quoting and trading behavior can cause significant harm to investors and the markets'' and ''erode the public's confidence in fair and orderly markets.'' [113] The OIAD further believes that a disciplinary proceeding against a U.S.-based broker dealer that permits a significant volume of manipulative trading to pass through its systems on a regular basis without establishing a supervisory system reasonably designed to detect and prevent this activity ''must be timely.'' [114] The OIAD states that this proposal appears to be appropriately tailored to minimize the possibility that it would curtail legitimate trading activities by market makers and other liquidity providers, and that the proposed Expedited Client Suspension Proceeding appears to provide ''appropriate safeguards for innocent parties,'' such as adequate notice, an opportunity to be heard at a meaningful time prior to the decision, a right to appeal the determination, and a right to obtain Commission review.'' [115] Further, the OIAD believes that the proposed process should act as a deterrent to U.S. broker-dealers that would otherwise permit manipulators to continue to access U.S. markets during the course of an enforcement proceeding.[116] Accordingly, the OIAD submitted its recommendation to the Commission that the Commission approve the proposal.[117]

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[118] In particular, the Commission finds that the proposed rule change is consistent with the requirements of: (1) Section 6(b)(1) of the Act,[119] which requires, among other things, that the Exchange be so organized and have the capacity to enforce compliance by its members and persons associated with its members with the Act, the rules thereunder, and the Exchange's rules; (2) Section 6(b)(5) of the Act,[120] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; (3) Section 6(b)(6) of the Act,[121] which requires, among other things, that the Exchange's rules provide for appropriate discipline of members or persons associated with a member for violations of the Act, the rules thereunder, or the Exchange's rules; (4) Section 6(b)(7) of the Act,[122] which requires, among other things, that the rules of an exchange be in accordance with Section 6(d) of the Act,[123] and in general, provide a fair procedure for the disciplining of members and persons associated with members and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof; and (5) Sections 6(d)(1) and 6(d)(2) of the Act,[124] which require, among other things, that in any Exchange proceeding to determine whether a member or person associated with a member should be disciplined or whether a person should be prohibited or limited with respect to access to services offered by the exchange or a member thereof, the Exchange must provide notice of, and an opportunity to be heard upon, the specific grounds for the sanction under consideration, keep a record, and provide a statement setting forth the specific grounds upon which a determination to impose any such sanction is based.

The Commission notes that the Exchange believes that the proposal meets the requirements of Sections 6(b)(1), 6(b)(5), and 6(b)(6) of the Act because it will provide the Exchange with a mechanism to promptly initiate proceedings in the event that the Exchange believes it has sufficient proof that a violation of proposed Rule 12.15 is occurring, and also because it will help to strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where awaiting the conclusion of a full disciplinary hearing is unsuitable in view of the potential harm to other members, their customers, and/or the Exchange that may occur if the violative conduct is allowed to continue.[125] The Exchange notes that it has defined the prohibited disruptive quoting and trading activities by modifying the traditional definitions of layering and spoofing to eliminate an express intent element.[126] The Exchange states that it believes it is necessary for the protection of investors to make such modifications to those traditional definitions in order to adopt an expedited process rather than allowing disruptive quoting and trading activities to continue to occur for a potentially extended period of time.[127] The Exchange also states that it does not intend for this proposal to modify the definitions of layering and spoofing that have generally been used by the Exchange and other regulators in connection with prior disciplinary and enforcement cases.[128]

The Commission further notes that the Exchange already has the authority pursuant to its existing rules to prohibit and take action against manipulative trading activity, including the disruptive quoting and trading activities

[109] *See* BATS Response Letter I, *supra* note 8, at 10.

[110] *Id.*

[111] *See supra,* note 9.

[112] *See* OIAD Recommendation, *supra* note 9, at 3.

[113] *Id.* at 4.

[114] *Id.* at 5.

[115] *Id.* at 6.

[116] *Id.* at 5–6. In its letter addressing the current proposal, the Exchange explains that the OIAD ''correctly notes that the proposed expedited suspension process is intended to be used sparingly as a deterrent force—supplementing rather than replacing the current enforcement process.'' *See* BATS Response Letter II, *supra* note 8, at 7.

[117] *See* OIAD Recommendation, *supra* note 9, at 3.

[118] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[119] 15 U.S.C. 78f(b)(1).

[120] 15 U.S.C. 78f(b)(5).

[121] 15 U.S.C. 78f(b)(6).

[122] 15 U.S.C. 78f(b)(7).

[123] 15 U.S.C. 78f(d).

[124] 15 U.S.C. 78f(d)(1), (d)(2).

[125] *See* Notice, *supra* note 5, at 73251.

[126] *Id.*

[127] *Id.*

[128] *Id.*

enumerated under proposed Rule 12.15.[129] Violations of these rules, however, are pursued according to the Exchange's existing disciplinary and enforcement processes which, as the Exchange describes, can take several years to conclude, during which time the manipulative or disruptive quoting or trading activity may continue to the detriment of investors and other market participants.[130] The Commission acknowledges that good reason exists in many cases for these lengthy processes, not the least of which is ensuring that adequate due process is provided. However, if an offending Member refuses to cease disruptive quoting and trading activity that is enumerated in Rule 12.15 after the Exchange detects such activity and notifies the Member of the alleged misconduct, the Commission also believes that it would be consistent with the Act for the Exchange to have the authority to seek to stop that disruptive quoting and trading activity through the proposed expedited client suspension proceeding. The Commission believes that the disciplinary procedures proposed herein are reasonably designed to occur on an expedited basis in order stop two specific types of ongoing disruptive quoting and trading activities that the Exchange believes could result in significant harm to investors if allowed to continue. Accordingly, the Commission believes that the proposal is reasonably designed to further the purposes of Sections 6(b)(1), 6(b)(5), and 6(b)(6) of the Act by enhancing the Exchange's ability to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, protect investors and the public interest, enforce compliance by its members and persons associated with its members with the relevant rules and law, and appropriately discipline its members for violations of the rules of the Exchange.

In addition, the Commission notes that the Exchange represents that it ''will only seek an expedited suspension when—after multiple requests to a Member for an explanation of [a pattern of potentially disruptive quoting and trading] activity—it continues to see the same pattern of manipulation from the same Member and the source of the activity is the same or has been previously identified as a frequent source of disruptive quoting and trading activity.'' [131] As such, the Commission believes that the disciplinary measures available to the Exchange under the proposal to stop the offending trading behavior from continuing on the Exchange—*i.e.,* an order suspending the offending Member unless the applicable action is taken or refrained from—are consistent with Section 6(b)(6) of the Act.

The Commission recognizes one commenter's concern that the definitions of the prohibited quoting and trading activities set forth in proposed Rule 12.15 could be viewed by some to be too narrow, such that certain other disruptive or manipulative trading activities might not fall within those definitions.[132] The Commission notes that, in making revisions to its original proposal in BATS–2015–57, the Exchange has purposely chosen to prohibit, under proposed Rule 12.15, two types of trading activities that follow very specific fact patterns, which the Exchange believes constitute clear and egregious disruptive quoting and trading activity. The Commission also notes that, according the Exchange, this proposal is not meant to define all possible permutations of layering and spoofing.[133] Rather, the Exchange asserts that the proposal is meant to provide the Exchange with an expedited disciplinary proceeding, to be used under limited circumstances, as a complement to its current, lengthier disciplinary process.[134] Accordingly, the Exchange has purposely chosen not to subject other types of disruptive or manipulative quoting or trading activities to the prohibitions of proposed Rule 12.15 or, therefore, the expedited disciplinary procedure under proposed Rule 8.17. That the Exchange has purposely proposed to apply these rules to some, but not all, types of disruptive quoting and trading activities does not render the proposed rules inconsistent with the Act. The Exchange may exercise its judgment as to the proper scope of its rules, so long as the rules comply with the relevant statutory requirements under the Act and the rules thereunder. In this instance, the Commission believes that it is consistent with the Act for the Exchange to limit the application of the Expedited Client Suspension Proceeding to a specific set of disruptive quoting and trading activities rather than to have the proposal encompass all types of disruptive or manipulative activities, which are still subject to the Exchange's standard disciplinary process.

Furthermore, given the significant authority provided to the Exchange under proposed Rule 8.17 for pursuing alleged violations of proposed Rule 12.15, the Commission believes that it is appropriate and consistent with the Act for proposed Rule 12.15 to be narrowly tailored so as to only encompass certain specific types of disruptive quoting and trading activities. Moreover, as noted by the OIAD, ''[e]ven if limited to a small number of cases, such disruptive quoting and trading behavior can cause significant harm to investors and the markets.'' [135] The Commission believes that, by prohibiting specific types of disruptive quoting and trading activities and providing an expeditious process for ceasing such activities, proposed Rules 12.15 and 8.17, respectively, are reasonably designed to protect investors and the public interest from the potential harm associated with such activities. Therefore, the Commission believes that the proposed rules are consistent with the requirements under Section 6(b)(5) that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. In addition, the Commission again notes that any quoting or trading activity that does not fall within the express prohibitions of proposed Rule 12.15—but that is disruptive or manipulative—may be subject to existing disciplinary and enforcement measures if the activity constitutes a violation of one or more of the Exchange's current rules and/or the Act and the rules thereunder.

The Commission recognizes another concern of certain commenters that the proposed definitions of the prohibited disruptive quoting and trading activities may be too broad, such that they may encompass legitimate quoting or trading activity, such as market making. The Commission emphasizes the importance of the Exchange's acknowledgement that the authority conferred by proposed Rules 8.17 and 12.15 is a powerful measure that should be used very cautiously.[136] In addition, the Commission believes that the proposal incorporates procedural components that are reasonably designed to mitigate the potential for overreach of this authority into legitimate quoting or trading activity. For example, proposed Rule 8.17 would require the CRO or another senior officer of the Exchange to

[129] *See, e.g.,* Rules 3.1, 3.2, and 3.3. *See also* Notice, *supra* note 5, at 73250–51.

[130] *See* Notice, *supra* note 5, at 73248.

[131] *See* BATS Response Letter II, *supra* note 8, at 6.

[132] *See* Leuchtkafer Letters I, II, and III, *supra* note 8.

[133] *See* BATS Response Letter II, *supra* note 8, at 9 n.9.

[134] *See supra,* notes 87–92 and accompanying text.

[135] *See* OIAD Recommendation, *supra* note 9, at 4.

[136] *See* Notice, *supra* note 5, at 73251.

issue written authorization before the Exchange can institute an Expedited Client Suspension Proceeding. Additionally, the Commission believes that the opportunity to respond before a hearing panel, and the associated due process elements for initiating and conducting the expedited proceeding under proposed Rule 8.17, provide additional safeguards. Moreover, the Commission notes that a determination of the Hearing Panel constituting final disciplinary sanction may be appealed to the Commission pursuant to Section 19 of the Act.[137] The Commission also notes that the OIAD believes that the proposal ''appears to be appropriately tailored to minimize the possibility that it would curtail legitimate trading activities by market makers and other liquidity providers'' and ''appears to provide appropriate safeguards for innocent parties.'' [138]

Lastly, the Commission notes that the Exchange believes that the requirements of Sections 6(b)(7), 6(d)(1), and 6(d)(2) of the Act are addressed by the notice and due process provisions included within proposed Rule 8.17.[139] Proposed Rule 8.17 would require the Exchange to serve notice on the subject Respondent, which notice would include the suspension order the Exchange seeks to impose on the Respondent. The notice would also be accompanied by a declaration of facts that specifies the acts that constitute the alleged violation. Proposed Rule 8.17 also would provide an opportunity for the Respondent to defend against the charges in the notice in a hearing before a three-person Hearing Panel,[140] with the opportunity for witnesses and with a transcribed record, and would detail the applicable timelines for the proceeding. Further, proposed Rule 8.17 would require the Hearing Panel to issue a written decision stating whether a suspension order shall be imposed; if imposed, proposed Rule 8.17 would require the suspension order to set forth the alleged violation and market disruption or significant harm to investors that is likely to result without the order, and to describe in reasonable detail what action the Respondent is required to take or refrain from taking. In addition, proposed Rule 8.17 would allow the Respondent to appeal to the Hearing Panel to have a suspension order modified, set aside, limited, or revoked. Accordingly, the Commission believes that proposed Rule 8.17 is consistent with Sections 6(b)(7), 6(d)(1), and 6(d)(2) of the Act.[141]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[142] that the proposed rule change (SR–BATS–2015–101), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[143]

Robert W. Errett,

Deputy Secretary.

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[137] 15 U.S.C. 78s. *See also* proposed Rule 8.17(f).

[138] *See* OIAD Recommendation, *supra* note 9, at 6.

[139] *See* Notice, *supra* note 5, at 73251.

[140] The Commission notes that the Hearing Panel would be assigned according to current Rule 8.6(a), which requires that one member of the panel be a professional hearing officer, another be an industry representative, and the third be a Member representative.

[141] 15 U.S.C. 78f(b)(7), (d)(1), and (d)(2).

[142] 15 U.S.C. 78s(b)(2).

[143] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77169; File No. SR–NYSEARCA–2016–26]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Schedule of Options Fees and Charges

February 18, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 4, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca schedule of Options Fees and Charges (''Fee Schedule'') to exclude from its average daily volume calculations any trading day on which the Exchange is not open for the entire trading day and/or a disruption affects an Exchange system that lasts for more than 60 minutes during regular trading hours. The Exchange proposes to implement the fee change effective February 4, 2016. The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to exclude from its average daily volume (''ADV'') calculations any trading day on which (1) the Exchange is not open for the entire trading day and/or (2) a disruption affects an Exchange system that lasts for more than 60 minutes during regular trading hours. The Exchange proposes to implement the fee change effective February 4, 2016.

As provided in the Exchange's Fee Schedule, several of the Exchange's transaction fees and credits are based on trading, quoting and liquidity thresholds that involve an ADV calculation. The Exchange proposes to add a clause permitting the Exchange to exclude from its ADV calculation, when determining the qualification threshold for electronic customer executions that take liquidity in a non-Penny Pilot class from the trading interest of an Lead Market Maker (''LMM'') (including orders and quotes) and for applicable rebate tiers generally, contracts traded on any day on which the Exchange is not is not [sic] open for the entire trading day. This would allow the Exchange to exclude days where the Exchange declares a trading halt in all securities or honors a market-wide trading halt declared by another market as well as days on which the market closes early for holiday observances. The Exchange's proposal is consistent

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

with the rules of other self-regulatory organizations.[4]

The artificially low volumes of trading on days when the Exchange is not open for the entire trading day reduces the average daily activity of OTP Holders both daily and monthly. Given the decreased trading volumes, the numerator for the ADV calculation (*e.g.*, trading volume) would be correspondingly lower, but the denominator for the threshold calculations (*e.g.*, the number of trading days) would not be decreased, and could result in an unintended increase in the cost of trading on the Exchange, a result that is unintended and undesirable to the Exchange and its OTP Holders. The Exchange believes that the authority to exclude days when the Exchange is not open for the entire trading day would provide OTP Holders with greater certainty as to their monthly costs and diminish the likelihood of an effective increase in the cost of trading.[5]

Similarly, the Exchange proposes to modify its Fee Schedule to permit the Exchange to exclude from its ADV calculation, contracts traded on a trading day where a disruption affects an Exchange system that lasts for more than 60 minutes during regular trading hours even if such disruption would not be categorized as a complete outage of the Exchange's system. Such a disruption may occur where a certain options series traded on the Exchange is unavailable for trading due to an Exchange system issue or where, while the Exchange may be able to perform certain functions with respect to accepting and processing orders, the Exchange may be experiencing a failure to another significant process, such as routing to other market centers, that would lead permit holders that rely on such process to avoid utilizing the Exchange until the Exchange's entire system was operational. Once again, the Exchange's proposal is consistent with the rules of other self-regulatory organizations.[6]

The Exchange is not proposing any changes to the level of rebates currently being provided on the Exchange, or to the ADV thresholds required to achieve each rebate tier.

The proposed change is also not otherwise intended to address any other issues, and the Exchange is not aware of any problems that permit holders would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that it is reasonable to permit the Exchange to eliminate from the calculation days on which the market is not open the entire trading day because it preserves the Exchange's intent behind adopting volume-based pricing. Similarly, the Exchange believes that its proposal is reasonable because it will help provide permit holders with a greater level of certainty as to their level of rebates and costs for trading in any month where the Exchange experiences such a system disruption on one or more trading days. The Exchange is not proposing to amend the thresholds permit holders must achieve to become eligible for, or the dollar value associated with, the tiered rebates or fees. By eliminating the inclusion of a trading day on which a system disruption occurs, the Exchange would almost certainly be excluding a day that would otherwise lower members' and member organizations' ADV, thereby making it more likely for permit holders to meet the minimum or higher tier thresholds and thus incentivizing permit holders to increase their participation on the Exchange in order to meet the next highest tier.

The Exchange further believes that the proposal is reasonable because the proposed exclusion seeks to avoid penalizing permit holders that might otherwise qualify for certain tiered pricing but that, because of a significant Exchange system problem, would not participate to the extent that they might have otherwise participated. The Exchange believes that certain systems disruptions could preclude some permit holders from submitting orders to the Exchange even if such issue is not actually a complete systems outage.

Finally, the Exchange believes that the proposal is equitable and not unfairly discriminatory because the methodology for calculating ADV would apply equally to all permit holders and to all volume tiers. The Exchange notes that, although unlikely, there is some possibility that a certain small proportion of permit holders may have a higher ADV as a percentage of average daily volume [sic] with their activity included from days where the Exchange experiences a system disruption. The Exchange believes that the proposal would still be equitable and not unfairly discriminatory given that the impacted universe is potentially quite small and that the proposal would benefit the overwhelming majority of market participants and would make the overall cost of trading on the Exchange more predictable for the membership as a whole.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[9] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that, with respect to ADV calculations for rebates, there are very few instances where the exclusion would be invoked, and if invoked, would have little or no impact on trading decisions or execution quality. On the contrary, the Exchange believes that the proposal fosters competition by avoiding a penalty to Members for days when trading on the Exchange is disrupted for a significant portion of the day and would result in lower total costs to end users, a positive outcome of competitive markets. Further, other options exchanges have adopted rules that are substantially similar to the change in ADV calculation being proposed by the Exchange.[10]

[4] *See, e.g.*, NASDAQ Stock Market LLC Rule 7018(j) (''For purposes of determining average daily volume and total consolidated volume under this rule, any day that the market is not open for the entire trading day will be excluded from such calculation.''); International Securities Exchange, LLC Fee Schedule (''For purposes of determining Priority Customer ADV, any day that the regular order book is not open for the entire trading day or the Exchange instructs members in writing to route their orders to other markets may be excluded from such calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included.'').

[5] *See, e.g.*, Securities Exchange Act Release No. 70657 (October 10, 2013), 78 FR 62899 (October 22, 2103) (SR–ISE–2013–51).

[6] *See, e.g.*, BATS BZX Exchange Fee Schedule (''The Exchange excludes from its calculation of ADAV and ADV shares added or removed on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours (''Exchange System Disruption''), on any day with a scheduled early market close and on the last Friday in June (the ''Russell Reconstitution Day'').

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] 15 U.S.C. 78f(b)(8).

[10] *See* note 5 [sic], *supra.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [11] of the Act and subparagraph (f)(2) of Rule 19b–4 [12] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2016–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2016–26. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2016–26 and should be submitted on or before March 15, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03738 Filed 2–22–16; 8:45 am]

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[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77168; File No. SR–NYSEMKT–2016–21]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Change Amending the NYSE Amex Options Fee Schedule

February 18, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 4, 2016, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Amex Options Fee Schedule (''Fee Schedule'') to exclude from its monthly calculations of contract volume any trading day on which the Exchange is not open for the entire trading day and/or a disruption affects an Exchange system that lasts for more than 60 minutes during regular trading hours. The Exchange proposes to implement the fee change effective February 4, 2016. The proposed change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to exclude from its monthly calculations of contract volume any trading day on which (1) the Exchange is not open for the entire trading day and/or (2) a disruption affects an Exchange system that lasts for more than 60 minutes during regular trading hours. The Exchange proposes to implement the fee change effective February 4, 2016.

As provided in the Exchange's Fee Schedule, several of the Exchange's transaction fees and credits are based on trading, quoting and liquidity thresholds that involve a monthly calculation of contract volume, including calculations of average daily volume (''ADV'').[4] The Exchange

[4] For example, the NYSE Amex Options Market Makers are eligible for reduced per contract rates for

Continued

proposes to add a definition of Systems Disruptions to the Fee Schedule Preface that would permit the Exchange to exclude from its monthly contract volume calculations contracts traded on any day on which the Exchange is not is not [sic] open for the entire trading day. This would allow the Exchange to exclude days where the Exchange declares a trading halt in all securities or honors a market-wide trading halt declared by another market as well as days on which the market closes early for holiday observances. The Exchange's proposal is consistent with the rules of other self-regulatory organizations.[5]

The artificially low volumes of trading on days when the Exchange is not open for the entire trading day reduces the average daily activity of ATP Holders both daily and monthly. Given the decreased trading volumes, the numerator for the monthly calculation (*e.g.,* trading volume) would be correspondingly lower, but the denominator for the threshold calculations (*e.g.,* the number of trading days) would not be decreased, and could result in an unintended increase in the cost of trading on the Exchange, a result that is unintended and undesirable to the Exchange and its ATP Holders. The Exchange believes that the authority to exclude days when the Exchange is not open for the entire trading day would provide ATP Holders with greater certainty as to their monthly costs and diminish the likelihood of an effective increase in the cost of trading.[6]

Similarly, the Exchange proposes to modify its Fee Schedule to permit the Exchange to exclude from its monthly contract calculations, contracts traded on a trading day where a disruption affects an Exchange system that lasts for more than 60 minutes during regular trading hours even if such disruption would not be categorized as a complete outage of the Exchange's system. Such a disruption may occur where a certain options series traded on the Exchange is unavailable for trading due to an Exchange system issue or where, while the Exchange may be able to perform certain functions with respect to accepting and processing orders, the Exchange may be experiencing a failure to another significant process, such as routing to other market centers, that would lead permit holders that rely on such process to avoid utilizing the Exchange until the Exchange's entire system was operational. Once again, the Exchange's proposal is consistent with the rules of other self-regulatory organizations.[7]

The Exchange is not proposing any changes to the level of rebates currently being provided on the Exchange, or to the thresholds required to achieve each rebate tier.

The proposed change is also not otherwise intended to address any other issues, and the Exchange is not aware of any problems that permit holders would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[9] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that it is reasonable to permit the Exchange to eliminate from the calculation days on which the market is not open the entire trading day because it preserves the Exchange's intent behind adopting volume-based pricing. Similarly, the Exchange believes that its proposal is reasonable because it will help provide permit holders with a greater level of certainty as to their level of rebates and costs for trading in any month where the Exchange experiences such a system disruption on one or more trading days. The Exchange is not proposing to amend the thresholds permit holders must achieve to become eligible for, or the dollar value associated with, the tiered rebates or fees. By eliminating the inclusion of a trading day on which a system disruption occurs, the Exchange would almost certainly be excluding a day that would otherwise lower members' and member organizations' contract volume, thereby making it more likely for permit holders to meet the minimum or higher tier thresholds and thus incentivizing permit holders to increase their participation on the Exchange in order to meet the next highest tier.

The Exchange further believes that the proposal is reasonable because the proposed exclusion seeks to avoid penalizing permit holders that might otherwise qualify for certain tiered pricing but that, because of a significant Exchange system problem, would not participate to the extent that they might have otherwise participated. The Exchange believes that certain systems disruptions could preclude some permit holders from submitting orders to the Exchange even if such issue is not actually a complete systems outage.

Finally, the Exchange believes that the proposal is equitable and not unfairly discriminatory because the methodology for the monthly calculations would apply equally to all permit holders and to all volume tiers.

The Exchange notes that, although unlikely, there is some possibility that a certain small proportion of permit holders may have a higher ADV as a percentage of average daily volume [sic] with their activity included from days where the Exchange experiences a system disruption. The Exchange believes that the proposal would still be equitable and not unfairly discriminatory given that the impacted universe is potentially quite small and that the proposal would benefit the overwhelming majority of market participants and would make the overall cost of trading on the Exchange more

electronic transactions in Standard Options based on rates applicable to monthly contract volume in a given tier. *See* Fee Schedule, Section I. C (NYSE Amex Options Market Maker Sliding Scale—Electronic). Similarly, Order Flow Providers (''OFP'') are eligible for certain credits for orders submitted to the Exchange as agent payable only on customer volume based on (1) calculating, on a monthly basis, the average daily Customer contract volume an OFP executes Electronically on the Exchange as a percentage of total average daily industry Customer equity and ETF options volume, or (2) calculating, on a monthly basis, the average daily contract volume an OFP executes Electronically in all participant types (*i.e.,* Customer, Firm, Broker-Dealer, NYSE Amex Options Market Maker, Non-NYSE Amex Options Market Maker, and Professional Customer) on the Exchange, as a percentage of total average daily industry Customer equity and ETF option volume, with the further requirement that a specified percentage of the minimum volume required to qualify for the Tier must be Customer volume. *See* Fee Schedule, Section I. E (Amex Customer Engagement (''ACE'') Program—Standard Options).

[5] *See, e.g.,* NASDAQ Stock Market LLC Rule 7018(j) (" For purposes of determining average daily volume and total consolidated volume under this rule, any day that the market is not open for the entire trading day will be excluded from such calculation.''); International Securities Exchange, LLC Fee Schedule (''For purposes of determining Priority Customer ADV, any day that the regular order book is not open for the entire trading day or the Exchange instructs members in writing to route their orders to other markets may be excluded from such calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included.'').

[6] *See, e.g.,* Securities Exchange Act Release No. 70657 (October 10, 2013), 78 FR 62899 (October 22, 2103) (SR–ISE–2013–51).

[7] *See, e.g.,* BATS BZX Exchange Fee Schedule (''The Exchange excludes from its calculation of ADAV and ADV shares added or removed on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours (''Exchange System Disruption''), on any day with a scheduled early market close and on the last Friday in June (the ''Russell Reconstitution Day'').

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

predictable for the membership as a whole.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[10] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that, with respect to monthly contract calculations for rebates, there are very few instances where the exclusion would be invoked, and if invoked, would have little or no impact on trading decisions or execution quality. On the contrary, the Exchange believes that the proposal fosters competition by avoiding a penalty to permit holders for days when trading on the Exchange is disrupted for a significant portion of the day and would result in lower total costs to end users, a positive outcome of competitive markets. Further, other options exchanges have adopted rules that are substantially similar to the change in ADV calculation being proposed by the Exchange.[11]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[12] of the Act and subparagraph (f)(2) of Rule 19b–4[13] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[14] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2016–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2016–21 and should be submitted on or before March 15, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03737 Filed 2–22–16; 8:45 am]

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[10] 15 U.S.C. 78f(b)(8).

[11] *See* note 5, *supra.*

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] 15 U.S.C. 78s(b)(2)(B).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77160; File No. SR–NYSEArca–2016–14]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating To Listing and Trading of Shares of WBI Tactical Rotation Shares Under NYSE Arca Equities Rule 8.600

February 17, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 3, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): WBI Tactical Rotation Shares. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the WBI Tactical Rotation Shares (the ''Fund'') under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares.[4] The Shares will be offered by the Absolute Shares Trust (the ''Trust''),[5] a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[6]

Millington Securities, Inc. (''Adviser''), a wholly-owned subsidiary of WBI Trading Company, Inc., will be the investment advisor to the Fund. WBI Investments, Inc. (''WBI'' or the ''Sub-Adviser''), an affiliate of WBI Trading Company, Inc., will act as Sub-Adviser to the Fund. U.S. Bancorp Fund Services, LLC will serve as ''Administrator'', ''Transfer Agent'' and ''Index Receipt Agent''. U.S. Bank, National Association will serve as the Fund's ''Custodian'' and ''Securities Lending Agent''. Foreside Fund Services, LLC will serve as the ''Distributor'' for the Fund on an agency basis.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[7] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Adviser is a registered broker-dealer and is affiliated with a broker-dealer. The Sub-Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer. In such capacity, the Adviser and Sub-Adviser have implemented a firewall with respect to their relevant personnel and their respective broker-dealer affiliates regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. In the event (a) the Adviser becomes newly affiliated with a broker-dealer or Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, as applicable, or (b) any new adviser or sub-adviser is a broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its personnel or such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Principal Investments

According to the Registration Statement, the Fund's investment objective is to seek long term capital appreciation while also seeking to protect principal during unfavorable market conditions.[8]

The Fund, under normal market conditions,[9] will seek to invest primarily (more than 50% of its total assets) in the securities included in its principal investment strategy as indicated in the following discussion. The Fund will invest directly in equity securities, debt instruments and ''Financial Instruments'' (as described below) or will invest in them indirectly by investing in the equity securities of other registered investment companies (including exchange traded funds (''ETFs''),[10] mutual funds, unit investment trusts, exchange-traded and over-the counter (''OTC'') closed-end funds (''CEFs'') and exchange-traded and OTC business development companies), equity securities of exchange-traded pooled vehicles not required to be registered under the 1940 Act and issuing equity securities

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Trust is registered under the 1940 Act. On August 24, 2015, the Trust filed with the Commission a registration statement on Form N–1A, and on November 6, 2015 filed an amendment thereto, under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act'') and the 1940 Act relating to the Fund (File Nos. 333–192733 and 811–22917) (as amended, the ''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30543 (May 29, 2013) (File No. 812–13886) (''Exemptive Order'').

[6] The Commission previously approved listing and trading on the Exchange of the following actively managed funds under Rule 8.600. *See* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving listing of five fixed income funds of the PIMCO ETF Trust); 63329 (November 17, 2010), 75 FR 71760 (November 24, 2010) (SR–NYSEArca–2010–86) (order approving listing of Peritus High Yield ETF); 64550 (May 26, 2011), 76 FR 32005 (June 2, 2011) (SR–NYSEArca–2011–11) (order approving listing of Guggenheim Enhanced Core Bond ETF and Guggenheim Enhanced Ultra-Short Bond ETF).

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser, Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] The Sub-Adviser's proprietary portfolio selection process used for the Fund attempts to identify investments that can provide consistent, attractive returns net of expenses with potentially less volatility and risk to capital than traditional approaches, whatever market conditions may be.

[9] The term ''under normal market conditions'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[10] For purposes of this filing, ETFs consist of Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100; and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). All ETFs will be listed and traded in the U.S. on a national securities exchange. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (*e.g.,* 2X, –2X, 3X or –3X) ETFs.

(''ETPVs''),[11] exchange-traded notes (''ETNs''),[12] equity-linked notes (''ELNs'') [13] and index-linked exchangeable notes (''ILENs'').[14] (Collectively, ETFs, ETPVs, ETNs, ELNs and ILENs are referred to as ''exchange traded products'' or ''ETPs''. Collectively, ETFs, mutual funds, unit investment trusts, CEFs and business development companies are referred to as ''Registered Funds''.) The foregoing investments, which are further detailed below, will be selected on the basis of the Sub-Adviser's proprietary global asset rotation investment model and selection process as described herein and in the Fund's Registration Statement.

The Fund may invest in exchange-traded and OTC U.S. and foreign equity securities (other than non-exchange-traded investment company securities), which are the following: Common stocks, preferred stocks, rights, warrants, convertibles, master limited partnerships (exchange-traded businesses organized as partnerships (''MLPs'')), Depositary Receipts (''DRs'', as described below),[15] and exchange-traded real estate investment trusts (''REITs'').

As part of the Fund's principal investment strategy, up to 20% of the Fund's net assets may be invested in exchange-traded or OTC ''Financial Instruments''. For purposes of this filing, ''Financial Instruments'' are the following: Foreign exchange forward contracts; futures on equity securities, debt securities, equity indices, fixed income indices, commodity indices, currencies, commodities, and interest rates; exchange-traded and OTC options on equity indices, currencies, and equity and debt securities; exchange-traded and OTC options on futures contracts; exchange-traded and OTC interest rate swaps, cross-currency swaps, total return swaps on fixed income and equity securities, inflation swaps and credit default swaps; and options on such swaps (''swaptions'').[16] Financial Instruments will be utilized in connection with option strategies used by the Fund, including writing (selling) covered calls, buying puts, using combinations of calls and puts, and using combinations of calls and combinations of puts. The Fund may also use options on indices and on futures, such as by writing a call on a futures contract.[17] The Fund may enter cap, floor and collar agreements as a part of its option strategies.[18]

As part of its principal investment strategy, the Fund may invest in the following types of debt securities (''Debt Instruments''): Corporate debt securities; [19] corporate debt securities that are convertible into common stock or interests; U.S. Government securities; [20] debt securities of foreign issuers; sovereign debt securities; repurchase agreements; municipal securities; sovereign debt obligations; obligations of international agencies or supranational agencies; sovereign, quasi-sovereign, supranational or local authority debt obligations issued by non-U.S. governments; Treasury Inflation-Protected Securities (''TIPs''); and zero coupon bonds. Debt Instruments may be of all maturities, from less than one year to more than thirty years (if available). Debt Instruments may be fixed, variable or floating rate securities.

The Fund may invest in and hold cash or ''Cash Equivalents'' [21] as part of the normal operation of its principal investment strategy. As a result, an investment in cash or Cash Equivalents may periodically represent a material percentage of the Fund's assets.

For investments in Registered Funds, the Fund may invest in excess of the limits contained in the 1940 Act.[22]

Non-Principal Investment Strategies

While the Fund, under normal market conditions, will seek to invest primarily (at least 50% of its total assets) in the securities described above, the Fund may invest as part of its non-principal investment strategy (less than 50% of

[11] For purposes of this filing, the ''exchange-traded pooled vehicles'' or ''ETPVs'' consist of Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); and Commodity Futures Trust Shares (as described in NYSE Arca Equities Rule 8.204).

[12] ETNs include Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)).

[13] Equity Linked Notes are described in NYSE Arca Equities Rule 5.2(j)(2).

[14] Index-Linked Exchangeable Notes are described in NYSE Arca Equities Rule 5.2(j)(4).

[15] For purposes of this filing, DRs means the following: American Depositary Receipts (''ADRs''), American Depositary Shares (''ADSs''), European Depositary Receipts (''EDRs''), Global Depositary Receipts (''GDRs'') and International Depositary Receipts (''IDRs''). DRs are receipts typically issued in connection with a U.S. or foreign bank or trust company which evidence ownership of underlying securities issued by a non-U.S. company. ADRs are depositary receipts for foreign securities denominated in U.S. dollars and traded on U.S. securities markets. These securities may not necessarily be denominated in the same currency as the securities for which they may be exchanged. These are certificates evidencing ownership of shares of a foreign-based issuer held in trust by a bank or similar financial institutions. Designed for use in U.S. securities markets, ADRs are alternatives to the purchase of the underlying securities in their national market and currencies. ADRs may be purchased through ''sponsored'' or ''unsponsored'' facilities. ADSs are U.S. dollar-denominated equity shares of a foreign-based company available for purchase on an American stock exchange. ADSs are issued by depository banks in the United States under an agreement with the foreign issuer, and the entire issuance is called an ADR and the individual shares are referred to as ADSs. EDRs, GDRs, and IDRs are similar to ADRs in that they are certificates evidencing ownership of shares of a foreign issuer, however, GDRs, EDRs, and IDRs may be issued in bearer form and denominated in other currencies, and are generally designed for use in specific or multiple securities markets outside the U.S. EDRs, for example, are designed for use in European securities markets while GDRs are designed for use throughout the world. ADRs, GDRs, EDRs, and IDRs will not necessarily be denominated in the same currency as their underlying securities. Not more than 10% of the Fund's assets will be invested in non-exchange-listed ADRs.

[16] Options on swaps are traded OTC. In the future, in the event that there are exchange-traded options on swaps, the Fund may invest in these instruments.

[17] The Fund may directly write call options on stocks and stock indices if the calls are ''covered'' throughout the life of the option. The Fund may also write and purchase put options (''puts'').

[18] In a typical cap or floor agreement, one party agrees to make payments only under specified circumstances, usually in return for payment of a fee by the other party. For example, the buyer of an interest rate cap obtains the right to receive payments to the extent that a specified interest rate exceeds an agreed-upon level. The seller of an interest rate floor is obligated to make payments to the extent that a specified interest rate falls below an agreed-upon level. An interest rate collar combines elements of buying a cap and selling a floor.

[19] Such corporate debt securities also includes debt securities sold pursuant to Rule 144A under the Securities Act.

The Adviser expects that, under normal market conditions, the Fund generally will seek to invest at least 75% of its corporate debt securities in issuances that have at least $100,000,000 par amount outstanding in developed countries or at least $200,000,000 par amount outstanding in emerging market countries.

[20] The Fund may invest in U.S. Government obligations and other quasi government related obligations. Such obligations include Treasury bills, certificates of indebtedness, notes and bonds, and issues of such entities as the Government National Mortgage Association (''GNMA''), Federal Home Loan Banks, Federal Intermediate Credit Banks, Federal Farm Credit Banks, Federal Housing Administration, Federal National Mortgage Association (''FNMA''), Federal Home Loan Mortgage Corporation (''FHLMC''), and the Student Loan Marketing Association.

[21] ''Cash Equivalents'' means: High-quality short-term debt securities; money market instruments, certificates of deposit issued by commercial banks as well as savings banks or savings and loan associations; bankers' acceptances; time deposits; and commercial paper and short-term notes rated at the time of purchase ''A–2'' or higher by Standard & Poor's, ''Prime-1'' by Moody's Investors Services Inc., or similarly rated by another nationally recognized statistical rating organization, or, if unrated, will be determined by the Sub-Adviser to be of comparable quality, as well as U.S. Government obligations.

[22] The Commission has granted exemptive relief to the Trust under Section 12(d)(1)(J) of the 1940 Act permitting the Fund to operate as a ''fund of funds'' and invest in other investment companies without complying with the limitations set forth in Section 12(d)(1) of the 1940 Act, subject to certain terms and limitations that are contained in the Exemptive Order.

the Fund's assets) in the types of investments discussed below.

The Fund may invest in short positions in equity securities.

The Fund may invest in agency and non-agency residential mortgage-backed securities (''RMBS''); agency and non-agency commercial mortgage-backed securities (''CMBS''); and agency and non-agency asset-backed securities (''ABS'').

Investment Restrictions

The Fund may invest up to 40% of its net assets in Debt Instruments rated below investment grade (also known as ''junk bonds'').

The Fund will not invest more than 50% of its net assets in securities of issuers in emerging markets, which could consist of DRs, dollar-denominated foreign securities or non-U.S. dollar denominated foreign securities.

Investments in non-agency mortgage and asset backed securities will be limited to 20% of the Fund's total assets in the aggregate.

The Fund may invest up to 30% of its total assets in securities denominated in non-U.S. Dollars, but this limitation will not apply to securities of non-U.S. issuers that are denominated in U.S. Dollars. The Fund may invest up to 50% of the Fund's principal investments in the securities of issuers in emerging markets.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[23]

The Fund will be non-diversified under the 1940 Act.[24]

The Fund intends to qualify for and to elect to be treated as a separate regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code.[25]

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).[26]

Net Asset Value (''NAV'')

The NAV per Share of the Fund will be computed by dividing the value of the net assets of the Fund (*i.e.,* the Fund's total assets less total liabilities) by the total number of outstanding Shares of the Fund, rounded to the nearest cent.

For purposes of calculating NAV, portfolio securities and other assets for which market quotes are readily available will be valued at market value. Market value will generally be determined on the basis of last reported sales prices, or if no sales are reported, based on quotes obtained from a quotation reporting system, established market makers, or pricing services.

Exchange-traded equity securities (including common stocks, ETPs, CEFs, convertibles, REITs, warrants, MLPs, DRs and preferred securities) will be valued at the official closing price or the last trading price on the exchange or market on which the security is primarily traded at the time of valuation. If no sales or closing prices are reported during the day, exchange-traded equity securities will generally be valued at the mean of the last available bid and ask quotation on the exchange or market on which the security is primarily traded, or using other market information obtained from quotation reporting systems, established market makers, or pricing services. Investment company securities that are not exchange-traded will be valued at NAV. Equity securities traded OTC will be valued at the last sale price in the OTC market. If a non-exchange traded security does not trade on a particular day, then the mean between the last quoted closing bid and asked price will be used. In the event that such market quotations are not readily available, then the security will be fair valued in accordance with the Trust's procedures.

U.S. and non-U.S. debt securities with a maturity of greater than 60 days at the time of acquisition, as well as non-exchange traded Financial Instruments, will be valued at prices that reflect broker/dealer supplied valuations or are obtained from independent pricing services. Short-term securities with remaining maturities of 60 days or less will be valued at amortized cost, provided such amount approximates market value. Cash Equivalents will be valued based on information provided by third party pricing services.

Financial Instruments for which market quotes are readily available will be valued at market value or on the basis of quotes obtained from a quotation reporting system, established market makers and pricing services. Local closing prices will be used for all instrument valuation purposes. Futures and options on futures will be valued at the closing price on the day of valuation. Non-exchange traded Financial Instruments, including forwards, swaps, and certain options, will normally be valued on the basis of quotes obtained from brokers and dealers or pricing services using data reflecting the closing of the principal market for those assets. Caps and floors will be valued using the exchange closing prices on the applicable options.

Generally, trading in foreign securities markets is substantially completed each day at various times prior to the close of the New York Stock Exchange (''NYSE'') (generally 4:00 p.m. Eastern time (''E.T.'') (the ''NYSE Close'')). The values of foreign securities are determined as of the close of such foreign markets or the close of the NYSE, if earlier. If a foreign security's value has materially changed after the close of the security's primary exchange or principal market but before the NYSE Close, the security will be valued at fair value based on procedures established and approved by the Trust's Board of Trustees (the ''Board''). Foreign securities that do not trade when the

[23] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 31835 (September 22, 2015), discussions at footnotes 92 & 93; Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

[24] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80e).

[25] 26 U.S.C. 851.

[26] The Fund's broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

NYSE is open will also be valued at fair value.

All investments quoted in foreign currency will be valued in U.S. dollars on the basis of the foreign currency exchange rates prevailing at the close of U.S. business at 4:00 p.m. E.T. As a result, the NAV of the Fund's Shares may be affected by changes in the value of currencies in relation to the U.S. dollar.

When market quotations are not readily available, are deemed unreliable or do not reflect material events occurring between the close of local markets and the time of valuation, investments will be valued using fair value pricing as determined in good faith by the Sub-Adviser under procedures established by and under the general supervision and responsibility of the Board. Investments that may be valued using fair value pricing include, but are not limited to: (1) Illiquid assets; (2) securities of an issuer that becomes bankrupt or enters into a restructuring; (3) securities whose trading has been halted or suspended; and (4) foreign securities traded on exchanges that close before the Fund's NAV is calculated.

Indicative Intra-Day Value

An independent third party calculator, initially the Exchange, will calculate the Indicative Intra-Day Value (''IIV'') (which is the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3)) for the Fund during the Exchange's Core Trading Session (as defined in NYSE Arca Equities Rule 7.34) by dividing the ''Estimated Fund Value'' as of the time of the calculation by the total number of outstanding Shares of the Fund. ''Estimated Fund Value'' is the sum of the estimated amount of cash held in the Fund's portfolio, the estimated amount of accrued interest owed to the Fund and the estimated value of assets held in the Fund's portfolio minus the estimated amount of the Fund's liabilities. The IIV will be calculated based on the same portfolio holdings disclosed on the Trust's Web site. The IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.

The Fund will provide the independent third party calculator with information to calculate the IIV, but the Fund will not be involved in the actual calculation of the IIV and is not responsible for the calculation or dissemination of the IIV. The IIV should not be viewed as a ''real-time'' update of NAV because the IIV may not be calculated in the same manner as the NAV, which will be computed once per day.

In addition, the IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. The IIV dissemination together with the Disclosed Portfolio will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

For the purposes of determining the IIV, the third party market data provider's valuation of Financial Instruments is expected to be similar to their valuation of all securities. The third party market data provider may use market quotes if available or may fair value securities against proxies (such as swap or yield curves).

With respect to specific Financial Instruments:

- Foreign exchange forward contracts may be valued intraday using market quotes, or another proxy as determined to be appropriate by the third party market data provider.
- Futures may be valued intraday using the relevant futures exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- Interest rate swaps and cross-currency swaps may be mapped to a swap curve and valued intraday based on changes of the swap curve, or another proxy as determined to be appropriate by the third party market data provider.
- Credit default swaps (such as, CDX/CDS) may be valued using intraday data from market vendors, or based on underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.
- Total return swaps may be valued intraday using the underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.
- Exchange listed options may be valued intraday using the relevant exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- OTC options and swaptions may be valued intraday through option valuation models (*e.g.,* Black-Scholes) or using exchange-traded options as a proxy, or another proxy as determined to be appropriate by the third party market data provider.
- Currency spot and forward rates from major market data vendors will generally be determined as of the NYSE Close.

Disclosures About Financial Instruments in the Disclosed Portfolio

The Fund's disclosure of Financial Instrument positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Adviser will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

Impact on Arbitrage Mechanism

The Adviser and the Sub-Adviser believe there will be minimal, if any, impact to the arbitrage mechanism as a result of the use of Financial Instruments. Market makers and participants should be able to value Financial Instruments as long as the positions are disclosed with relevant information. The Adviser and the Sub-Adviser believe that the price at which Shares trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem creation Shares at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

The Adviser and the Sub-Adviser do not believe there will be any significant impacts to the settlement or operational aspects of the Fund's arbitrage mechanism due to the use of Financial Instruments. Because Financial Instruments generally are not eligible for in-kind transfer, they will typically be substituted with a ''cash in lieu'' amount when the Fund processes purchases or redemptions of creation units in-kind.

Creation and Redemption of Shares

According to the Registration Statement, the Trust will issue and sell Shares of the Fund only in aggregations of a specified number of Shares (each a ''Creation Unit''). Creation Unit sizes will be 50,000 Shares per Creation Unit. The Creation Unit size may be changed.

The Fund will issue and redeem Shares only in Creation Units at the NAV next determined after receipt of order on a continuous basis on a ''Business Day''. A Business Day will be, generally, any day on which the Exchange is open for business. The NAV of the Fund will be determined once each Business Day, normally as of the close of trading on the NYSE (normally, 4:00 p.m. E.T.). An order to purchase or redeem Creation Units will be deemed to be received on the Business Day on which the order is placed through the Distributor at the Shares' NAV next determined after receipt of an order in proper form.

The Fund will issue and redeem Creation Units to or through an ''Authorized Participant'', which is either a ''Participating Party'' (*i.e.,* a broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation (''NSCC''), or a participant of the Depository Trust Company (''DTC''), and, in each case, must have entered an agreement with the Distributor with respect to the creation and redemption of Creation Units).

The consideration for purchase of Creation Units of the Fund generally will consist of an in-kind deposit of a designated portfolio of securities—the ''Deposit Securities''—for each Creation Unit constituting a substantial replication, or representation, of the securities included in the Fund's portfolio as selected by the Sub-Adviser (''Fund Securities'') and an amount of cash—the ''Cash Component''—computed as described below. Together, the Deposit Securities and the Cash Component constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The Cash Component is an amount equal to the difference between the NAV of the Shares (per Creation Unit) and an amount equal to the market value of the Deposit Securities (the ''Deposit Amount''). If the Cash Component is a positive number (*i.e.,* the NAV per Creation Unit exceeds the Deposit Amount), the Authorized Participant will deliver the Cash Component. If the Cash Component is a negative number (*i.e.,* the NAV per Creation Unit is less than the Deposit Amount), the Authorized Participant will receive the Cash Component. The Cash Component serves to compensate the Trust or the Authorized Participant, as applicable, for any differences between the NAV per Creation Unit and the Deposit Securities. Authorized Participants will be required to pay the Custodian a fixed transaction fee in connection with creation and redemption of Shares.

In addition, the Trust reserves the right to permit or require the substitution of an amount of cash (that is a ''cash in lieu'' amount) to be added to the Cash Component to replace any Deposit Security which may not be available in sufficient quantity for delivery or that may not be eligible for transfer or for other similar reasons. The Trust also reserves the right to permit or require a ''cash in lieu'' amount where the delivery of Deposit Securities by the Authorized Participant (as described below) would be restricted under the securities laws or where delivery of Deposit Securities to the Authorized Participant would result in the disposition of Deposit Securities by the Authorized Participant becoming restricted under the securities laws, and in certain other situations.

The Custodian through the (''NSCC''), will make available on each Business Day, prior to the opening of business on the Exchange (currently 9:30 a.m. E.T.), the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous Business Day) for the Fund. This Fund Deposit will be applicable, subject to any adjustments, to orders to effect creations of Creation Units of the Fund until such time as the next-announced composition of the Deposit Securities is made available.

In addition to the list of names and number of securities constituting the current Deposit Securities of a Fund Deposit, the Custodian, through the NSCC, also will make available on each Business Day the estimated Cash Component, effective through and including the previous Business Day, per outstanding Creation Unit of the Fund.

The process to redeem Creation Units is essentially the reverse of the process by which Creation Units are created, as described above. To redeem Shares directly from the Fund, an investor must be an Authorized Participant or must redeem through an Authorized Participant. The Trust redeems Creation Units on a continuous basis on any Business Day through the Distributor at the Shares' NAV next determined after receipt of an order in proper form.

Generally, Creation Units of the Fund will be redeemed in-kind, at NAV per Share next computed, plus a transaction fee as described below. The Custodian, through the NSCC, makes available prior to the opening of business on the Exchange (currently 9:30 a.m. E.T.) on each Business Day, the identity of the Fund Securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form (as described below) on that day. Fund Securities received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Units. The redemption proceeds for a Creation Unit consists of Fund Securities—as announced on the Business Day the request for redemption is received in proper form—plus or minus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a redemption request in proper form, and the value of the Fund Securities (''Cash Redemption Amount''), less a redemption transaction fee.

The right of redemption may be suspended or the date of payment postponed with respect to any Fund (1) for any period during which the NYSE is closed (other than customary weekend and holiday closings); (2) for any period during which trading on the Exchange is suspended or restricted; (3) for any period during which an emergency exists as a result of which disposal of the Shares of the Fund or determination of the Fund's NAV is not reasonably practicable; or (4) in such other circumstances as is permitted by the Commission.

The Trust may in its discretion at any time, or from time to time, exercise its option to redeem Shares by providing the redemption proceeds in cash, and the redeeming Authorized Participant will be required to receive its redemption proceeds in cash. In addition, an investor may request a redemption in cash that the Trust may permit, in its sole discretion. In either case, the investor will receive a cash payment equal to the NAV of its Shares based on the NAV of Shares of the Fund next determined after the redemption request is received in proper form (minus a transaction fee).[27] The Fund may also, in its sole discretion, upon request of a shareholder, provide such redeemer a portfolio of securities that differs from the exact composition of the Fund Securities, or cash in lieu of some securities added to the Cash Redemption Amount, but in no event will the total value of the securities delivered and the cash transmitted differ from the NAV.

[27] The Adviser represents that, to the extent the Trust effects the creation or redemption of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

Availability of Information

The Fund's Web site (*www.wbishares.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior Business Day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[28] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each Business Day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the Business Day.[29]

In addition, a basket composition file, which will include the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via NSCC. The basket represents one Creation Unit of the Fund.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume for the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Quotation and last sale information for the Shares, and U.S. exchange-traded common stocks, preferred stocks, rights, warrants, convertibles, MLPs, DRs, REITs, CEFs, ETFs, ETPs and ETNs will be available via the Consolidated Tape Association (''CTA'') high-speed line. Intra-day price information for foreign exchange-traded common stocks, preferred stocks, rights, warrants, convertibles, MLPs, DRs and REITs, will be available from the applicable foreign exchange and from major market data vendors. Price information for OTC common stocks, OTC CEFs, and OTC Financial Instruments will be available from major market data vendors. Intra-day and closing price information for exchange-traded Financial Instruments will be available from the applicable exchange and from major market data vendors. In addition, price information for U.S. exchange-traded options is available from the Options Price Reporting Authority. Intra-day price information for Cash Equivalents will be available from major market data vendors.

Intra-day and closing price information from brokers and dealers or independent pricing services will be available for Debt Instruments. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[30] The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and provide a close estimate of that value throughout the trading day.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[31] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the Financial Instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3[32] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, or by regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal

[28] The Bid/Ask Price of Shares of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[29] Under accounting procedures to be followed by the Fund, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

[30] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values taken from CTA or other data feeds.

[31] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[32] 17 CFR 240.10A–3.

securities laws applicable to trading on the Exchange. [33]

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, and regulatory staff of the Exchange, will communicate as needed regarding trading in the Shares, certain exchange-traded options and futures, certain exchange-traded equities (including ETFs, ETPs. ETNs, CEFs, certain common stocks and certain REITs) with other markets or other entities that are members of the Intermarket Surveillance Group (''ISG'')[34], and FINRA and regulatory staff of the Exchange may obtain trading information regarding trading in the Shares, certain exchange-traded options and futures, certain exchange-traded equities (including ETFs, ETPs. ETNs, CEFs, certain common stocks and certain REITs) from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares, certain exchange-traded options and futures, certain exchange-traded equities (including ETFs, ETPs. ETNs, CEFs, certain common stocks and certain REITs) from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[35] FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

Not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (other than non-exchange-traded investment company securities) shall consist of equity securities whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts or exchange-traded options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value and the Disclosed Portfolio is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day.

2. *Statutory Basis*

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [36] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Advisor is a broker-dealer and has represented that it has implemented a firewall with respect to relevant personnel regarding access to information concerning the composition and/or changes to the portfolio. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. FINRA, on behalf of the Exchange, and regulatory staff of the Exchange, will communicate as needed regarding trading in the Shares, certain exchange-traded options and futures, certain exchange-traded equities (including ETFs, ETPs. ETNs, CEFs, certain common stocks and certain REITs) with other markets or other entities that are members of the ISG, and FINRA, on behalf of the Exchange, and regulatory staff of the Exchange, may obtain trading information regarding trading in the Shares, certain exchange-traded options and futures, certain exchange-traded equities (including ETFs, ETPs. ETNs, CEFs, certain common stocks and certain REITs) from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares, certain exchange-traded options and futures, certain exchange-traded equities (including ETFs, ETPs, ETNs, CEFs, certain common stocks and certain REITs) from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE.

The Fund's disclosure of Financial Instrument positions in the Disclosed Portfolio will include information that

[33] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[34] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[35] Certain of the exchange-traded equity securities in which the Fund may invest may trade in markets that are not members of ISG.

[36] 15 U.S.C. 78f(b)(5).

market participants can use to value these positions intraday. On a daily basis, the Fund will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. Price information for the debt and equity securities held by the Fund will be available through major market data vendors and on the applicable securities exchanges on which such securities are listed and traded. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the Portfolio Indicative Value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each Business Day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the Business Day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (other than non-exchange-traded investment company securities) shall consist of equity securities whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts or exchange-traded options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that holds equities and fixed income securities, which may be represented by certain Financial Instruments as discussed above, which will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca2016–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–14 and should be submitted on or before March 15, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03667 Filed 2–22–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77170; SR–NYSEArca–2015–104]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Withdrawal of a Proposed Rule Change To Adopt a New Policy Relating To Trade Reports for Exchange Traded Products

February 18, 2016.

On October 28, 2015, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a new policy relating to the Exchange's treatment of trade reports for Exchange Traded Products that it determines to be inconsistent with the prevailing market. The proposed rule change was published for comment in the **Federal Register** on November 18, 2015.[3] The Commission received two comments on the proposed rule change.[4] On December 17, 2015, pursuant to section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6]

On January 28, 2016, the Exchange withdrew the proposed rule change (SR–NYSEArca–2015–104).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03739 Filed 2–22–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension: Rule 204–3, SEC File No. 270–42, OMB Control No. 3235–0047.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is ''Rule 204–3 (17 CFR 275.204–3) under the Investment Advisers Act of 1940.'' (15 U.S.C. 80b). Rule 204–3, the ''brochure rule,'' requires advisers to deliver their brochures and brochure supplements at the start of an advisory relationship and to deliver annually thereafter the full updated brochure or a summary of material changes to their brochure. The rule also requires that advisers deliver an amended brochure or brochure supplement (or just a statement describing the amendment) to clients only when disciplinary information in the brochure or supplement becomes materially inaccurate. The brochure assists the client in determining whether to retain, or continue employing, the adviser. The information that Rule 204–3 requires to be contained in the brochure is also used by the Commission and staff in its enforcement, regulatory, and examination programs. This collection of information is found at 17 CFR 275.204–3 and is mandatory.

The respondents to this information collection are investment advisers registered with the Commission. Our latest data indicate that there were 11,956 advisers registered with the Commission as of January 4, 2016. The Commission has estimated that compliance with rule 204–3 imposes a burden of approximately 39 hours annually based on an average adviser having 1,494 clients. Based on this figure, the Commission estimates a total annual burden of 466,145 hours for this collection of information.

Written 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 17, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03642 Filed 2–22–16; 8:45 am]

BILLING CODE 8011–01–P

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[37] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 76431 (Nov. 12, 2015), 80 FR 72126.

[4] *See* Letter from Gary Gastineau, ETF Consultants.com, Inc., to the Commission (Nov. 27, 2015); Letter from James J. Angel, Associate Professor, Georgetown University, to the Commission (Dec. 5, 2015). All comments on the proposed rule change are available on the Commission's Web site at: *http://www.sec.gov/comments/sr-nysearca-2015-104/nysearca2015104.shtml.*

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 76673, 80 FR 79963 (Dec. 23, 2015). The Commission determined that it was appropriate to designate a longer period within which to take action on the proposed rule change so that it had sufficient time to consider the proposed rule change and the comments received. Accordingly, the Commission designated February 16, 2016 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[7] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77153; File No. SR–Phlx–2016–19]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the FLEX No Minimum Value Pilot

February 17, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 2, 2016, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend Phlx Rule 1079 (FLEX Index, Equity and Currency Options) to extend a pilot program that eliminates minimum value sizes for opening transactions in new series of FLEX index options and FLEX equity options (together known as ''FLEX Options'').[3]

The text of the amended Exchange rule is set forth immediately below.

Additions are *in italics* and deletions are [bracketed].

Rules of the Exchange

Options Rules

* * * * *

Rule 1079. FLEX Index, Equity and Currency Options

A Requesting Member shall obtain quotes and execute trades in certain non-listed FLEX options at the specialist post of the non-FLEX option on the Exchange. The term ''FLEX option'' means a FLEX option contract that is traded subject to this Rule. Although FLEX options are generally subject to the Rules in this section, to the extent that the provisions of this Rule are inconsistent with other applicable Exchange Rules, this Rule takes precedence with respect to FLEX options.

(a)–(f) No Change.

• • • *Commentary:*

.01 Notwithstanding subparagraphs (a)(8)(A)(i) and (a)(8)(A)(ii) above, for a pilot period ending the earlier of [January 31] March 15, 2016, or the date on which the pilot is approved on a permanent basis, there shall be no minimum value size requirements for FLEX options.

* * * * *

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Phlx Rule 1079 (FLEX Index, Equity and Currency Options) to extend a pilot program that eliminates minimum value sizes for opening transactions in new series of FLEX Options (the ''Pilot Program'' or ''Pilot''). The Exchange has submitted a separate filing for permanent approval of the Pilot Program;[4] and is submitting this extension proposal so the Pilot Program continues while the Commission considers such permanent approval.

Rule 1079 deals with the process of listing and trading FLEX equity, index, and currency options on the Exchange. Rule 1079(a)(8)(A) currently sets the minimum opening transaction value size in the case of a FLEX Option in a newly established (opening) series if there is no open interest in the particular series when a Request-for-Quote (''RFQ'') is submitted (except as provided in Commentary .01 to Rule 1079): (i) $10 million underlying equivalent value, respecting FLEX market index options, and $5 million underlying equivalent value respecting FLEX industry index options;[5] (ii) the lesser of 250 contracts or the number of contracts overlying $1 million in the underlying securities, with respect to FLEX equity options (together the ''minimum value size'').[6]

Presently, Commentary .01 to Rule 1079 states that by virtue of the Pilot Program ending January 31, 2016, or the date on which the pilot is approved on a permanent basis, there shall be no minimum value size requirements for FLEX Options as noted in subsections (a)(8)(A)(i) and (a)(8)(A)(ii) of Rule 1079.[7]

The Exchange now proposes to extend the Pilot Program for a pilot period ending the earlier of March 15, 2016, or the date on which the Pilot is approved on a permanent basis.[8]

The Exchange believes that there is sufficient investor interest and demand in the Pilot Program to warrant an extension. The Exchange believes that the Pilot Program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Extension of the Pilot Program would continue to provide greater opportunities for traders and investors to manage risk through the use of FLEX Options, including investors that may otherwise trade in the unregulated over

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In addition to FLEX Options, FLEX currency options are also traded on the Exchange. These flexible index, equity, and currency options provide investors the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices, and may have expiration dates within five years. *See* Rule 1079. FLEX currency options traded on the Exchange are also known as FLEX FX Options. The pilot program discussed herein does not encompass FLEX currency options.

[4] *See* Securities Exchange Act Release No. 76593 (December 8, 2015), 80 FR 77399 (December 14, 2015) (SR–Phlx–2015–94) (notice of amended proposal to make the Pilot Program permanent) (the ''permanent approval filing'').

[5] Market index options and industry index options are broad-based index options and narrow-based index options, respectively. *See* Rule 1000A(b)(11) and (12).

[6] Subsection (a)(8)(A) also provides a third alternative: (iii) 50 contracts in the case of FLEX currency options. However, this alternative is not part of the Pilot Program.

[7] *See* Securities Exchange Act Release No. 75794 (August 31, 2015), 80 FR 53606 (September 4, 2015) (SR–Phlx–2015–74) (notice of filing and immediate effectiveness of proposal to extend Pilot Program). The Pilot Program was instituted in 2010. *See* Securities Exchange Act Release No. 62900 (September 13, 2010), 75 FR 57098 (September 17, 2010) (SR–Phlx–2010–123) (notice of filing and immediate effectiveness of proposal to institute Pilot Program).

[8] The Exchange notes that any positions established under this Pilot would not be impacted by the expiration of the Pilot. For example, a 10 contract FLEX equity option opening position that overlies less than $1 million in the underlying security and expires in January 2017 could be established during the Pilot. If the Pilot Program were not extended, the position would continue to exist and any further trading in the series would be subject to the minimum value size requirements for continued trading in that series.

the counter (''OTC'') market where similar size restrictions do not apply.[9]

In support of the proposed extension of the Pilot Program, the Exchange has under separate cover submitted to the Commission a Pilot Program Report (''Report'') that provides an analysis of the Pilot Program covering the period during which the Pilot has been in effect. This Report includes: (i) Data and analysis on the open interest and trading volume in (a) FLEX equity options that have an opening transaction with a minimum size of 0 to 249 contracts and less than $1 million in underlying value; (b) FLEX index options that have an opening transaction with a minimum opening size of less than $10 million in underlying equivalent value; and (ii) analysis of the types of investors that initiated opening FLEX Options transactions (*i.e.,* institutional, high net worth, or retail). The Report has been submitted to the Commission as Exhibit 3 to the Exchange's permanent approval filing, and a subsequent Report with updated data, which the Exchange intends to make public, was also submitted to the Commission under separate cover.[10]

2. Statutory Basis

The Exchange's proposal is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(5) of the Act [12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. Specifically, the Exchange believes that the proposed extension of the Pilot Program, which eliminates the minimum value size applicable to opening transactions in new series of FLEX Options, would provide greater opportunities for investors to manage risk through the use of FLEX Options. The Exchange notes that it has not experienced any adverse market effects with respect to the Pilot Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal would give traders and investors the opportunity to more effectively tailor their trading, investing and hedging through FLEX options traded on the Exchange. Prior to the Pilot, options that represented opening transactions in new series that could not meet a minimum value size could not trade via FLEX on the Exchange, but rather had to trade OTC. Extension of the Pilot enables such options to continue to trade on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the Exchange may seamlessly continue its Pilot Program. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[16] The Commission notes that waiving the 30-day operative delay would enable the Pilot Program to continue as of the date of the filing of this proposed rule change. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2016–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[9] The Exchange has not experienced any adverse market effects with respect to the Pilot Program.

[10] In the event the Pilot Program is not permanently approved by March 15, 2016, the Exchange will submit an additional Report covering the extended Pilot period.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2016–19, and should be submitted on or before March 15, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03661 Filed 2–22–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77159; File No. SR–BATS–2015–105]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change to Rule 14.11(i), Managed Fund Shares, To List and Trade the Shares of the Elkhorn S&P GSCI Dynamic Roll Commodity ETF of Elkhorn ETF Trust

February 17, 2016.

On December 18, 2015, BATS Exchange, Inc. (''BATS'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade the shares of the Elkhorn S&P GSCI Dynamic Roll Commodity ETF of Elkhorn ETF Trust under BATS Rule 14.11(i). The proposed rule change was published for comment in the **Federal Register** on January 4, 2016.[3] The Commission has not received any comments on the proposal.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is February 18, 2016. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates April 1, 2016, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–BATS–2015–105).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03666 Filed 2–22–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77165; File Nos. SR–BSECC–2015–002; SR–SCCP–2015–02; SR–BX–2015–085; SR–NASDAQ–2015–160; SR–Phlx–2015–113]

Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; Stock Clearing Corporation of Philadelphia; NASDAQ OMX BX, Inc.; The NASDAQ Stock Market LLC; NASDAQ OMX PHLX LLC; Order Approving Proposed Rule Changes, as Modified by Amendments Thereto, To Amend the By-Laws of NASDAQ, Inc.

February 17, 2016.

I. Introduction

On December 21, 2015, each of the Boston Stock Exchange Clearing Corporation (''BSECC''), Stock Clearing Corporation of Philadelphia (''SCCP''), NASDAQ OMX BX, Inc. (''BX''), The NASDAQ Stock Market LLC (''NASDAQ''), and NASDAQ OMX PHLX LLC (''Phlx'' and, together with BSECC, SCCP, BX, and NASDAQ, the ''SROs''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] proposed rule changes with respect to the By-Laws (''By-Laws'') of NASDAQ, Inc. (''Company''), the parent company of the SROs. The proposed rule changes would revise certain requirements regarding Director[3] qualifications and Director disqualification procedures for the Company's Board of Directors (''Board''). On December 29, 2015, each SRO filed Amendment No. 1 to its respective proposal.[4] On December 30, 2015, Phlx filed Amendment No. 2 to its proposal.[5] The proposed rule changes, as modified by the amendments thereto, were published for comment in the **Federal Register** on January 7, 2016.[6] The Commission did not receive any comment letters on the proposals. This order approves the proposed rule changes, as modified by the respective amendments thereto.

II. Description of the Proposal

The Company proposes to amend certain provisions of the By-Laws that relate to the qualification of Directors.

First, the Company proposes to amend Section 4.3 of the By-Laws (Qualifications), which sets forth the compositional requirements of the Board. Currently, Section 4.3 requires that the number of Non-Industry Directors[7] on the Board equal or exceed

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 76776 (Dec. 28, 2015), 80 FR 120.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Director'' means a member of the Company's Board of Directors. *See* Article I(j) of the By-Laws.

[4] Amendment No. 1 for each of the proposals amended and replaced the original filing in its entirety. In Amendment No. 1, each SRO, among other things, clarified the operation of the current and proposed provisions of the By-Laws and how the proposed rule change would operate in conjunction with the Listing Rules (as herein defined) of NASDAQ.

[5] On December 30, 2015, Phlx withdrew Amendment No. 1 for technical reasons and, subsequently, filed Amendment No. 2. Amendment No. 2 amended and replaced the original filing in its entirety.

[6] Securities Exchange Act Release Nos. 76806 (December 31, 2015), 81 FR 838 (SR–BSCC–2015–002); 76807 (December 31, 2015), 81 FR 828 (SR–SCCP–2015–02); 76808 (December 31, 2015), 81 FR 831 (SR–BX–2015–085); 76809 (December 31, 2015), 81 FR 817 (SR–NASDAQ–2015–160); 76810 (December 31, 2015), 81 FR 841 (SR–Phlx–2015–113) (collectively, ''Notices'').

[7] Under the By-Laws, ''Non-Industry Director'' or ''Non-Industry committee member'' means a Director (excluding any Staff Director) or committee member who is (1) a Public Director or Public committee member; (2) an Issuer Director or Issuer committee member; or (3) any other individual who would not be an Industry Director or Industry committee member. *See* Article I(q) of the By-Laws.

the number of Industry Directors,[8] and that the Board include (1) at least two Public Directors; [9] (2) at least one, but no more than two, Issuer Directors; [10] and (3) no more than one Staff Director,[11] unless the Board consists of ten or more Directors, in which case the Board shall include no more than two Staff Directors.

The Company proposes to amend Section 4.3 to state that the Board may, rather than shall, include at least one, but no more than two, Issuer Directors. Thus, the proposal would allow, but no longer would mandate, that the Board include an Issuer Director. The SROs state that, while the Company highly values the views of its listed companies, the Company does not believe that it is necessary to have an Issuer Director on its own Board to represent those views.[12] The SROs state that issues relating to listed companies are generally the province of NASDAQ and its board of directors, rather than the Company and its Directors, and that NASDAQ's board includes issuer representation, as mandated by NASDAQ's by-laws.[13] Additionally, the SROs state that the Company's Directors are experienced and capable enough to handle issues relating to listed companies that may arise without specifically having an Issuer Director on the Board.[14]

Second, the Company proposes to amend Section 4.7 of the By-Laws (Disqualification), which addresses the disqualification of a Director due to a change in that Director's classification. Specifically, Section 4.7 provides that the term of office of a Director shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Directors, that: (a) The Director no longer satisfies the classification for which the Director was elected; and (b) the Director's continued service as such would violate the compositional requirements of the Board set forth in Section 4.3 of the By-Laws.[15]

The Company proposes to amend Section 4.7 to allow the Board to elect to defer determinations under Section 4.7 regarding Director disqualification until the next annual meeting of stockholders. In addition, the proposals would amend Section 4.7 to provide that, if the Board elects to defer such determinations, neither the Board nor any committee of the Board would be deemed to be in violation of Section 4.3 or 4.13 [16] of the By-Laws as a result of such deferral. The SROs state that the nominee selection process for Directors is long and complex and the Board cannot act quickly to replace a Director whose classification has changed.[17] The SROs state that the proposed amendment to Section 4.7 would allow the Board to continue to make informed, deliberate decisions regarding Director nominees, rather than require it to act quickly in a way that is not in the best interest of the Company's stockholders.[18] In addition, the SROs state that the proposed rule changes would provide the Board with the option to retain Directors whose classification has changed but whose continued service is otherwise beneficial to the Board, the Company, and its stockholders.[19] Further, the SROs state that the proposed amendment to Section 4.7 is designed to prevent the significant disruption that the SROs believe would occur if the Board had to replace a Director between annual meetings of stockholders.[20]

The SROs represent that the provisions of the Company's By-Laws that relate to Director classifications are completely distinct from the listing rules of NASDAQ (''Listing Rules'') and that the proposed rule changes do not affect in any way the Company's obligation, as an issuer listed on NASDAQ, to comply with the Listing Rules, and that the Company will continue to comply with the Listing Rules, including provisions relating to corporate governance, following the effectiveness of the proposed By-Law amendments.[21]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, in the case of the proposals by BX, NASDAQ, and Phlx (collectively, the ''Exchanges''), and to a clearing agency, in the case of the proposals by BSECC and SCCP.[22]

The Commission finds that the proposed rule changes by the Exchanges to amend the By-Laws are consistent with the requirements of Section 6 of the Act and the rules and regulations thereunder applicable to a national

[8] Under the By-Laws, ''Industry Director'' or ''Industry committee member'' means a Director (excluding any Staff Directors) or committee member who (1) is, or within the last year was, or has an immediate family member who is, or within the last year was, a member of a Self-Regulatory Subsidiary; (2) is, or within the last year was, employed by a member or a member organization of a Self-Regulatory Subsidiary; (3) has an immediate family member who is, or within the last year was, an executive officer of a member or a member organization of a Self-Regulatory Subsidiary; (4) has within the last year received from any member or member organization of a Self-Regulatory Subsidiary more than $100,000 per year in direct compensation, or received from such members or member organizations in the aggregate an amount of direct compensation that in any one year is more than 10 percent of the Director's annual gross compensation for such year, excluding in each case director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service); or (5) is affiliated, directly or indirectly, with a member or member organization of a Self-Regulatory Subsidiary. *See* Article I(m) of the By-Laws. A ''Self-Regulatory Subsidiary'' is any subsidiary of the Company that is a self-regulatory organization as defined under Section 3(a)(26) of the Act. *See* Article I(s) of the By-Laws.

[9] Under the By-Laws, ''Public Director'' or ''Public committee member'' means a Director or committee member who (1) is not an Industry Director or Industry committee member, (2) is not an Issuer Director or Issuer committee member, and (3) has no material business relationship with a member or member organization of a Self-Regulatory Subsidiary, the Company or its affiliates, or the Financial Industry Regulatory Authority, Inc. *See* Article I(r) of the By-Laws.

[10] Under the By-Laws, ''Issuer Director'' or ''Issuer committee member'' means a Director (excluding any Staff Director) or committee member who is an officer or employee of an issuer of securities listed on a national securities exchange operated by any Self-Regulatory Subsidiary, excluding any Director or committee member who is a director of such an issuer but is not also an officer or employee of such an issuer. *See* Article I(o) of the By-Laws.

[11] Under the By-Laws, ''Staff Director'' means an officer of the Company that is serving as a Director. *See* Article I(t) of the By-Laws.

[12] *See* Notices, *supra* note 6.

[13] *See* Notices, *supra* note 6, citing to Article III, Section 2 of NASDAQ's by-laws.

[14] *See* Notices, *supra* note 6. The SROs represent that currently three of the Company's eleven Directors are also directors of companies listed on NASDAQ or another national securities exchange. *See* Notices, *supra* note 6. The SROs state that these Directors do not qualify as Issuer Directors because they are not specifically officers or employees of listed companies. However, as directors of such companies, the SROs believe that the Directors are familiar with corporate governance topics and other issues confronted by listed companies. *See* Notices, *supra* note 6.

[15] Section 4.7 of the By-Laws further provides that, if a Director's term of office terminates because of such disqualification and the remaining term of office for that Director at the time of termination is not more than six months, during the period of vacancy, the Board shall not be deemed to be in violation of Section 4.3 of the By-Laws by virtue of such vacancy. *See* Section 4.7 of the By-Laws.

[16] Section 4.13(h)(iii) of the By-Laws requires the Company's Corporate Secretary to certify to the Nominating & Governance Committee of the Company's Board the classification of each Director after collecting from each nominee for Director information as is reasonably necessary to serve as the basis for a determination of the nominee's classifications. *See* Section 4.13(h)(iii) of the By-Laws.

[17] *See* Notices, *supra* note 6.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] Additionally, in approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

securities exchange.[23] In particular, the Commission finds that the proposed rule changes by the Exchanges are consistent with the requirements of Section 6(b)(5) of the Act, which requires, among other things, that an exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[24]

The proposed amendment to Section 4.3 of the By-Laws would allow, but no longer require, that the Board include an Issuer Director. The Exchanges state that the Company's Directors are sufficiently experienced and capable to handle issues relating to listed companies without requiring the explicit participation of an Issuer Director.[25] Further, the Exchanges state that issues relating to listed companies are generally the province of NASDAQ, as NASDAQ is the Company subsidiary that provides listing services.[26] The Exchanges represent that NASDAQ's board includes issuer representation, as mandated by NASDAQ's by-laws.[27] Under the proposals, the Company would still retain the option to include one or more Issuer Director on the Board.

The proposed amendment to Section 4.7 of the By-Laws would allow the Board to elect to defer determinations under Section 4.7 regarding Director disqualification until the next annual meeting of stockholders, and to do so without being in violation of the By-Laws. The By-Laws currently are silent regarding the required timeframe within which the Board must make Director disqualification determinations under Section 4.7. The Exchanges represent that the proposal would aid the Board to act in the best interests of the Company and its stockholders as it would allow the Board to continue to make informed, deliberate decisions regarding Director nominees and prevent the significant disruption that the SROs believe would occur if the Board were forced to replace a Director between annual meetings.[28]

Based on the foregoing, the Commission finds that the proposed rule changes filed by BX, NASDAQ, and Phlx are consistent with the Act.

The Commission also finds that the proposed rule changes by BSECC and SCCP are consistent with the requirements of the Act and the rules and regulations thereunder applicable to clearing agencies. Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to protect investors and the public interest.[29] In addition, Rule 17Ad–22(d)(8) under the Act requires registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent.[30] Here, BSECC and SCCP filed proposed rule changes to highlight changes being made to the By-Laws of the Company,[31] which indirectly owns BSECC and SCCP. Therefore, the proposed rule changes by BSECC and SCCP help make clear and transparent the governance arrangements of the Company and, thus, BSECC and SCCP, which helps ensure investor protection and the public interest.

The Commission notes that the Company, as an issuer listed on NASDAQ, will continue to be required to comply with NASDAQ's Listing Rules, including the provisions in the Listing Rules relating to Corporate Governance Requirements, which requirements may differ from the By-Laws. The SROs have represented that the Company will continue to comply with the Listing Rules following the effectiveness of the proposed By-Law amendments.[32] The Commission further notes that the Listing Rules provide generally that a majority of the directors of a listed issuer must be ''independent'' as defined in those rules and that a listed issuer's audit, compensation, and nominations committees must be composed solely of directors who are ''independent.''[33] Because the Company's securities are listed on NASDAQ, the Commission notes that, when deferring determinations regarding Director disqualification pursuant to revised Section 4.7 of the By-Laws, the Company also must take into account the Listing Rules, including the ''cure periods'' contained therein, if the Director is serving in the capacity of an ''independent director'' within the meaning of the Listing Rules.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule changes, as modified by the amendments thereto, are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, in the case of BX, NASDAQ, and Phlx, and to a registered clearing agency, in the case of BSECC and SCCP.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule changes (SR–BSECC–2015–002; SR–SCCP–2015–02; SR–BX–2015–085; SR–NASDAQ–2015–160; SR–Phlx–2015–113), as modified by the amendments thereto, be, and hereby are, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03669 Filed 2–22–16; 8:45 am]

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[23] Certain provisions of the Company's By-Laws are considered rules of BX, NASDAQ, and Phlx if they are stated policies, practices, or interpretations, as defined in Rule 19b–4 under the Act, of BX, NASDAQ, and Phlx, and must be filed with the Commission pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder. 15 U.S.C. 78s(b); 17 CFR 240.19b–4.

[24] 15 U.S.C. 78f(b)(5).

[25] *See* Notices, *supra* note 6.

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] 15 U.S.C. 78q–1(b)(3)(F).

[30] 17 CFR 240.17Ad–22(d)(8).

[31] Certain provisions of the Company's By-Laws are considered rules of BSECC and SCCP if they are stated policies, practices, or interpretations, as defined in Rule 19b–4 under the Act, of BSECC and SCCP, and must be filed with the Commission pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder. 15 U.S.C. 78q–1(b); 17 CFR 240.19b–4. *See supra* note 23.

[32] *See* Notices, *supra* note 6.

[33] *See* NASDAQ Rules 5605(b)(1), (c)(2), (d)(2), and (e).

[34] 15 U.S.C. 78s(b)(2).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77164; File No. SR–FINRA–2015–048]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Partial Amendment No. 1, To Adopt FINRA Rule 6191(b) and Amend FINRA Rule 7440 To Implement the Data Collection Requirements of the Regulation NMS Plan To Implement a Tick Size Pilot Program

February 17, 2016.

I. Introduction

On November 13, 2015, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt FINRA Rule 6191(b) and amend FINRA Rule 7440 to implement the Regulation NMS Plan to Implement a Tick Size Pilot Program (''Tick Size Pilot'').[3] The proposed rule change was published in the **Federal Register** on November 25, 2015.[4] On February 12, 2016, FINRA filed Partial Amendment No. 1 to the proposal.[5] The Commission received three comments on the proposal.[6] On January 7, 2016, the Commission designated a longer period for Commission action on the proposal.[7] This order approves the proposed rule change, as modified by Partial Amendment No. 1.

II. Background

On August 25, 2014, NYSE Group, Inc., on behalf of BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., FINRA, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc. (collectively ''Participants''), filed with the Commission, pursuant to Section 11A of the Act[8] and Rule 608 of Regulation NMS thereunder,[9] the Plan to Implement the Tick Size Pilot Program (''Plan'').[10] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[11] The Plan was published for comment in the **Federal Register** on November 7, 2014,[12] and approved by the Commission, as modified, on May 6, 2015.[13] On November 6, 2015, the Commission issued an exemption to the Participants from implementing the Plan until October 3, 2016.[14]

The Tick Size Pilot is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of certain small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its members, as applicable, with the provisions of the Plan.[15] In addition to developing quoting and trading requirements for the Tick Size Pilot, the Plan requires Participants to collect and submit to the Commission a variety of data, including market quality statistics and market maker participation statistics and profitability data.[16] FINRA has filed the proposed rule change, as modified by Partial Amendment No. 1, to require its members to comply with the applicable data collection requirements of the Plan. In addition, FINRA proposes to clarify certain of the data collection provisions.[17]

III. Description of the Proposed Rule Change, as Modified by Partial Amendment No. 1

FINRA proposes to adopt Rule 6191(b), which sets forth the data collection requirements under the Plan. Proposed Rule 6191(b)(1) would require that a member that operates a Trading Center[18] shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Items I and II to Appendix B of the Plan, and a member that is a Market Maker shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Item IV of Appendix B to the Plan and Item I of Appendix C of the Plan.

Proposed Rule 6191(b)(2) sets forth the Trading Center data requirements. Under proposed Rule 6191(b)(2)(A)(i), a member that operates a Trading Center subject to the Plan and for which FINRA is the Designated Examining Authority (''DEA'') shall collect and transmit to FINRA the data described in Items I and II of Appendix B of the Plan with respect to each Pre-Pilot Data Collection Security[19] for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period (''Pre-Pilot Period''); and each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

Proposed Rule 6191(b)(2)(A)(ii) provides that members that operate Trading Centers that are subject to the Plan, and for which FINRA is the DEA, shall meet the data collection and reporting requirements in Items I and II of Appendix B by reporting the required order information in Pilot Securities and Pre-Pilot Data Collection Securities to OATS. The proposed rule change adds four new fields to OATS to enable OATS to capture the necessary Tick Size Pilot data.[20] Specifically, FINRA proposes that OATS Reporting Members[21] that operate a Trading Center will collect and transmit to FINRA the following information for orders received or originated involving

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (''Approval Order'').

[4] *See* Securities Exchange Act Release No. 76484 (November 19, 2015), 80 FR 73858.

[5] In Partial Amendment No. 1, FINRA proposes to: (1) Require members to provide the Retail Investor Order flag in OATS execution-related reports; (2) delete the requirement that FINRA members report data for execution on venues that do not report to FINRA; and (3) change the reference in Supplementary Material .03 for securities that trade in both the U.S. and in a foreign market from ''dually-listed'' to ''securities that may trade in a foreign market.''

[6] *See* letters from Mary Lou Von Kaenel, Managing Director, Financial Information Forum, dated December 16, 2015 (''FIF Letter I) and January 25, 2016 (''FIF Letter II''); and Manisha Kimmel, Chief Regulatory Officer, Wealth Management, Thomson Reuters, dated December 16, 2015 (''Thomson Reuters Letter'') to Robert W. Errett, Deputy Secretary, Commission. On February 12, 2016, FINRA submitted a response to the comments. *See* letter from Andrew Madar, Associate General Counsel, Regulatory Policy and Oversight, FINRA to Brent J. Fields, Secretary, Commission dated February 12, 2016 (''FINRA Response'').

[7] *See* Securities Exchange Act Release No. 76854, 81 FR 1670 (January 13, 2016).

[8] 15 U.S.C. 78k–1.

[9] 17 CFR 242.608.

[10] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[11] *See* Securities Exchange Act Release No. 72460, 79 FR 36840 (June 30, 2014).

[12] *See* Securities Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423.

[13] *See* Approval Order, *supra* note 3.

[14] *See* Securities Exchange Act Release No. 76382, 80 FR 70284 (November 13, 2015).

[15] Rule 608(c) of Regulation NMS. 17 CFR 242.608(c). *See also* Plan Sections II.B. and IV.

[16] *See* Appendices B and C to the Plan.

[17] FINRA, on behalf of the Plan Participants, submitted a letter to Commission requesting exemption from certain provisions of the Plan related to data collection. *See* letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA dated December 9, 2015 to Robert W. Errett, Deputy Secretary, Commission (''Exemption Request''). The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, has granted FINRA a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the letter and noted herein. *See* letter from David Shillman, Associate Director, Division of Trading and Markets, Commission, to Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, dated February 17, 2016 (''SEC Exemption Letter'').

[18] Capitalized terms used in this Order are defined in the Plan, unless otherwise specified herein.

[19] As discussed herein, FINRA proposes to establish data collection requirements for securities designated as Pre-Pilot Data Collection Securities for the period that begins six months prior to the Pilot Period.

[20] In its filing, FINRA noted that it would add additional values to existing OATS fields necessary to implement requirements of the Tick Size Pilot. The new values are described in the *OATS Reporting Technical Specifications.* FINRA will also provide additional guidance in the *OATS Reporting Technical Specifications* regarding the use of existing values that may be affected by members participating in the Tick Size Pilot.

[21] FINRA Rule 7410(o) generally defines ''Reporting Member'' as a member that receives or originates an order and has an obligation to record and report information under FINRA Rules 7440 and 7450.

Pilot Securities and Pre-Pilot Data Collection Securities:

(a) Whether the member is a Trading Center in either a Pilot Security or a Pre-Pilot Data Collection Security;

(b) If the member is an Alternative Display Facility (''ADF'') Market Participant under FINRA Rule 6220, the display size of the order; and

(c) Whether the order is routable.

In Partial Amendment No. 1, FINRA proposes that members shall identify whether the member is relying on the Retail Investor Order exception with respect to the execution of order.[22]

For purposes of subparagraph (a), FINRA notes that only those OATS Reporting Members that operate a Trading Center and for which FINRA is the DEA are required to make changes to their OATS reporting. OATS Reporting Members that do not operate Trading Centers or that have another self-regulatory organization as DEA will be permitted to leave the new fields blank (*i.e.,* they are not required to populate the new Trading Center field to affirmatively indicate that they are not a Trading Center). OATS Reporting Members that operate Trading Centers will be required to indicate their status as a Trading Center on all OATS reports for new orders involving Pre-Pilot Data Collection Securities and Pilot Securities, including New Order Reports, Combined Order/Route Reports, Combined Order Execution Reports, and Cancel/Replace Reports.

For purposes of subparagraph (b), FINRA notes that OATS Reporting Members that operate Trading Centers and also are ADF Market Participants[23] will be required to indicate their status as an ADF Market Participant and must indicate the display size of the order so that OATS can capture the information required by Appendix B regarding hidden and displayed size.[24]

FINRA proposes to add a new OATS field under subparagraphs (c) to capture the information required by Item II(o) of Appendix B to the Plan. This information will be required on all OATS reports for new orders, including New Order Reports, Combined Order/Route Reports, Combined Order/Execution Reports, and Cancel/Replace Reports.

Finally, FINRA proposes to add a new OATS field under proposed Rule 6191(b)(A)(iii) to capture information required under Item II(n) of Appendix B to the Plan. As described in Partial Amendment No. 1, FINRA will require members to add a flag to OATS execution reports for those orders that rely on the Retail Investor Order exceptions provided under Test Groups Two and Three.[25]

Proposed Rule 6191(b)(2)(B) provides that FINRA shall transmit the data required by Items I and II of Appendix B to the Plan, and collected pursuant to FINRA Rule 6191(b)(2)(A), to the SEC in a pipe-delimited format on a disaggregated basis by Trading Center within 30 calendar days following month end. FINRA also shall make such data publicly available on the FINRA Web site on a monthly basis at no charge and will not identify the Trading Center that generated the data.[26]

Proposed Rule 6191(b)(3)(A) provides that a member that is a Market Maker[27] for which FINRA is the DEA shall collect and transmit to FINRA data relating to Item IV of Appendix B to the Plan with respect to activity conducted on any Trading Center in furtherance of its status as a Market Maker, including a Trading Center that executes trades otherwise than on a national securities exchange, for transactions that have settled or reached settlement date. The proposed rule requires Market Makers to transmit such data in a pipe-delimited format, by 12 p.m. EST on T+4 for (1) transactions in each Pre-Pilot Data Collection Security for the Pre-Pilot Period; and (2) for transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

Proposed Rule 6191(b)(3)(B) provides that FINRA shall transmit the data relating to Market Maker activity required by Item IV of Appendix B to the Plan, and collected pursuant to paragraph (b)(3)(A), to the Participant operating the Trading Center on which such activity occurred in a pipe-delimited format on a disaggregated basis by Market Maker during the Pre-Pilot Period and within 15 calendar days following month end during the Pilot Period.

Proposed Rule 6191(b)(3)(C) provides that FINRA shall transmit the data relating to Market Maker activity conducted otherwise than on a national securities exchange required by Item IV of Appendix B to the Plan, and collected pursuant to paragraph (b)(3)(A), to the SEC in a pipe-delimited format, on a disaggregated basis by Trading Center, within 30 calendar days following month end. FINRA shall also make such data publicly available on the FINRA Web site on a monthly basis at no charge and will not identify the Trading Center that generated the data.[28]

Proposed Rule 6191(b)(4) sets forth the requirements for the collection and transmission of data pursuant to Appendix C.I of the Plan. Proposed Rule 6191(b)(4)(A) requires that a member that is a Market Maker, and for which FINRA is the DEA, shall collect and transmit to FINRA the data described in Item I of Appendix C to the Plan, as modified by Rule 6191(b)(5) with respect to executions that have settled or reached settlement date that were executed on any Trading Center. Market Makers will provide such data in a pipe-delimited format by 12 p.m. EST on T+4: (1) For executions during and outside of Regular Trading Hours in each Pre-Pilot Data Collection Security for the Pre-Pilot Period; and (2) for executions during and outside of Regular Trading Hours in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

Proposed Rule 6191(b)(4)(B) provides that FINRA shall collect the data required by Item I of Appendix C to the Plan on a monthly basis, transmit such data, categorized by the Control Group and each Test Group, to the SEC in a pipe-delimited format; the data transmitted to the SEC shall include the profitability statistics categorized by Market Maker and by security. FINRA shall also make aggregated data required by Item I of Appendix C to the Plan, and collected pursuant to (b)(4)(A) categorized by the Control Group and each Test Group, publically available on the FINRA Web site on a monthly basis

[22] FINRA has requested an exemption from the Plan related to this provision. *See* Exemption Request, *supra* note 17.

[23] FINRA Rule 6220(a)(3) defines ''ADF Market Participant'' or ''Market Participant'' as a Registered Reporting ADF Market Maker, as defined in FINRA Rule 6220(a)(13), or a Registered Reporting ADF ECN, as defined in FINRA Rule 6220(a)(12).

[24] Items I(a)(5), (29), and (30) of Appendix B to the Plan each require that hidden (*i.e.,* non-displayed) order information be collected.

[25] In Partial Amendment No. 1, FINRA deleted the proposed requirement in proposed Rule 6191(b)(2)(A)(iv) to require information on foreign executions and executions on domestic venues which do not provide execution information to FINRA. In Partial Amendment No. 1, FINRA stated that it has agreements with all equity exchanges to receive data for executions in Pre-Pilot Data Collection Securities and Pilot Securities that occur on those venues. For foreign markets, FINRA stated that it could obtain the necessary information through existing OATS data that would be sufficient to analyze the impact of the Tick Size Pilot on the number of orders routed to foreign markets.

[26] FINRA has requested an exemption from the Plan related to this provision. *See* Exemption Request, *supra* note 17.

[27] The Plan defines a ''Market Maker'' as ''a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest.''

[28] FINRA has requested an exemption from the Plan related to this provision. *See* Exemption Request, *supra* note 17.

at no charge and shall not identify the Market Makers that generated the data or the individual securities.

Proposed Rule 6191(b)(5) sets forth the manner in which Market Maker participation statistics and profitability will be calculated. Proposed Rule 6191(b)(5) provides that a member that is a Market Maker subject to the requirements of proposed Rule 6191(b)(3)(A) and (b)(4)(A) in a Pre-Pilot Data Collection Security or a Pilot Security, and for which FINRA is the DEA, shall be deemed to have satisfied the requirements of proposed Rule 6191(b)(3)(A) and (b)(4)(A), in addition to the requirements of Item IV of Appendix B and Item I of Appendix C, if such Market Maker submits to FINRA the following specified data for any principal trade, not including a riskless principal trade, in a Pre-Pilot Data Collection Security or a Pilot Security executed in furtherance of its status as a Market Maker on any Trading Center: (1) Ticker Symbol; (2) Trading Center where the trade was executed, or if not known, the destination where the order originally was routed for further handling and execution; (3) Time of execution; (4) Price; (5) Size; (6) Buy/sell; (7) for trades executed away from the Market Maker, a unique identifier, as specified by the Market Maker's DEA, that will allow the trade to be associated with the Trading Center where the trade was executed; and (8) for trades cancelled or corrected beyond T+3, whether the trade represents a cancellation or correction.

FINRA proposes to adopt certain Supplementary Material to Rule 6191(b) to clarify other aspects of the data collection requirements. First, FINRA proposes to clarify in Supplementary Material .01 that the terms used in Rule 6191(b) shall have the same meaning as provided in the Plan, unless otherwise specified. In proposed Supplementary Material .02, FINRA proposes to clarify a reporting requirement for Retail Investor Orders for purposes of Appendix B.II(n). Specifically, FINRA proposes that a Trading Center shall report ''Y'' when it is relying upon the Retail Investor Order exception to Test Groups Two and Three with respect to the execution of the order, and ''N'' in all other instances.[29]

In proposed Supplementary Material .03, FINRA proposes to require that for purposes of Appendix B.I, a field identified as ''Affected by Limit-Up Limit-Down bands'' [30] be included. Under this proposal, a Trading Center shall report a value of ''Y'' when the ability of an order to execute has been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt. A Trading Center shall report a value of ''N'' when the ability of an order to execute has not been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt.

In addition, proposed Supplementary Material .03 requires that, for Appendix B.I purposes, Participants shall classify all orders in Pilot and Pre-Pilot Data Collection Securities that may trade in a foreign market as fully executed domestically or fully or partially executed on a foreign market. For purposes of Appendix B.II, Participants shall classify all orders in Pilot and Pre-Pilot Data Collection Securities that may trade in a foreign market as: Directed to a domestic venue for execution; may only be directed to a foreign venue for execution; or fully or partially directed to a foreign venue at the discretion of a member.[31]

In proposed Supplementary Material .04, FINRA proposes to modify the reporting requirements under Appendix B.I.a(14), B.I.a(15), B.I.a(21) and B.I.a(22).[32] Specifically, FINRA proposes the following: Appendix B.I.a(14A): The cumulative number of shares of orders executed from 100 microseconds to less than 1 millisecond after the time of order receipt; Appendix B.I.a(15): The cumulative number of shares of orders executed from 1 millisecond to less than 100 milliseconds after the time of order receipt; Appendix B.I.a(21A): The cumulative number of shares of orders canceled from 100 microseconds to less than 1 millisecond after the time of order receipt; and Appendix B.I.a(22): The cumulative number of shares of orders canceled from 1 millisecond to less than 100 milliseconds after the time of order receipt.

In proposed Supplementary Material .05, FINRA proposes to add the requirement in Appendix B.I.a(33) relating to the share-weighted average BBO Spread to a Trading Center that displays on the ADF. In proposed Supplementary Material .06, FINRA proposes to calculate data based upon the time of order receipt for purposes of Appendix B.I.a(31)–(33) [33] In proposed Supplementary Material .07, FINRA proposes to clarify that, for purposes of Appendix B.I.a(33), only a Trading Center that is displaying in its own name as a Trading Center when executing an order shall enter a value in this field.[34]

In proposed Supplementary Material .08, FINRA proposes to specifically identify certain orders types for purposes of Appendix B reporting. In particular, not held orders, assigned the number (18); clean cross orders, assigned the number (19); auction orders, assigned the number (20); and orders that cannot be otherwise be classified, including, for example, orders received when the NBBO is crossed, assigned the number (21), shall be specifically identified in the data reports.

In proposed Supplementary Material .09, FINRA proposes to clarify the scope of the Plan as it relates to members that only execute orders for limited purposes. Specifically, proposed Supplementary Material .09 clarifies that a member shall not be deemed a Trading Center for purposes of Appendix B of the Plan where that member only executes orders otherwise than on a national securities exchange for the purpose of: (1) Correcting a bona fide error related to the execution of a customer order; (2) purchasing a security from a customer at a nominal price solely for purposes of liquidating the customer's position; or (3) completing the fractional share portion of an order.[35]

In proposed Supplementary Material .10, FINRA clarifies that Trading Centers must begin the data collection

[29] *See* Partial Amendment No. 1. FINRA has requested an exemption from the Plan related to this provision. *See* Exemption Request, *supra* note 17.

[30] *See* National Market System Plan to Address Extraordinary Market Volatility, Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (''Limit Up Limit Down Plan'').

[31] *See* Partial Amendment No. 1.

[32] FINRA has requested an exemption from the Plan related to this provision. *See* Exemption Request, *supra* note 17. Appendix B.I.a(14) requires reporting of the cumulative number of shares of orders executed from 0 to less than 100 microseconds after the time of order receipt; Appendix B.I.a(15) requires reporting of the cumulative number of shares or orders executed from 100 microseconds to less than 100 milliseconds after the time of order receipt; Appendix B.I.a(21) requires reporting of the cumulative number of shares of orders cancelled from 0 to less than 100 microseconds after the time of order receipt; and Appendix B.I.a(22) requires reporting of the cumulative number of shares or orders cancelled from 100 microseconds to less than 100 milliseconds after the time of order receipt.

[33] FINRA has requested an exemption from the Plan related to this provision. *See* Exemption Request, *supra* note 17.

[34] FINRA believes that the Appendix B.I.a(33) reporting requirement is only relevant for a Trading Center that is a display venue and not Trading Centers that may display through other Trading Centers (such as a market maker displaying a quote on a national securities exchange).

[35] FINRA notes that when a member purchases a fractional share from a customer, the Trading Center that executes the remaining whole shares of that customer order would be subject to Appendix B of the Plan.

required pursuant to Appendix B.I.a(1) through B.II.(y) to the Plan and Item I of Appendix C to the Plan on April 4, 2016. In addition, FINRA proposes that it will provide information to the SEC within 30 calendar days following month end and make such data publicly available on its Web site pursuant to Appendix B and C to the Plan at the beginning of the Pilot Period.[36]

In proposed Supplementary Material .11, FINRA proposes for purposes of Item I of Appendix C that the Participants shall calculate daily Market Maker realized profitability statistics for each trading day on a last-in, first out (LIFO) basis using reported trade price and shall include only trades executed on the subject trading day.[37] The daily LIFO calculation shall not include any positions carried over from previous trading days. The proposal also provides that for purposes of Item I.c of Appendix C, the Participants shall calculate daily Market Maker unrealized profitability statistics for each trading day on an average price basis. Specifically, the Participants must calculate the volume weighted average price of the excess (deficit) of buy volume over sell volume for the current trading day using reported trade price. The gain (loss) of the excess (deficit) of buy volume over sell volume shall be determined by using the volume weighted average price compared to the closing price of the security as reported by the primary listing exchange. In calculating unrealized trading profits, the Participant shall also report the number of excess (deficit) shares held by the Market Maker, the volume weighted average price of that excess (deficit) and the closing price of the security as reported by the primary listing exchange used in reporting unrealized profit.

In proposed Supplementary Material .12, FINRA proposes to identify the securities that will be subject to the data collection requirements prior to the commencement of the Pilot Period. Proposed Supplementary Material .12 defines ''Pre-Pilot Data Collection Securities'' as the securities designated by the Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C to the Plan for the Pre-Pilot Period. The Participants shall compile the list of Pre-Pilot Data Collection Securities by selecting all NMS stocks with a market capitalization of $5 billion or less, a Consolidated Average Daily Volume (''CADV'') of 2 million shares or less and a closing price of $1 per share or more. The market capitalization and the closing price thresholds shall be applied to the last day of the Pre-Pilot measurement period, and the CADV threshold shall be applied to the duration of the Pre-Pilot measurement period. The Pre-Pilot measurement period shall be the three calendar months ending on the day when the Pre-Pilot Data Collection Securities are selected. The Pre-Pilot Data Collection Securities shall be selected thirty days prior to the commencement of the six-month Pre-Pilot Period. FINRA notes that beginning with the first trading day of the Pilot Period through six months after the end of the Pilot Period, the data collection requirements will become applicable to the Pilot Securities only.

Finally, proposed Supplementary Material .13 provides that the Rule shall be in effect during a pilot period to coincide with the Pilot Period for the Plan (including any extensions to the Pilot Period for the Plan).

IV. Discussion and Findings

After careful review of the proposal and the comment letters, the Commission finds that the proposed rule change, as modified by Partial Amendment No. 1, is consistent the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association.[38] Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[39] which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. In addition, the Commission finds that the proposed rule change is consistent with Section 15A(b)(9) of the Act,[40] which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

The Commission has previously stated that the Tick Size Pilot set forth in the Plan should provide a data-driven approach to evaluate whether certain changes to the market structure for Pilot Securities would be consistent with the Commission's mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.[41] As discussed below, the Commission believes that FINRA's proposal is consistent with the requirements of the Act, and would further the purpose of the Plan to provide measurable data.

FINRA, as a Participant in the Plan, has an obligation to comply, and enforce compliance by its members, with the terms of the Plan. Rule 608(c) of Regulation NMS provides that ''[e]ach self-regulatory organization shall comply with the terms of any effective national market system plan of which it is a sponsor or participant. Each self-regulatory organization also shall, absent reasonable justification or excuse, enforce compliance with any such plan by its members and persons associated with its members.'' [42] FINRA's proposed Rule 6191(b) would impose compliance obligations on its members with the data collection requirements set forth in Appendices B and C to the Plan. The Commission also believes the proposal is consistent with the Act because it is designed to assist FINRA in meeting its regulatory obligations pursuant to Rule 608 of Regulation NMS and the Plan.[43]

FINRA proposes to use OATS to collect the Trading Center data specified in Appendix B.I and II under the Plan from its members. FINRA proposes changes to OATS to require new data elements that are necessary to accommodate the data requirements under the Plan. The new OATS requirements will only apply to those members that operate a Trading Center subject to the Tick Size Pilot and for which FINRA is the DEA. In its letter, FIF recognized that by using OATS, ''FINRA has taken much of the burden from industry members in terms of categorization of orders and calculation of execution quality and market makers' profitability statistics.'' [44] The Commission believes that the use of OATS to collect Tick Size Pilot data from FINRA members should facilitate

[36] FINRA has requested an exemption from the Plan related to this provision. *See* Exemption Request, *supra* note 17.

[37] FINRA has requested an exemption from the Plan related to this provision. *See* Exemption Request, *supra* note 17.

[38] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[39] 15 U.S.C. 78*o*–3(b)(6).

[40] 15 U.S.C. 78*o*–3(b)(9).

[41] *See* Approval Order, *supra* note 3.

[42] 17 CFR 242.608(c).

[43] Sections II.B and IV of the Plan each require Participants to comply with, and enforce compliance by its members, with the Plan. *See* Approval Order, 80 FR at 27548, *supra* note 3.

[44] *See* FIF Letter I. In its letter, Thomson Reuters stated their understanding of several OATS reports, including the Tick Size Participation Flag, the Display Flag and the Routable Flag. *See* Thomson Reuters Letter.

the efficient implementation of the data collection requirements under the Plan because FINRA members will be able to utilize an existing system. Further, the use of OATS should enhance the usefulness of the data because the data will be collected and submitted to the Commission and the public in a consistent format.

FINRA proposes several new data elements for OATS to accommodate the Tick Size Pilot data requirements, including whether the member is a Trading Center in either a Pilot Security or Pre-Pilot Data Collection Security, if the member is an ADF Market Participant and whether the order is routable. The Commission finds that these new data elements support the data collection requirements under the Tick Size Pilot.

In addition, FINRA originally proposed that members identify in OATS those orders that rely on the Retail Investor Order exception in Test Groups Two and Three. As discussed below, this provision was further clarified in proposed Supplemental Material .02 by noting that for purposes of reporting, a Trading Center shall report a ''Y'' when it is relying upon the Retail Investor Order exceptions in Test Groups Two and Three and ''N'' in all other instances.[45] The two commenters to the proposal noted that identifying orders that rely on the Retail Investor Order exceptions prior to execution would be difficult.[46] One commenter stated that it would be operationally complex to determine the eligibility of a Retail Investor Order flag on a new order and that Trading Centers may choose not to avail themselves of the exceptions even if the new order met the definition of a Retail Investor Order.[47] The commenters suggested that FINRA require the identification of orders that rely on the Retail Investor Order exceptions on execution reports rather than New Order Reports, Combined Order/Route or Cancel/Replace reports.

In Partial Amendment No. 1, FINRA proposes to amend its proposed rule to require the identification of Retail Investor Orders that rely on the exceptions in Test Groups Two and Three on OATS execution reports. FINRA noted that it understood that firms may not make the ultimate decision of whether an exception will be relied upon until the time of execution and therefore, it may be operationally more efficient to reflect the Retail Investor Order flag on execution reports.

The Commission finds that the amended FINRA rule requiring the identification of Retail Investor Orders on OATS execution reports to be consistent with the Act. The FINRA rule should implement the requirement under Appendix B.II.(n) in a manner that should be more efficient for Trading Centers.

In addition, FINRA originally proposed to require its members to record information in OATS related to an order or part of an order that is executed on a venue that does not provide execution information to FINRA. One commenter stated that it would be difficult and costly to link orders to the OATS execution report process.[48] The commenter noted that it believed that the largest majority of ''away trades'' on a U.S. venue that is not a FINRA member may be those executed on the Chicago Stock Exchange (''CHX'') and recommended that FINRA work with CHX so that an OATS-like execution report could be tied to OATS route reports to collect the necessary data. In its response, FINRA noted that it had reached an agreement with CHX to obtain data for executions that occur on CHX and therefore, FINRA amended its proposed rule so that members would not need to submit data related to executions that occur on CHX.[49] The Commission finds that FINRA's proposal is consistent with the Act because it will provide FINRA with the data it is required to collect under the Plan in a cost effective and efficient manner.

FINRA's proposed rule contains several provisions related to the Market Maker data required under the Plan.[50] Specifically, FINRA proposes under FINRA Rule 6191(b)(3) to collect from its members that are Market Makers and for which FINRA is the DEA, the Daily Market Marker Participation Statistics, required under Appendix B.IV to the Plan.[51] FINRA proposes to collect data related to activity conducted on any Trading Center in furtherance of its status as a Market Maker. FINRA proposes to transmit the data it collects under this paragraph to the Participants that operate Trading Centers on which the Market Maker activity occurred. In addition, FINRA will transmit the data related to activity conducted otherwise than on a national securities exchange to the Commission.

The Commission notes that the FINRA proposal expands upon the data required under Appendix B.IV to the Plan. Appendix B.IV to the Plan only requires FINRA to collect data from Market Makers who register with its ADF. As provided, Appendix B.IV to the Plan would not allow a complete evaluation of Market Maker participation in Pilot Securities. The Commission believes that the FINRA proposal should enhance the ability of the Commission and the public to assess the impact of the Tick Size Pilot on Market Maker participation. The increased coverage of Market Maker

[45] The Commission notes that it has granted FINRA an exemption from Rule 608(c) related to this provision. *See* SEC Exemption Letter, *supra* note 17.

[46] *See* FIF Letter I and Thomson Reuters Letter.

[47] *See* Thomson Reuters Letter.

[48] *See* FIF Letter I.

[49] *See* Partial Amendment No. 1. In Partial Amendment No. 1, FINRA also proposes to remove the requirement that members provide information about foreign executions. FINRA will obtain information from OATS about orders routed to a foreign market. The Commission believes that this proposal is consistent with the Act because it would allow for analysis to be conducted on the impact of the Tick Size Pilot on routing to foreign markets.

[50] One commenter requested confirmation that a firm that is neither a Trading Center nor a Market Maker but becomes a Market Maker in a Pilot Security during either the Pre-Pilot or Pilot Period would not have to retroactively provide data. *See* FIF Letter I. FINRA, in response, clarified that there is no retroactive reporting requirement for Trading Centers that become Market Makers during the Pre-Pilot or Pilot Period, and that Market Makers only need to report data on those days in with they are trading as a Registered Market Maker. *See* FINRA Response.

[51] In its second comment letter, one commenter noted that FINRA published new technical specifications for Market Maker Transaction Reporting on January 11, 2016 and raised comments on the technical specifications. *See* FIF Letter II. Specifically, the commenter stated its belief that the new technical specifications impact market makers' ability to meet the April 4, 2016 date for transaction reporting. The commenter noted that identifying the execution venue would add complexity that impacts market makers to meet the April 4, 2016 date, and suggests that the identification should not be required in certain situations. The commenter also noted that correcting mismatched records would be resource intensive and requested a grace period for compliance. Finally, the commenter raised concerns with respect to how riskless principal trades are reported, and offered suggestions on alternate reporting methods. With respect to the execution venue and mismatched trades, FINRA responded that the updated Market Maker Transaction Reporting specifications would allow FINRA to determine the ultimate execution venue for each trade, even if the Market Makers do not know such venue. FINRA would use identifiers to link Market Markers trades to the final destination where the trade was executed, using exchange data and OATS data reported to FINRA. Correcting mismatched records would allow the linkage process to result in complete and accurate Market Maker participation statistics. FINRA further stated that it would work with the Commission and the other Participants to evaluate the mismatched records issue and make any determination as to whether such correction continues to be necessary. With respect to riskless principal trades reporting, FINRA responded that such trades must be eliminated from the Market Maker participation statistics, in order to evaluate the Plan. FINRA noted that it has attempted to provide industry participants with as much advance notice as possible to comply with the proposed requirements and that it will continue to work with members to ensure that they have the information and clarity needed to implement the new reporting requirements.

data should provide greater insight on Market Maker participation under the Tick Size Pilot by including Market Maker participation in the over-the-counter market.

One commenter raised concerns about the data collected by FINRA under Rule 6191(b)(3)(B) and provided to each Participant where the Market Maker activity occurred.[52] The commenter requested that each Participant provide clear assurances that the data provided to them under the Tick Size Pilot would not be used for commercial or competitive purposes. In its response, FINRA stated that it does not intend to use the data collected under the Tick Size Pilot for commercial or competitive purposes.[53]

In its letter, FIF also raised concerns about Tick Size Pilot data being published and that because some Pilot Securities could trade infrequently that the data, even if unattributed may be reverse-engineered to identify counter-parties.[54] In its response, FINRA noted that the Plan sets forth the publication requirements of Participants. However, FINRA noted that it appreciates members confidentiality concerns and intends to work to ensure that the Tick Size Pilot data is made available consistent with the requirements of the Plan.[55]

The Commission notes that the Plan provides for the public dissemination of Tick Size Pilot data but states that ''[t]he data made publicly available shall not identify the trading center that generated the data.'' [56] The Commission also notes that Participants are scheduled to start collecting data on April 4, 2016, but the Participants have requested not to make the data publicly available until August 30, 2016.[57] The Commission notes that this could give Participants the opportunity to evaluate the data to determine whether the FIF's concerns related to the disclosure of the identity of Trading Centers exist, and if so, whether additional measures are necessary to prevent the disclosure of attributed Trading Center data. The Commission finds that proposed Rule 6191(b) is consistent with the Act because it implements provisions of the Plan.

FINRA's proposed Rule 6191(b)(4) contains the provisions by which FINRA will collect, submit to the Commission, and make publically available Market Maker Profitability data required under Appendix C of the Plan. The Commission finds that these provisions are consistent with the Act because they implement provisions of the Plan.

FINRA also proposes Rule 6191(b)(5), which contains provisions whereby FINRA will collect data and calculate the Market Maker Participation Statistics and Market Maker Profitability Data. Under proposed Rule 6191(b)(5), FINRA members that are Market Makers and for which FINRA is the DEA shall submit certain data elements, which FINRA will use to calculate Market Maker Participation Statistics and Market Maker Profitability. The Commission finds that this proposal is consistent with the Act because it implements provisions of the Plan. Further, this provision should lessen costs for FINRA members as FINRA will conduct the necessary calculations. Finally, the proposal should also enhance the usefulness of the data by making the calculations consistent across FINRA members.

Further, in proposed Supplementary Material .11, FINRA proposes to specify how it will calculate raw Marker Maker realized trading profits as required under Appendix C.I.(b) under the Plan. Under the Appendix C.I.(b), the share prices used to calculate raw Market Maker realized trading profits is determined using a LIFO-like method. FINRA proposes to use a methodology that yields LIFO-like results, rather than utilizing a LIFO-like method for purposes of the calculation.

In addition, FINRA proposes to calculate the unrealized trading profits of Market Makers as required under Appendix C.I.(c). Appendix C.I.(c) provides that ''[r]aw Market Maker unrealized trading profits—the difference between the purchase or sale price of the end-of-day inventory position of the Market Maker and the Closing Price. In the case of a short position, the Closing Price for the sale will be subtracted. In the case of a long position, the purchase price will be subtracted from the Closing Price'' which is to be provided as a separate data element. FINRA proposes to calculate daily Market Maker unrealized profitability statistics for each trading day on an average basis. Specifically, FINRA proposes to calculate the volume-weighted average price of the excess (deficit) of buy volume over sell volume for the current trading day using reported trade prices. Further, the gain (loss) of the excess (deficit) of buy volume over sell volume shall be determined by using the volume weighted average price compared to the closing price of the security as reported by the primary listing exchange. FINRA shall report the number of excess (deficit) shares held by the Market Maker, the volume weighted average price of that excess (deficit) and the closing price of the security as reported by the primary listing exchange.

The Commission believes that proposed Supplementary Material .11 is consistent with the Act because the proposed calculations will provide measurable data that is consistent with what was originally sought to be captured under the Plan. Therefore, the proposal will continue to allow analysis of the impact of the Tick Size Pilot on Market Maker Profitability. The Commission also believes that the proposed calculation will also reduce implementation costs for market participants because FINRA will conduct the calculations for its members.[58]

FINRA proposes several provisions that would, among other things, specify to FINRA members how to report Plan data. Specifically, FINRA proposes in Supplementary Material .02 to clarify how a Trading Center will report Retail Investor Orders under Appendix B.II.(n). Specifically, FINRA proposes that only those orders that rely on the Retail Investor Order exceptions in Test Group Two or Three would be identified with ''Y,'' all other orders would be identified with a ''N.'' The Commission notes that commenters supported the FINRA clarification but, as discussed above, requested further clarification as to which OATS report the Retail Investor Order flag should be added. The Commission believes that this proposal, as modified by Partial Amendment No. 1, is consistent with the Act as it clarifies existing Plan language in a way that maintains the usefulness of the data while also reducing implementation costs.[59]

FINRA proposes to report certain data elements based upon modified time fields. Specifically, under Appendix B.Ia.(14) and B.I.a.(15), the number of cumulative shares of orders executed is required to be reported based upon a set time frame after the time of order receipt. Under Appendix B.I.a(21) and

[52] *See* FIF Letter I.

[53] *See* FINRA Response.

[54] *See* FIF Letter I.

[55] *See* FINRA Response.

[56] This requirement is contained in Section VII.A of the Plan. *See* Approval Order, 80 FR at 27551, *supra* note 3.

[57] *See* Exemption Request, *supra* note 17. The Commission notes that it has granted FINRA an exemption from Rule 608(c) of Regulation NMS related to this provision. *See* SEC Exemption Letter, *supra* note 17.

[58] The Commission notes that it has granted FINRA an exemption from Rule 608(c) related to this provision. *See* SEC Exemption Letter, *supra* note 17.

[59] The Commission notes that it has granted FINRA an exemption from Rule 608(c) related to this provision. *See* SEC Exemption Letter, *supra* note 17.

B.I.a(22), the number of cumulative shares of orders canceled is required to be reported based upon a set time frame after the time of order receipt. The proposed rules would add finer increments to the Plan reporting requirements and isolate microsecond and millisecond reporting requirements into separate data elements. According to the Participants, not all Participants or non-Participant Trading Centers currently capture or report all orders and trades in either microseconds or milliseconds.[60] One commenter noted that OATS formats do not allow for reporting in microseconds.[61] FINRA responded that a member is not required to report in an increment of time that is not accepted or permitted by FINRA systems—if a member maintains its internal timestamps in microseconds, the member would not be required to report to OATS in microseconds because OATS currently does not support microseconds. The Commission notes that the proposal merely shifts the time reporting elements into separate reporting lines to accommodate different reporting capabilities. The data reported under FINRA's rules and the clarification from FINRA are consistent with the intent of the Plan. Accordingly, the Commission finds that the proposal is consistent with the Act.[62]

Under Appendix B.I.a(31)–(33), certain data elements are calculated based upon prices measured at the time of order execution. FINRA proposes to measure prices based upon the time of order receipt. According to the Participants, the time of order receipt is more consistent with the goal of observing the effect to the Tick Size Pilot on liquidity.[63] The Commission finds that the proposal is consistent with the Act because it should make the data more useful for measuring the impact of the Tick Size Pilot. Further, the Commission notes that the time of order receipt is used in other current rules, which should lessen implementation burdens for gathering these data elements.[64]

FINRA also proposes to require that Trading Centers that display on the ADF to report under Appendix B.I.a.(33) and that only those Trading Centers that display in their own name shall be subject to this section. The Commission believes that these additional requirements are consistent with the Act. The provisions should make the Tick Size Pilot data more complete by including additional Trading Centers' data under this reporting requirement.

FINRA proposes several provisions that clarify current reporting obligations. For example, FINRA proposes that certain order types be separately reported in discrete data lines, such as not held orders, auction orders, and clean cross orders.[65] The Commission notes that these orders are currently included under Appendix B to the Plan. The FINRA proposal clarifies how these orders would be identified for reporting purposes, which should facilitate reporting and provide for better analysis.

Further, FINRA proposes that a field be attached to signify whether an order to be executed has been affected by LULD bands.[66] In addition, FINRA proposes, for purposes of Appendix B.I, to classify all orders in Pilot and Pre-Pilot Securities that may trade in a foreign market as fully executed domestically or fully or partially executed on a foreign market. Finally, FINRA proposes, for purposes of Appendix B.II, to classify all orders in Pilot and Pre-Pilot Securities that may trade in a foreign market as directed to a domestic venue for execution; may only be directed to a foreign venue for execution; or fully or partially directed to a foreign venue at the discretion of the member. The Commission finds that these additional discrete data reporting elements are consistent with the Act. They should further clarify the Tick Size Pilot data elements and provide guidance to reporting Trading Centers.

Under proposed Supplementary Material .09, FINRA proposes to clarify that for purposes of Appendix B to the Plan, certain members shall not be considered Trading Centers. Specifically, members that execute orders over-the-counter for the purpose of correcting bona fide errors of customer orders, purchase securities from customers at a nominal price solely for the purposes of liquidating customers' positions or completing a fractional share portion of an order, would not be considered a Trading Center for purposes of Appendix B of the Plan. One commenter noted that this proposal provides a better understanding of the type of activity that would deem a firm to be a Trading Center and agreed with the criteria proposed.[67] The Commission finds that this proposal is consistent with the Act as it further clarifies what is required under the Plan. As noted in the Approval Order, the data requirements are reasonably designed to provide measurable data that should facilitate the ability of the Commission, the public, and market participants to review and analyze the effect of tick size on the trading, liquidity, and market quality of Pilot Securities.[68] The Commission believes that it is appropriate to exclude such discrete trading activities identified in proposed Supplementary Material .09 without harming the usefulness of the data.

FINRA proposes to identify Pre-Pilot Data Collection Securities for purposes of the data collection requirements under the Plan that are required to begin six months before the Pilot Period.[69] The data collection requirements are scheduled to begin on April 4, 2016.[70] However, according to Section V of the Plan, the identification of Pilot Securities will occur during the six-

[60] *See* Exemption Request, *supra* note 17.

[61] *See* FIF Letter I.

[62] The Commission notes that it has granted FINRA an exemption from Rule 608(c) related to this provision. *See* SEC Exemption Letter, *supra* note 17.

[63] *See* Exemption Request, *supra* note 17.

[64] *See e.g.* Rule 605 of Regulation NMS. The Commission notes that it has granted FINRA an exemption from Rule 608(c) related to this provision. *See* SEC Exemption Letter, *supra* note 17.

[65] One commenter requested confirmation that no additional input would be required for Trading Centers beyond what was specified in the OATS specifications published on October 12, 2015 and that FINRA would be responsible for determining the order types based on the trade details provided by Trading Centers in their OATS reports. *See* FIF Letter I. FINRA responded by clarifying that members that operate Trading Centers would not be required to provide additional data to complete these fields beyond what has already be required in the OATS Reporting Technical Specifications. *See* FINRA Response.

[66] In its letter, FIF requested clarification that FINRA would provide this data element. *See* FIF Letter I. FINRA responded that no additional reporting will be required by members that operate Trading Centers to populate this field beyond what has already been set forth in OATS Reporting and Technical Specifications. *See* FINRA Response.

[67] *See* FIF Letter I.

[68] *See* Approval Order, *supra* note 3.

[69] One commenter requested information about how market participants will obtain the list of impacted securities and other details about Pre-Pilot Data Collection Securities and Pilot Securities. *See* FIF Letter I. FINRA responded that it had published detailed guidance on the format and content of the lists, including the daily change lists. According the FINRA, this guidance includes information on how firms may retrieve the lists in an automated format. Further, FINRA noted that on February 10, 2016, FINRA and the primary listing markets published a Tick Size Sample List that may be used for testing until the actual Pre-Pilot Data Collection Securities list is determined on March 4, 2016.

[70] One commenter suggested that there is insufficient time to complete implementation of the data collection requirements. *See* FIF Letters I and II. The Commission notes that FINRA issued data collection specifications in October 2015 and January 2016 and published FAQs for Trading Centers and Market Makers in October 2015. FINRA also noted that it is engaged in continuing discussions with industry participants, including the commenter, on implementing the data collection requirements and that it would continue to work with members to ensure that they have the information and clarity needed to implement the new reporting requirements. *See* FINRA Response. Accordingly, the Commission believes that the current implementation schedule is appropriate.

month Pre-Pilot Period. FINRA has proposed to identify a wider universe of securities for which data will be collected during the Pre-Pilot Period so that once the Pilot Period begins, there should be a complete data set for Pilot Securities.

The Commission finds that the proposal to identify Pre-Pilot Data Collection Securities for which Tick Size Pilot data will be collected during the Pre-Pilot Period is consistent with the Act. The Commission understands that it could be costly for Trading Centers to backfill the data requirements to collect the Pre-Pilot Period data if Trading Centers were forced to wait until the list of Pilot Securities is developed as specified under the Plan. Therefore, FINRA's proposal to establish a slightly broader universe of securities that likely would be subject to the Tick Size Pilot is reasonable for purposes of collecting data during the Pre-Pilot Period. The Commission believes that the proposal should help to ensure that there is a complete data set for Pilot Securities when the Pilot Period commences and should help to reduce the cost and complexity of implementing the data collection requirements.

In proposed Supplementary Material .10, FINRA proposes to submit data generated and collected under Appendices B and C of the Plan within 30 days following the month end and to make certain data publicly available on its Web site at the beginning of the Pilot Period.[71] In the Exemption Request, the Participants sought to provide Pre-Pilot Period data under a revised schedule.[72] Specifically, the Participants requested to provide the initial submission of pre-Pilot Period data on August 30, 2016, which would include data for the months of April, May, June and July. The Participants requested this modified schedule in order to conduct testing to ensure the accuracy of the data prior to the first transmission to the Commission and publication of the data on their respective Web sites.

The Commission finds that proposed Supplementary Material .10 is consistent with the Act because it will permit FINRA to conduct testing to ensure the accuracy of the data it collects before it is submitted to the Commission and published on its Web site. The data gathered during the Pre-Pilot Period is intended to provide a baseline for analysis against the data collected during the Pilot Period. The analysis on the impact of the Tick Size Pilot can only begin once the Pilot Period begins. Therefore, the Commission believes that FINRA's proposal is reasonable as the delay in submitting and publishing Pre-Pilot Period data should not impact the assessment of the Tick Size Pilot.

Finally, in proposed Supplementary Material .13, FINRA specifies that the rule should be in effect during a pilot period to coincide with the Pilot Period.[73] Accordingly, the rule would become effective once the Pre-Pilot Period begins.[74] The Commission believes that this proposal is consistent with the Act because it reinforces and clarifies important dates and obligations under the Plan.

The Commission finds that FINRA's proposed rules to implement the Tick Size Pilot data collection requirements are consistent with the requirements of the Act. The proposal clarifies and implements the data collection requirements set forth in the Plan.

V. Solicitation of Comments of Partial Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning Partial Amendment No. 1, including whether the proposed rule change, as modified by Partial Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2015–048 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2015–048. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2015–048 and should be submitted on or before March 15, 2016.

VI. Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act, to approve the proposed rule change, as modified by Partial Amendment No. 1, prior to the 30th day after the date of publication of Partial Amendment No. 1 in the **Federal Register**. Partial Amendment No. 1 requires FINRA members to provide the Retail Investor Order flag in OATS execution-related reports; deletes the requirement that FINRA members report data for execution on venues that do not report to FINRA; and changes the reference in proposed Supplementary Material .03 for securities that trade in both the U.S. and in a foreign market from ''dually-listed'' to ''securities that may trade in a foreign market.'' The Commission believes that these changes provide greater clarity on the application of the proposal. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Partial Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[75] that the

[71] The Commission notes that is has granted FINRA an exemption from Rule 608(c) related to this provision. *See* SEC Exemption Letter *supra* note 17.

[72] *See* Exemption Request, *supra* note 17.

[73] One commenter submitted specific questions related to the implementation of the data collection rules. *See* FIF Letter I, Appendix. FINRA stated in its response that it is engaged in a continuing discussion with FIF and other industry participants with respect to the issues raised in the appendix of FIF's comment letter.

[74] *See also* proposed Supplementary Material .10.

[75] 15 U.S.C. 78s(b)(2).

proposed rule change, as modified by Partial Amendment No.1 (SR–FINRA–2015–048) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[76]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03668 Filed 2–22–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension: Rule 20a–1, SEC File No. 270–132, OMB Control No. 3235–0158.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 20a–1 (17 CFR 270.20a-1) was adopted under Section 20(a) of the Investment Company Act of 1940 (''1940 Act'') (15 U.S.C. 80a–20(a)) and concerns the solicitation of proxies, consents, and authorizations with respect to securities issued by registered investment companies (''Funds''). More specifically, rule 20a–1 under the 1940 Act (15 U.S.C. 80a–1 *et seq.*) requires that the solicitation of a proxy, consent, or authorization with respect to a security issued by a Fund be in compliance with Regulation 14A (17 CFR 240.14a–1 *et seq.*), Schedule 14A (17 CFR 240.14a–101), and all other rules and regulations adopted pursuant to section 14(a) of the Securities Exchange Act of 1934 (''1934 Act'') (15 U.S.C. 78n(a)). It also requires, in certain circumstances, a Fund's investment adviser or a prospective adviser, and certain affiliates of the adviser or prospective adviser, to transmit to the person making the solicitation the information necessary to enable that person to comply with the rules and regulations applicable to the solicitation. In addition, rule 20a–1 instructs Funds that have made a public offering of securities and that hold security holder votes for which proxies, consents, or authorizations are not being solicited, to refer to section 14(c) of the 1934 Act (15 U.S.C. 78n(c)) and the information statement requirements set forth in the rules thereunder.

The types of proposals voted upon by Fund shareholders include not only the typical matters considered in proxy solicitations made by operating companies, such as the election of directors, but also include issues that are unique to Funds, such as the approval of an investment advisory contract and the approval of changes in fundamental investment policies of the Fund. Through rule 20a–1, any person making a solicitation with respect to a security issued by a Fund must, similar to operating company solicitations, comply with the rules and regulations adopted pursuant to Section 14(a) of the 1934 Act. Some of those Section 14(a) rules and regulations, however, include provisions specifically related to Funds, including certain particularized disclosure requirements set forth in Item 22 of Schedule 14A under the 1934 Act.

Rule 20a–1 is intended to ensure that investors in Fund securities are provided with appropriate information upon which to base informed decisions regarding the actions for which Funds solicit proxies. Without rule 20a–1, Fund issuers would not be required to comply with the rules and regulations adopted under Section 14(a) of the 1934 Act, which are applicable to non-Fund issuers, including the provisions relating to the form of proxy and disclosure in proxy statements.

The staff currently estimates that approximately 1,196 proxy statements are filed by Funds annually. Based on staff estimates and information from the industry, the staff estimates that the average annual burden associated with the preparation and submission of proxy statements is 85 hours per response, for a total annual burden of 101,660 hours (1,196 responses × 85 hours per response = 101,660). In addition, the staff estimates the costs for purchased services, such as outside legal counsel, proxy statement mailing, and proxy tabulation services, to be approximately $30,000 per proxy solicitation.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 17, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03641 Filed 2–22–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77156; File No. SR–BYX–2016–02]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend the Certificate of Incorporation and Bylaws of the Exchange's Ultimate Parent Company, BATS Global Markets, Inc.

February 17, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 9, 2016, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the certificate of incorporation and bylaws of the Exchange's ultimate parent company, BATS Global Markets, Inc. (the ''Corporation'').

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[76] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 16, 2015, the Corporation, the ultimate parent company of the Exchange, filed a registration statement on Form S–1 with the Commission seeking to register shares of common stock and to conduct an initial public offering of those shares, which will be listed for trading on BATS Exchange, Inc. (the ''IPO''). In connection with its IPO, the Corporation intends to (i) amend and restate its current certificate of incorporation (the ''Current Certificate of Incorporation'') and adopt these changes as its Amended and Restated Certificate of Incorporation (the ''New Certificate of Incorporation''), and (ii) amend and restate its current bylaws (the ''Current Bylaws'') and adopt these changes as its Amended and Restated Bylaws (the ''New Bylaws''). It is anticipated that the New Certificate of Incorporation and the New Bylaws will become effective (the ''Effective Date'') the moment before the closing of the IPO.

The amendments to the Current Certificate of Incorporation include, among other things, (i) increasing the total number of authorized shares of capital stock of the Corporation, (ii) effecting a conversion and elimination of one class of non-voting common stock and reclassifying the remaining class of non-voting common stock, (iii) establishing a classified board structure, (iv) prohibiting cumulative voting in the election of directors, (v) eliminating the process for action by written consent of stockholders, (vi) revising certain requirements for approval of future amendments to the New Certificate of Incorporation, and (vii) and changing the name of the Corporation from ''BATS Global Markets, Inc.'' to ''Bats Global Markets, Inc.''

The amendments to the Current Bylaws include, among other things, (i) revising the procedures for stockholder proposals and nomination of directors, (ii) revising the authority to call special meetings of the stockholders, (iii) eliminating the process for action by written consent of stockholders, (iv) establishing a classified board structure, (v) revising the requirements for removal of directors, (vi) removing duplicative provisions relating to the indemnification of officers and directors that are contained in the Current Certificate of Incorporation (and are proposed to be maintained in the New Certificate of Incorporation), (vii) revising certain requirements for approval of future amendments to the New Bylaws, (viii) eliminating the authority to make loans to corporate officers, and (ix) changes to reflect the change of the Corporation's name. The amendments to the Corporation's Current Certificate of Incorporation and Current Bylaws are intended primarily to reflect (i) the adoption of provisions more customary for publicly-owned companies, (ii) changes to the Corporation's capital structure, specifically with respect to non-voting common stock, and (iii) stylistic and other non-substantive changes.[3]

The purpose of this rule filing is to submit for Commission approval the New Certificate of Incorporation and the New Bylaws. The changes described herein relate to the certificate of incorporation and bylaws of the Corporation only, not to the governance of the Exchange. The Exchange will continue to be governed by its existing certificate of incorporation and bylaws. The stock in, and voting power of, the Exchange will continue to be directly and solely held by BATS Global Markets Holdings, Inc., an intermediate holding company wholly-owned by the Corporation.

The Corporation was originally formed as BATS Global Markets Holdings, Inc. on August 22, 2013 as a new ultimate holding company for the Exchange as a result of a business combination involving the holding company of the Exchange at the time and Direct Edge Holdings LLC.[4]

1. The New Certificate of Incorporation

a. Capital Stock; Voting Rights

The current capital structure of the Corporation is comprised of 75 million authorized shares of Common Stock, consisting of 55 million shares of Voting Common Stock, 10 million shares of Class A Non-Voting Common Stock and 10 million shares of Class B Non-Voting Common Stock. Article Fourth(a)(i) of the New Certificate of Incorporation would revise this capital structure such that there would be 150 million total authorized shares of capital stock, consisting of 125 million shares designated as Voting Common Stock and a single class of 10 million shares designated as Non-Voting Common Stock (together with Voting Common Stock, ''Common Stock''), as well as 15 million shares of Preferred Stock.

The Corporation's existing Class A Non-Voting Common Stock is currently held by International Securities Exchange Holdings, Inc. (''ISE Holdings''). Pursuant to the Investor Rights Agreement dated January 31, 2014, among the Corporation and its stockholders signatory thereto (the ''Investor Rights Agreement''), and the Current Certificate of Incorporation, ISE Holdings' shares of Class A Non-Voting Common Stock may convert into Voting Common Stock (i) automatically with respect to any shares transferred to persons other than related persons of ISE Holdings; (ii) upon the termination of the Investor Rights Agreement, with such agreement (other than with respect to registration rights) terminating upon the IPO; or (iii) automatically with respect to any shares of Class A Non-Voting Common Stock sold by ISE Holdings in any public offering of the stock of the Corporation. In addition, ISE Holdings' shares of Class A Non-Voting Common Stock may convert into Voting Stock at the option of ISE Holdings, provided that ISE Holdings furnishes to the Corporation a written

[3] Certain of the amendments proposed to be adopted in the New Certificate of Incorporation and New Bylaws were previously approved by the Commission in 2011 as part of proposed amendments to the certificate of incorporation and bylaws of the Exchange's ultimate parent company at the time. *See* Securities Exchange Act Release No. 65647 (October 27, 2011), 76 FR 67784 (November 2, 2011) (SR–BYX–2011–021); Securities Exchange Act Release No. 65729 (November 10, 2011), 76 FR 71396 (November 17, 2011) (SR–BYX–2011–022). Although approved, these amendments were not ultimately implemented.

[4] In connection with the Corporation's combination with Direct Edge Holdings LLC, the existing holding company for the Exchange, BATS Global Markets, Inc., changed its name to BATS Global Markets Holdings, Inc., and became an intermediate holding company between the Exchange and BATS Global Markets, Inc. The ownership structure of the Exchange at the time of the business combination and the Current Certificate of Incorporation and Current Bylaws of the Corporation are further described in the Commission's order approving the Exchange's proposed rule changes in connection with the Corporation's business combination with Direct Edge Holdings LLC. *See* Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR–BYX–2013–039; SR–BATS–2013–059).

notice stating that ISE Holdings desires to convert a stated number of shares of Class A Non-Voting Common Stock and the certificates representing such shares.[5]

As a result of these conversion rights, the Corporation expects the Class A Non-Voting Common Stock to convert into Voting Common Stock at the time of the IPO. To effect this conversion, Article Fourth(b)(i) of the New Certificate of Incorporation states that, at the time that the New Certificate of Incorporation becomes effective (the ''Effective Time''),[6] each authorized, issued and outstanding share of Class A Non-Voting Common Stock shall be automatically converted into one share of Voting Common Stock. To simplify the capital structure of the Corporation, Article Fourth(b)(ii) would reclassify each authorized, issued and outstanding share of Class B Non-Voting Common Stock into one share of Non-Voting Common Stock.[7]

Pursuant to Article Fourth(c) of the New Certificate of Incorporation, as proposed to be adopted, all voting power will be vested in Voting Common Stock (except with regard to certain matters relating to the rights of holders of Preferred Stock described below). Specifically, each holder of Voting Common Stock will be entitled to one vote for each share of Voting Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote. Shares of Non-Voting Common Stock are non-voting, except with regard to certain matters that would adversely affect their respective rights as described in the proposed amendments to Article Fourth(c)(ii) of the New Certificate of Incorporation.

Pursuant to Article Fourth(d) of the New Certificate of Incorporation, Non-Voting Common Stock will generally have the conversion features that previously applied to Class B Non-Voting Common Stock under the Current Certificate of Incorporation. Non-Voting Common Stock will be convertible into Voting Common Stock, on a one-to-one basis, following a ''Qualified Transfer,'' as defined in Article Fourth(d)(i).[8] Voting Common Stock will not be convertible into Non-Voting Common Stock.

Except for voting rights and certain conversion features, as described above, Non-Voting Common Stock and Voting Common Stock will generally rank equally and have identical rights and privileges. Because the IPO is expected to be a widely distributed public offering registered pursuant to the Securities Act of 1933 (15 U.S.C. 77a.), the Corporation expects it to be a ''Qualified Transfer,'' for purposes of the conversion feature of the Non-Voting Common Stock,[9] such that any shares of Non-Voting Common Stock sold in the IPO would convert to Voting Common Stock. As a result, purchasers of the Corporation's common stock in the IPO will receive only Voting Common Stock.

Proposed Article Fourth(a)(i) of the New Certificate of Incorporation would increase the Corporation's authorized shares in order to accommodate the reclassification of Class A Non-Voting Common Stock and Class B Non-Voting Common Stock discussed above, while providing sufficient additional authorized shares for future issuances, such as, for example, grants of equity to employees pursuant to a compensation plan.

b. Board of Directors

Article Sixth of the New Certificate of Incorporation would amend certain provisions relating to the Corporation's board of directors to add further specificity and detail, and effect a number of changes to the board of directors of the Corporation.

Article Sixth(a) of the New Certificate of Incorporation would explicitly specify that the business and affairs of the Corporation shall be managed by or under the board of directors and empower the board of the directors to do all such acts and things as may be exercised or done by the Corporation. This provision is intended to restate the power of the Corporation's board in accordance with the General Corporation Law of the State of Delaware, as amended (''Delaware Law'').[10]

Article Sixth(c) of the New Certificate of Incorporation would establish a ''staggered'' or classified board structure in which the directors would be divided into three classes of equal size, to the extent possible. Only one class of directors would be elected each year, and once elected, directors would serve a three-year term. Directors initially designated as Class I directors would serve for a term ending on the date of the 2017 annual meeting of stockholders, directors initially designated as Class II directors would serve for a term ending on the date of the 2018 annual meeting of stockholders, and directors initially designated as Class III directors would serve for a term ending on the date of the 2019 annual meeting of stockholders. The names and addresses of each of the directors initially classified as Class I, Class II and Class III directors are set forth in Article Sixth(c)(ii) of the New Certificate of Incorporation. The Exchange believes that such a classified board structure is common for publicly-held companies, as it has the effect of making hostile takeover attempts more difficult.

Pursuant to Article Sixth(d) of the New Certificate of Incorporation, cumulative voting in the election of directors will be prohibited. If the Corporation were to permit cumulative voting, stockholders would be entitled to as many votes as are equal to the number of voting shares it holds, multiplied by the number of director seats up for election to the board of directors, and such stockholder may allocate all of its votes to one or more directorial candidates, as the stockholder desires. In contrast, in ''regular'' or ''statutory'' voting (*i.e.,* when cumulative voting is prohibited), stockholders may not vote more than one vote per share to any single director nominee. The Exchange believes that cumulative voting is inappropriate for the ultimate parent company of a national securities exchange, as it would increase the likelihood that a

[5] *See* Current Certificate of Incorporation, Art. Fourth, para. (c); Investor Rights Agreement, Section 2.2(j).

[6] It is anticipated that the Effective Time will coincide with the date of the closing of the IPO and will occur immediately prior thereto.

[7] The Exchange understands that the existing Class B Non-Voting Common Stock is, and the Non-Voting Common Stock upon conversion will be, held by certain persons subject to restrictions under the Bank Holding Company Act of 1956 on the extent to which they are permitted to own voting stock of the Corporation or certain types of non-voting stock convertible into voting stock of the Corporation.

[8] A ''Qualified Transfer'' is defined as a sale or other transfer of Non-Voting Common Stock by a holder of such shares: (A) In a widely distributed public offering registered pursuant to the Securities Act of 1933 (15 U.S.C. 77a.); (B) in a private sale or transfer in which the relevant transferee (together with its Affiliates, as defined below, and other transferees acting in concert with it) acquires no more than two percent of any class of voting shares (as defined in 12 CFR 225.2(q)(3) and determined by giving effect to any such permitted conversion of transferred shares of Non-Voting Common Stock upon such transfer pursuant to Article Fourth of the New Certificate of Incorporation); (C) to a transferee that (together with its Affiliates and other transferees acting in concert with it) owns or controls more than 50 percent of any class of voting shares (as defined in 12 CFR 225.2(q)(3)) of the Corporation without regard to any transfer of shares from the transferring holder of shares of Non-Voting Common Stock; or (D) to the Corporation. As used above, the term ''Affiliate'' means, with respect to any person, any other person directly or indirectly controlling, controlled by or under common control with such person, and ''control'' (including, with correlative meanings, the terms ''controlled by'' and ''under common control with'') has the meaning set forth in 12 CFR 225.2(e)(1).

[9] *See* New Certificate of Incorporation, Art. Fourth(d)(i).

[10] *See* Delaware Law Section 141(a).

stockholder or group of stockholders holding only a minority of voting shares would be able to exert an outsized influence in the election of directors of the Corporation, relative to its stockholdings in the Corporation. As a result, cumulative voting could undermine the limitations on concentrations of ownership or voting included in both the Current Certificate of Incorporation and New Certificate of Incorporation.[11]

c. Transfer, Ownership and Voting Restrictions

The transfer, ownership and voting restrictions set forth in Article Fifth of the Corporation's Current Certificate of Incorporation would be retained in the New Certificate of Incorporation. Article Fifth of the Corporation's Current Certificate of Incorporation provides that for so long as the Corporation controls, directly or indirectly, a national securities exchange, subject to certain exceptions, (i) no person, either alone or together with its ''Related Persons'' (as defined therein), may own, directly or indirectly, of record or beneficially, shares constituting more than 40 percent of any class of the Corporation's capital stock, (ii) no member of such a national securities exchange, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, shares constituting more than 20 percent of any class of the Corporation's capital stock, and (iii) no person, either alone or together with its Related Persons, at any time, may, directly, indirectly or pursuant to any of various arrangements, vote or cause the voting of shares or give any consent or proxy with respect to shares representing more than 20 percent of the voting power of the Corporation's then issued and outstanding capital stock.

In the case of shares of the Corporation purportedly transferred in violation of the limitations contained in Article Fifth, in addition to other remedies provided under Article Fifth(d),[12] Article Fifth(e) of the Current Certificate of Incorporation provides that the Corporation may redeem the shares sold, transferred, assigned, pledged, or owned in violation of Article Fifth for a price equal to the fair market value of those shares.

These limitations and remedies are designed to prevent any stockholder from exercising undue influence over the Corporation's national securities exchange subsidiaries. As a result, these limitations and remedies would be retained in the New Certificate of Incorporation. However, in the case of the redemption of shares purportedly transferred in violation of Article Fifth, the Current Certificate of Incorporation does not specify the manner of determining the fair market value. In order to enhance this remedy and provide clarity in the event that it is necessary to enforce it, Article Fifth(e) of the New Certificate of Incorporation is proposed to be amended to provide that the fair market value would be determined as the volume-weighted average price per share of the Common Stock during the five business days immediately preceding the date of the redemption.

d. Future Amendments to the Certificate of Incorporation

Article Twelfth of the Current Certificate of Incorporation requires that any proposed amendment to the Current Certificate of Incorporation be approved by the board of directors of the Corporation, submitted to the Board of Directors of the Exchange and filed with, or filed with and approved by, the Commission, if required under Section 19 of the Act. Provided that these conditions are satisfied, the Current Certificate of Incorporation can be amended in any manner permitted by Delaware Law, which today generally allows for the amendment of a certificate of incorporation by the affirmative vote of the majority of the outstanding stock entitled to vote thereon. Pursuant to proposed Article Fourteenth(a) of the New Certificate of Incorporation, certain provisions of the New Certificate of Incorporation would only be able to be amended upon the affirmative vote of not less than 66⅔ percent of the total voting power of the Corporation's outstanding securities entitled to vote generally in the election of directors, voting together as a single class. These provisions include Article Fourth(c) and (d), relating to voting rights and conversion of Non-Voting Common Stock, and Articles Fifth through Thirteenth, relating to limitations on transfer, ownership and voting, board of directors, duration of the Corporation, adopting, amending or repealing bylaws, indemnification and limitation of director liability, meetings of stockholders, forum selection, compromise or other arrangement, Section 203 opt-in (discussed below), and amendments to the certificate of incorporation, respectively.

The purpose of this supermajority requirement, which the Exchange believes is common among public companies, is to deter actions being taken that the Corporation believes may be detrimental to the Corporation, including any actions that could detrimentally affect the Corporation's ability to comply with its unique responsibilities under the Act as the ultimate parent of four registered national securities exchanges. The purpose for limiting the application of the supermajority voting requirement to certain specified provisions of the certificate of incorporation is to focus such requirement on the most critical provisions of the certificate of incorporation.

e. Other Amendments

The New Certificate of Incorporation will amend and restate various other provisions of the Current Certificate of Incorporation in a manner that the Exchange believes are intended to reflect provisions that are more customary for publicly-owned companies organized under Delaware Law. In particular:

• *Preferred Stock.* Pursuant to proposed Article Fourth(a) of the New Certificate of Incorporation, the Corporation will have the authority to issue 15 million shares of Preferred Stock, par value $0.01 per share (the ''Preferred Stock''), which the Corporation's board of directors may, by resolution from time to time, issue in one or more classes or series by filing a certificate of designation pursuant to Delaware Law, fixing the terms and conditions of such class or series of Preferred Stock. The Preferred Stock may be used by the Corporation to raise capital or to act as a safety mechanism for unwanted takeovers. Pursuant to Article Sixth(f) of the New Certificate of Incorporation, should the Corporation issue Preferred Stock and the holders of Preferred Stock have the right to vote separately or as a class to elect directors, the features of such directorships shall be governed by the terms of the resolution adopted by the board of directors, rather than the features otherwise applicable under Article Sixth.

• *Stockholder Meetings.* Article Tenth of the Current Certificate of Incorporation permits action to be taken by the stockholders of the Corporation, without a meeting, by written consent as permitted by Delaware Law. The New Certificate of Incorporation would amend Article Tenth to provide that any action required or permitted to be taken

[11] *See* Current Certificate of Incorporation, Art. Fifth; New Certificate of Incorporation, Art. Fifth.

[12] Article Fifth(d) of the Current Certificate of Incorporation provides that purported transfers that would result in a violation of the ownership limitations are not recognized by the Corporation to the extent of any ownership in excess of the limitation.

at any meeting of the stockholders may be taken only upon the vote of stockholders at a meeting of the stockholders in accordance with Delaware Law and the New Certificate of Incorporation, and may not be taken by written consent without a meeting, subject to the rights of the holders of any class or series of Preferred Stock then outstanding. Proposed Article Tenth(a) would establish a requirement for the Corporation to hold annual meetings of stockholders for director elections and other business, while Proposed Article Tenth(b) would permit special meetings to be called only upon a resolution of a majority of the board of directors (except that when holders of Preferred Stock have the right to elect directors, such holders may call a special meeting). Provisions providing for annual meetings and special meetings are currently contained only in the Current Bylaws.[13]

• *Forum Selection.* The New Certificate of Incorporation would add a new Article Eleventh, designating the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain actions or proceedings, such as derivative actions brought on behalf of the Corporation or actions asserting a claim of breach of fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or to its stockholders. Among other things, this provision prevents similar actions from being brought in multiple jurisdictions and helps ensure that any litigation will be handled by the court that is most experienced in applying Delaware Law. Article Eleventh also provides that any person or entity acquiring an interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to this exclusive forum provision.

• *Section 203.* The New Certificate of Incorporation would add Article Thirteenth, providing that the Corporation will be governed by Section 203 of Delaware Law. In general, Section 203 prohibits a publicly-held Delaware corporation from engaging in a business combination with anyone who owns at least 15 percent of its common stock. This prohibition lasts for a period of three years after that person has acquired the 15 percent ownership. The corporation may, however, engage in a business combination if it is approved by its board of directors before the person acquires the 15 percent ownership or later by its board of directors and two-thirds of the stockholders of the public corporation. The restrictions contained in Section 203 do not apply if, among other things, the corporation's certificate of incorporation contains a provision expressly electing not to be governed by Section 203. Unless opted-out, Section 203 provides Delaware corporations with a defense to unwanted corporate takeovers.

The New Certificate of Incorporation also removes various references to the Investor Rights Agreement, as the provisions of that agreement, other than certain registration rights, is expected to terminate upon the occurrence of the IPO.[14] The New Certificate of Incorporation additionally makes various non-substantive, stylistic changes throughout. For example, the New Certificate of Incorporation would amend the name of the Corporation from ''BATS Global Markets, Inc.'' to ''Bats Global Markets, Inc.''

2. The New Bylaws

a. Registered Office

Article I of the Current Bylaws designates the initial registered office of the Corporation in the State of Delaware as 1209 Orange Street in the City of Wilmington, County of New Castle, Delaware and the initial registered agent at that address as The Corporation Trust Company. Section 1.01 of the New Bylaws would amend Article I to state that the registered office will continue to be located at the same location and to further provide the board of directors with the authority to designate another location from time to time. This will provide the board of directors with the flexibility to change the registered office in the future if it believes that such a change is necessary. In addition, Section 1.01 of the New Bylaws would provide that the registered agent will continue to be The Corporation Trust Company.

b. Annual Meeting of Stockholders

Section 2.02(a) of the Current Bylaws requires that an annual meeting of stockholders for the purpose of election of directors and for such other business as may lawfully come before the meeting occur on the third Tuesday of January, or such other time as the board of directors may designate. The New Bylaws remove the reference to the third Tuesday of January from Section 2.02(a) and authorize the board of directors to determine the place, date and time of the annual meeting.

Section 2.02(b) of the Current Bylaws specifies the procedures for stockholders to properly bring matters before the annual meeting, including specifying that stockholders provide timely notice to the Corporation of the business desired to be brought before the meeting. To be considered timely, Section 2.02(b) of the Current Bylaws states that the stockholder's notice must be delivered to the Corporation no earlier than the ninetieth day or later than the sixtieth day prior to the first anniversary of the preceding year's annual meeting. The New Bylaws modify the acceptable time period so that the stockholder's notice must be delivered to the Corporation no earlier than the one hundred and fiftieth day or later than the one hundred and twentieth day prior to the first anniversary of the preceding year's annual meeting. In the event that no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than thirty days, the New Bylaws generally require that the stockholder's notice be delivered no earlier than the one hundred and twentieth day or later than the seventieth day prior to such annual meeting.

Section 2.02(b) of the Current Bylaws specifies what must be contained in the stockholder's notice. In addition to the requirements contained in the Current Bylaws, Section 2.02(b) of the New Bylaws would require that the stockholder's notice (i) disclose the text of the proposal, (ii) disclose the beneficial owner on whose behalf the proposal is being made, (iii) disclose all arrangements or understandings between the stockholder and any other person pursuant to which the proposal is being made, (iv) disclose all agreements, arrangements or understandings (including derivative positions) to create or mitigate loss or manage the risk or benefit of share price changes, or increase or decrease the voting power of the stockholder or any beneficial owner with respect to the securities of the Corporation, (v) provide a representation as to whether the stockholder or any beneficial owner intends, or is part of a group that intends, to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of the Corporation needed to approve or adopt the proposal, or otherwise solicit proxies from stockholders in support of the proposal, and (vi) provide such other information relating to any proposed item of business as the Corporation may reasonably require to determine whether such proposed item

[13] Current Bylaws, Sections 2.02 and 2.03.

[14] *See* Investor Rights Agreement, Section 10 (providing that the rights and obligations of each stockholder party to the agreement shall terminate, to the extent not previously terminated, upon the occurrence of ''Qualified Public Offering,'' as defined therein, except that certain registration rights shall survive such termination).

of business is a proper matter for stockholder action.

Section 2.02(c) of the Current Bylaws specifies the procedures for stockholders to properly nominate persons for the board of directors, including that the stockholder provide timely notice to the Corporation. In addition to the requirements contained in the Current Bylaws, Section 2.02(c) of the New Bylaws would require that the stockholder's notice (i) disclose all agreements, arrangements or understandings (including derivative positions) to create or mitigate loss or manage the risk or benefit of share price changes, or increase or decrease the voting power of the stockholder, beneficial owner or any such nominee with respect to the securities of the Corporation, (ii) provide a representation that such stockholder is a stockholder entitled to vote at such meeting and intends to appear in person or by proxy at the meeting and to bring such nomination or other business before the meeting, and (iii) provide a representation as to whether the stockholder or any beneficial owner intends, or is part of a group that intends, to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of the Corporation needed to elect each such nominee, or otherwise solicit proxies from stockholders in support of the nomination.

The additional disclosure requirements being added to Sections 2.02(b) and 2.02(c) are intended to assure that stockholders asked to vote on a stockholder proposal or stockholder nominee are more fully informed in their voting and are able to consider any proposals or nominations along with the interests of those stockholders or the beneficial owners on whose behalf such proposal or nomination is being made.

The New Bylaws would further include a new Section 2.02(d), which would require that a stockholder proposal or a stockholder nomination be disregarded if the stockholder (or a qualified representative) does not appear at the annual or special meeting to present the proposal or nomination, notwithstanding that proxies may have been received and counted for purposes of determining a quorum. A ''qualified representative'' would include a duly authorized officer, manager or partner of the stockholder, or such other person authorized in writing to act as such stockholder's proxy. The purpose of this requirement is to assure that the stockholders' time at meetings is used efficiently and only serious stockholder proposals and nominations are considered.

The New Bylaws would also add Section 2.02(e), which would require that a stockholder, in addition to (and in no way limiting) all requirements set forth in Section 2.02 with respect to proposals or nominations, must also comply with all applicable requirements of the Act and the rules and regulations promulgated thereunder.

New Section 2.02(f) of the New Bylaws would note that, notwithstanding anything to the contrary in the New Bylaws, the notice requirements with respect to business proposals or nominations would be deemed satisfied if the stockholder submitted a proposal in compliance with Rule 14a–8 of the Act [15] and the proposal has been included in a proxy statement prepared by the Corporation to solicit proxies of the meeting of stockholders. This provision would assure that, in addition to proposals that meet the requirements of Section 2.02(b) of the New Bylaws, the Corporation would comply with the provisions of the Act and the rules promulgated thereunder with respect to the inclusion of stockholder proposals in its proxy statement.

c. Special Meetings of Stockholders

Section 2.03 of the Current Bylaws permits a special meeting of the stockholders to be called by any of (i) the chairman of the board of directors, (ii) the chief executive officer, (iii) the board of directors pursuant to a resolution passed by a majority of the board, or (iv) the stockholders entitled to vote at least 10 percent of the votes at the meeting. The New Bylaws would amend Section 2.03, consistent with Article Tenth(b) of the New Certificate of Incorporation, to only permit a special meeting of the stockholders to be called by the board of directors pursuant to a resolution adopted by the majority of the board. Additionally, whenever any holders of Preferred Stock have the right to elect directors pursuant to the New Certificate of Incorporation, such holders may call, pursuant to the terms of a resolution adopted by the board, a special meeting of the holders of such Preferred Stock. These amendments are designed to prevent any stockholder from exercising undue control over the operation of the Exchange by circumventing the board of directors of the Corporation through a special meeting of the stockholders.

d. Quorum; Vote Requirements

Section 2.05 of the Current Bylaws describe the quorum and voting requirements for the transaction of business at all meetings of stockholders of the Corporation. As the New Charter establishes two classes of stock, voting common stock and non-voting common stock, the New Bylaws would amend Section 2.05 to clarify that a majority of the voting power (the Voting Common Stock) is generally required for a quorum for the transaction of business, rather than a majority of all outstanding shares. The New Bylaws would also amend Section 2.05 to conform to Section 216 of Delaware Law to track the requirement of a majority of votes ''present in person or represented by proxy'' for a quorum where a separate vote by class or classes or series is required. In addition, Section 2.05 of the New Bylaws would also be amended to clarify that abstentions and broker non-votes shall not be counted as votes cast. Under Delaware Law, abstentions and broker non-votes are not shares authorized to vote and are not considered votes cast on any matter.[16] This amendment conforms the provisions of Section 2.05 to Delaware Law and is intended to eliminate ambiguity in the counting of abstentions and broker non-votes.

e. Adjournment of Meetings

Section 2.06 of the Current Bylaws outlines certain requirements relating to the adjournment of stockholder meetings, including that any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the voting power of the shares casting votes, excluding abstentions. The New Bylaws would amend Section 2.06 such that only the chairman of the meeting or the board of directors would be permitted to adjourn a stockholder meeting. The authority to adjourn a stockholder meeting resting solely with the board of directors or the chairman is common among publicly-held companies. Furthermore, this amendment would provide the Corporation with flexibility to postpone a stockholder vote if it determines necessary and would prevent stockholders from adjourning a meeting if the board of directors and chairman desire to continue with the meeting.

f. Voting Rights

Section 2.07 of the Current Bylaws describes the rights of stockholders of

[15] 17 CFR 240.14a–8.

[16] *See, e.g., Berlin* v. *Emerald Partners,* 552 A.2d 482 (Del. 1988).

the Corporation to vote their shares at a meeting of stockholders. The New Bylaws would amend Section 2.07 to further clarify that any share of stock of the Corporation held by the Corporation shall have no voting rights, except when such shares are held in a fiduciary capacity. The Current Bylaws do not address voting rights with respect to shares of stock of the Corporation held by the Corporation. This amendment is consistent with Delaware Law and removes ambiguity as to the voting rights of shares of stock of the Corporation held by the Corporation.[17]

g. Action Without a Meeting

Section 2.10(a) of the Current Bylaws permits certain actions to be taken by written consent of stockholders if signed by the holders of outstanding stock representing not less than the number of votes necessary to authorize or take such action at a meeting where all shares entitled to vote were present and voted. However, Section 2.10(c) of the Current Bylaws provides that no action by written consent may be taken following an initial public offering of the common stock of the Corporation. The New Bylaws would amend Section 2.10 to prohibit at all times actions taken by written consent of stockholders without a meeting, subject to the rights of any holders of Preferred Stock. This change is consistent with proposed changes contained in Article Tenth(c) of the New Certificate of Incorporation and would simplify Section 2.10 of the New Bylaws, given that the New Bylaws would become effective the moment before the closing of the IPO.

h. Number of Directors and Classified Board Structure

Section 3.01 of the Current Bylaws stipulates that the board of directors of the Corporation shall consist of 15 members, or such other number of members as determined from time to time by resolution of the board of directors. Under the New Bylaws, Section 3.01 would be amended to state that the board of directors shall consist of one or more directors, with the exact number of directors to be determined by resolution adopted by the majority of the board of directors. In addition, Section 3.01 of the New Bylaws would, consistent with proposed Article Sixth(c) of the New Certificate of Incorporation, establish a classified board structure in which the directors would be divided into three classes of equal size, to the extent possible. Only one class of directors would be elected each year, and once elected, directors would serve a three-year term. The Exchange believes that such a classified board structure is common for publicly-held companies, as it has the effect of making hostile takeover attempts more difficult.

i. Vacancies and Resignation

Section 3.03 of the Current Bylaws provides that vacancies on the board of directors resulting from death, resignation, removal or other causes, and any newly created directorships resulting from any increase in the number of directors, shall be filled by a majority vote of the directors then in office, even if less than a quorum, unless the board of directors determines by resolution that any such vacancies or newly created directorships should be filled by stockholders. Once elected, the director would hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified. Section 3.03 of the New Bylaws would adopt a substantially similar approach. Specifically, it would provide that vacancies or new directorships shall, except as otherwise required by law, be filled solely by a majority of the directors then in office (although less than a quorum) or by the sole remaining director, and each director so elected shall hold office for a term that shall coincide with the term of the class to which such director shall have been elected. The New Bylaws would also amend Section 3.03 to provide that if there are no directors in office, then an election of directors may be held in accordance with Delaware Law.

Section 3.04 of the Current Bylaws addresses the resignation of directors. For example, Section 3.04 provides that when one or more directors resign from the board of directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective. This provision would be retained in the New Bylaws, but it would be moved to Section 3.03. In addition, as is effectively the case under Section 3.04 of the Current Bylaws, Section 3.03 of the New Bylaws would provide that any director so chosen shall hold office as provided in the filling of other vacancies.

j. Removal of Directors

Section 3.05 of the Current Bylaws provides that the board of directors or any director may be removed, with or without cause, by the affirmative vote of at least 66⅔ percent of the voting power of all then-outstanding shares of voting stock of the Corporation. The New Bylaws would amend Section 3.05 to provide that directors may only be removed for cause with the affirmative vote of a simple majority of the holders of voting power of all then-outstanding securities of the Corporation generally entitled to vote in the election of directors, voting together as a single class.

The purpose of this amendment is to align the Corporation's requirements for removal of directors with Section 141(k)(1) of Delaware Law, which generally provides that, in the case of a corporation with a classified board, a simple majority of stockholders may remove any director, but only for cause, unless the certificate of incorporation provides otherwise.

k. Committees of Directors

Sections 3.10(a) and (b) of the Current Bylaws permit the board of directors to appoint an executive committee with certain enumerated powers of the board, as well as other committees permitted by law. The New Bylaws would amend Section 3.10(a) to eliminate specific reference to an executive committee and authorize the board to designate one or more committees that may exercise the power of the board to the extent permitted in the resolution designating the committee. This amendment would enhance the board's flexibility to create those committees it deems necessary and most efficient for the functioning of the board. Section 3.10(a) would be further amended to provide that no committee would have the power to (i) approve, adopt or recommend to the stockholders any matter required by Delaware Law to be submitted for stockholder approval, or (ii) adopt, amend or repeal any bylaw. These amendments are being made to assure that the full board of directors considers and passes upon these significant corporate decisions.

Section 3.10(c) of the Current Bylaws describes the requirements for committee meetings. The New Bylaws would amend Section 3.10(c) to require that each committee keep regular minutes of its meetings and report the same to the board of directors of the Corporation when required. This amendment is being made to assure that matters addressed during committee meetings are recorded in the corporate records of the Corporation and are available to be communicated to the full board of directors of the Corporation.

[17] *See* Delaware Law Section 160(c).

l. Preferred Stock Directors

The New Bylaws would add new Section 3.12 to clarify that whenever the holders of one or more classes or series of Preferred Stock have the right to elect one or more directors (a ''Preferred Stock Director''), pursuant to the New Certificate of Incorporation, the provisions of Article III of the New Bylaws relating to the election, term of office, filling of vacancies, removal, and other features of directorships would not apply to the Preferred Stock Directors. Rather, such features would be governed by the applicable provisions of the New Certificate of Incorporation. This amendment is consistent with proposed Article Sixth(f) of the New Certificate of Incorporation with respect to the rights of holders of Preferred Stock, should any class or series of Preferred Stock be issued with director voting rights in the future.

m. Officers

Section 4.01 of the Current Bylaws provides that the officers of the Corporation shall include, if and when designated by the board of directors, the chairman of the board of directors, the chief executive officer, the president, one or more vice presidents and certain other employees. The New Bylaws would amend Section 4.01 to remove the chairman of the board of directors from the list of potential officers of the Corporation. Similarly, the New Bylaws would also remove Section 4.02(b) of the Current Bylaws, which describes the duties of the chairman of the board of directors. These changes would be made to reflect the fact that the chairman of the board of directors does not serve in an officer role in the Corporation.

n. Form of Stock Certificates

The New Bylaws would amend Section 6.01 of the Current Bylaws to state that the shares of the Corporation shall be represented by certificates, unless the board of directors provides by resolution that some or all of any class or series of stock be uncertificated. Except as otherwise provided by law, holders of certificated and uncertificated shares of the same class and series would have identical rights and obligations. Pursuant to Section 6.03(d) of the New Bylaws, the board will also have the power to make rules for issuance, transfer and registration of certificated or uncertificated shares, and the issuance of new certificates in lieu of those lost or destroyed. The New Bylaws further amend Section 6.01 to provide that the Corporation will not have the power to issue a certificate in bearer form. These amendments are intended to align the bylaws of the Corporation with standard provisions for Delaware public companies.

o. Fixing Record Dates

Section 6.04 of the Current Bylaws provides the procedures for fixing a record date for determining the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof. In general, a determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting. However, Section 6.04(a) of the Current Bylaws also permits the board of directors to fix a new record date for the adjourned meeting. The New Bylaws would amend Section 6.04(a) to clarify that the board of directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting in its discretion or as required by Delaware Law. In such case, the board of directors would be permitted to fix the same date or an earlier date as the record date for stockholders entitled to notice of such adjourned meeting. The New Bylaws would also remove Section 6.04(b) of the Current Bylaws, which relates to the fixing of a record date for determining the stockholders entitled to consent to corporate action in writing without a meeting. This provision would be removed because the New Bylaws would remove the ability of stockholders to authorize or take corporate action by written consent.

p. Indemnification

Article X of the Current Bylaws contains certain provisions for the indemnification of directors, officers, employees and certain other agents of the Corporation. The New Bylaws will eliminate such provisions in their entirety. These provisions are being eliminated because provisions regarding indemnification are already contained in Article Ninth of the Current Certificate of Incorporation and will remain in Article Ninth of the New Certificate of Incorporation.

q. Notices

Article XI of the Current Bylaws contains provisions governing the delivery of notices to stockholders and directors. Section 11.01(b) of the Current Bylaws, for example, states that notices to directors may be given through U.S. mail, facsimile, telex or telegram, except that such notice, other than one which is delivered personally, must be sent to such address as such director shall have filed in writing with the secretary of the Corporation, or, in the absence of such filing, to the last known post office address of such director. The corresponding section of the New Bylaws, Section 10.01(b), would be revised to additionally permit notice to directors to be given through electronic mail, in addition to the other forms of delivery currently permitted. The Exchange believes that it has become customary to deliver business communications through electronic mail. The remainder of the notice provisions would not be substantively amended in the New Bylaws.

r. Future Bylaws Amendments

Article Eighth of the Current Certificate of Incorporation (as proposed to be maintained in the New Certificate of Incorporation) provides that the bylaws may be adopted, amended or repealed by the board of directors or by action of the stockholders, in accordance with the procedures set out in the bylaws. Article XII of the Current Bylaws permits the bylaws to be amended or repealed *only* by action of the stockholders holding 70 percent of the shares entitled to vote. Article XI of the New Bylaws would amend Article XII to provide that the bylaws may be altered, adopted, amended or repealed *either* by a majority of the board of directors, or by the stockholders with the affirmative vote of not less than 66⅔ of the total voting power then entitled to vote at a meeting of stockholders, unless a higher percentage is required under the New Certificate of Incorporation. The New Certificate of Incorporation does not include a higher percentage, so the threshold set forth in the New Bylaws would govern. The Current Bylaws require a vote of at least 70 percent of the total stockholder voting power in order to maintain consistency with the threshold that was separately agreed to in the Investor Rights Agreement.[18] As noted above, the Investor Rights Agreement is expected to terminate upon the IPO, except with respect to certain registration rights provisions, so the 70 percent threshold is no longer contractually necessary to maintain.[19] The requirement to obtain 70 percent stockholder approval for any amendments to the Corporation's bylaws was practical while the Corporation was closely-held. However, the Exchange believes that it is customary for amendments to a publicly-held corporation's bylaws to be predominantly a matter for the corporation's board of directors, both as a matter of convenience, and to make

[18] *See* Investor Rights Agreement, Section 4.3(d).

[19] *See supra* note 14 and accompanying text.

unwanted corporate takeovers more difficult. As a result, the New Bylaws require that, should the stockholders wish to amend the Corporation's bylaws, a supermajority of 66⅔ percent would be required. The threshold reduction from 70 percent to 66⅔ is intended to be consistent with other publicly-held companies.

In addition to the board of directors and stockholder approval requirements, Article XI of the New Bylaws would maintain the provisions contained in Article XII of the Current Bylaws requiring that, for so long as the Corporation will control a national securities exchange registered with the Commission under Section 6 of the Act, before any amendment to the New Bylaws may become effective, the amendment must be submitted to the board of directors of such exchange, and if required by Section 19 of the Act,[20] filed with or filed with and approved by the Commission.

s. Loans to Officers

Article XIII of the Current Bylaws authorizes the Corporation to lend money to or guarantee obligations of any officer of the company under certain circumstances. In order to comply with Section 13(k)(1) of the Act,[21] which will apply to the Corporation after the IPO, the New Bylaws eliminate this authority.

t. Other Amendments

The New Bylaws also remove references to the Investor Rights Agreement, as the provisions of that agreement, other than certain registration rights, is expected to terminate upon the occurrence of the IPO.[22] In addition, the New Bylaws make various non-substantive, stylistic changes throughout. For example, as with the New Certificate of Incorporation, the New Bylaws would reflect a change in the name of the Corporation from ''BATS Global Markets, Inc.'' to ''Bats Global Markets, Inc.''

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and rules and regulations thereunder that are applicable to a national securities exchange and, in particular, with the requirements of Section 6(b)(1) of the Act, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.[23] In particular, the New Certificate of Incorporation is consistent with Section 6(b)(1) of the Act because it would retain the limitations on ownership and total voting power that currently exist and would adopt super-majority requirements for certain amendments to the New Certificate of Incorporation. These provisions would help prevent any stockholder, including any member of the Exchange along with its Related Persons, from exercising undue control over the operation of the Exchange. In addition, Sections 2.03 and 2.10(c) of the New Bylaws would prohibit the ability of the stockholders to call a special meeting of the stockholders and to act by written consent. Therefore, as with the New Certificate of Incorporation, the New Bylaws would help prevent any stockholder from exercising undue control over the operation of the Exchange and assure that the Exchange is able to carry out its regulatory obligations under the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Indeed, the Exchange believes that the proposed rule change would enhance competition. The other major operators of registered national securities exchanges are currently public companies, with the access to the public markets that this facilitates. The amendments to the Corporation's certificate of incorporation and bylaws will facilitate the Corporation's IPO, facilitating capital formation and allowing the Corporation to better compete with other public companies operating national securities exchanges and other markets.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited or received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BYX–2016–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2016–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal

[20] 15 U.S.C. 78s.

[21] 15 U.S.C. 78m(k)(1).

[22] *See supra* note 14 and accompanying text.

[23] 15 U.S.C. 78f(b).

office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2016–02 and should be submitted on or before March 15, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03664 Filed 2–22–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77152; File No. SR–NASDAQ–2016–020]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Nasdaq Rule 7014 and Nasdaq Rule 7018

February 17, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 2016, The NASDAQ Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq is proposing changes to amend Nasdaq Rule 7014(g) concerning the national best bid or best offer (''NBBO'') Program and Nasdaq Rule 7018(a), governing fees and credits assessed for execution and routing of securities.

The text of the proposed rule change is available at *nasdaq.cchwallstreet.com,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the NBBO Program in Nasdaq Rule 7014(g) and to amend Nasdaq Rule 7018(a), governing fees and credits assessed for execution and routing of securities listed on Nasdaq,[3] listed on the New York Stock Exchange (''NYSE'')[4] and listed on exchanges other than Nasdaq and NYSE[5] (''Tape B'') (collectively, the ''Tapes'').

Specifically, Nasdaq Rule 7014(g) will be amended to add a new credit and to clarify the NBBO Program language to indicate that this new credit will be in addition to any rebate or credit payable under Nasdaq Rule 7018(a) or the Investor Support Program (''ISP''), Qualified Market Maker (''QMM'') Program and NBBO Program under Nasdaq Rule 7014. A member will qualify for the additional $0.0001 per share executed credit for displayed quotes/orders (other than supplemental orders or designated retail orders) that provide liquidity priced at $1 or more if the member qualifies for the (i) NBBO Program and (ii) has a ratio of at least 25% NBBO liquidity provided[6] to liquidity provided during the month.

For example, if a member provided liquidity of 0.55% total consolidated volume (''TCV'') during the month and provided NBBO liquidity of 0.15% TCV during the month, the member's ratio would equal 27.27%. The member would meet the NBBO Program criteria (since it was greater than 0.5% TCV threshold set forth in Nasdaq Rule 7014(g)(1)) and because the ratio is greater than the proposed 25% threshold of NBBO liquidity provided to liquidity provided [sic] during the month. Therefore, the member would also qualify for the additional $0.0001 per share executed credit. This credit will be in addition to any rebate or credit payable under Rule 7018(a) and the ISP, QMM Program, and NBBO Program under Rule 7014.

Nasdaq also proposes to amend across all three Tapes (Nasdaq Rules 7018(a)(1), (2) and (3)) one of the two criteria that a member must satisfy to qualify for the $0.0030 per share executed credit for adding displayed liquidity. The first prong of the criteria will remain the same and requires that a member must have shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.575% or more of consolidated volume (''Consolidated Volume'') during the month. The second prong of the criteria will be amended. Specifically, the second prong requires that 0.15% or more of Consolidated Volume during the month must include shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE. The percentage of shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE will be reduced from 0.15% to 0.10% or more of Consolidated Volume, thus reducing the required activity to achieve the credit. The amended criteria will read for all three Tapes as ''member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.575% or more of Consolidated Volume during the month, including shares of liquidity provided with respect to securities that are listed on exchanges other than NASDAQ or NYSE that represent 0.10% or more of Consolidated Volume''.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities which the Exchange operates or controls, and is not designed to permit unfair

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq Rule 7018(a)(1).

[4] Nasdaq Rule 7018(a)(2).

[5] Nasdaq Rule 7018(a)(3).

[6] NBBO liquidity provided means liquidity provided from orders (other than Designated Retail Orders, as defined in Nasdaq Rule 7018), that establish the NBBO, and displayed a quantity of at least one round lot at the time of execution.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [9] Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [10] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[11] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [12]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [13]

The NBBO Program is intended to encourage members to add liquidity at prices that benefit all Nasdaq market participants and the Nasdaq market itself, and to enhance price discovery, by establishing a new NBBO.[14] Specifically, Nasdaq believes that the proposed rule change to Nasdaq Rule 7014(g) that provides for an additional $0.0001 per share executed credit [15] for displayed quotes/orders (other than supplemental orders or designated retail orders) that provide liquidity priced at $1 or more is reasonable because it is in line with other credits provided on Nasdaq, as well as on other exchanges. For example, both the QMM Program [16] and the ISP [17] have credits of $0.0001 per share executed. The Exchange also believes that the proposed additional credit will serve as an effective incentive to members to provide more liquidity provided from orders (other than Designated Retail Orders, as defined in Nasdaq Rule 7018), that establish the NBBO, and displayed a quantity of at least one round lot at the time of execution. Increasing such liquidity is reflective of the Exchange's desire to improve liquidity and strengthen the NBBO Program.

The Exchange also believes that choosing the ratio of at least 25% NBBO liquidity provided of the liquidity provided during the month will incentivize participants to more aggressively pursue adding liquidity at the NBBO while still offering an attainable goal. This may focus participants on meeting the criteria in a way that relying on solely NBBO specific rebates has not. This proposed change is similar to other market incentive programs that require a certain level of activity in order to be eligible to receive a particular credit. For example, to receive an ISP credit a member is already required to provide a 40% of their [sic] liquidity through ISP designated ports (among other criteria).[18]

Additionally, minimum standards of specific activity (*e.g.,* non-display activity and other performance requirements) are also sometimes required to be eligible to receive a particular credit. One example of this is in Nasdaq Rule 7018(a)(1), which states that a member seeking to receive the particular available credit must provide shares of liquidity in all securities through one or more of its Nasdaq Market Center MPIDs of more than 0.75% of Consolidated Volume during the month, as well as provide a daily average of at least 5 million shares of non-displayed liquidity.

Also, the clarifying language added to the NBBO Program under Nasdaq Rule 7014(g) regarding the applicability of this new credit is reasonable because it will lessen participant confusion as to how these additional rebates/credits apply. The Exchange believes that the proposed changes to the NBBO Program overall will improve market quality and thus benefits all members.

Nasdaq believes that the proposed rule change is equitable and not unfairly discriminatory because the additional $0.0001 per share executed credit for displayed quotes/orders that provide liquidity priced at $1 or more under the NBBO Program is available to all members on an equal basis and provides an additional credit for activity that improves the Exchange's market quality through increased activity at the NBBO. In this regard, the NBBO Program encourages higher levels of liquidity provision into the price discovery process and is consistent with the overall goals of enhancing market quality. Also, this new credit will be in addition to any rebate or credit payable under Nasdaq Rule 7018(a) or the ISP, QMM Program, and NBBO Program under Nasdaq Rule 7014.

Nasdaq believes that the proposed rule change to Nasdaq Rule 7018(a)(1), (2) and (3) is reasonable because it will further encourage market participant activity and will also support liquidity provision across all three Tapes by making it easier for members to satisfy one of the two criteria to qualify for the $0.0030 per share executed credit for adding displayed liquidity. Specifically, by amending one prong of the criteria to reduce the percentage requirement from 0.15% to 0.10% of shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE [sic]. The Exchange believes this will allow more members to receive this credit and thereby incentivize the enhancement of liquidity with regard to displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) on Nasdaq. This, in turn, should positively impact market quality and benefit other Nasdaq members.

The Exchange also believes that the proposed rule change is an equitable allocation and is not unfairly discriminatory because it is reducing across all three Tapes one of the two criteria that a member must satisfy to qualify for the $0.0030 per share executed credit for adding displayed liquidity. Additionally, members who currently qualify for the credit will continue to do so.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in a burden on competition that is not necessary or appropriate in furtherance

[9] Securities Exchange Act Release No. 34–51808 (June 9, 2005) (''Regulation NMS Adopting Release'').

[10] *NetCoalition* v. *SEC* 615 F.3d 525 (D.C. Cir. 2010).

[11] *Id.* at 534–535.

[12] *Id.* at 537.

[13] *Id.* at 539 (quoting ArcaBook Order, 73 FR at 74782–74783).

[14] *See* Securities Exchange Act Release No. 68209 (November 9, 2012), 77 FR 69519 (November 19, 2012) (SR–NASDAQ–2012–126).

[15] The member will receive this additional credit if the member qualifies for the (i) NBBO Program and (ii) has a ratio of at least 25% NBBO liquidity provided of the liquidity provided during the month.

[16] *See* Nasdaq Rule 7014(e) Tier 1.

[17] *See* Nasdaq Rule 7014(c)(2).

[18] *See* Nasdaq Rule 7014(c)(2)(C).

of the purposes of the Act, as amended.[19] In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or credit opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and credits to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed additional $0.0001 per share executed credit for displayed quotes/orders that provide liquidity priced at $1 or more in connection with the NBBO Program under Nasdaq Rule 7014(g), as well as the easing of the criteria under Nasdaq Rule 7018(a) to receive a $0.0030 executed rebate for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity, do not impose a burden on competition because the Exchange's execution services are voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. The Exchange believes that the competition among exchanges and other venues will help to drive price improvement and overall execution quality higher for investors.

In sum, if the rule change proposed herein is unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed change will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[19] 15 U.S.C. 78f(b)(8).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[20] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2016–020 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–020. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–020, and should be submitted on or before March 15, 2016.

[20] 15 U.S.C. 78s(b)(3)(A)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03660 Filed 2–22–16; 8:45 am]

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[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77154 ; File No. SR–BOX–2016–08]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Reduce the Order Handling Period for Directed Orders From Three Seconds to One Second

February 17, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 5, 2016, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reduce the order handling period for Directed Orders from three seconds to one second. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 8040(d)(4) (Obligations of Market Makers) of the BOX Trading Rules, and the corresponding IM–8040–1 to reduce the order handling period for Directed Orders from three seconds to one second.[3] Based on trading and order management systems technology today, a three second period for a Market Maker to determine how to proceed with a Directed Order on BOX is simply unnecessary and BOX believes one second to act upon a Directed Order is more appropriate.

Currently, upon receipt of a Directed Order, an Executing Participant (''EP'') has three seconds to either submit the Directed Order to the Price Improvement Period (''PIP'')[4] or send the Directed Order to the BOX Book. If, three seconds after receipt of a Directed Order, an EP has not taken any action on the Directed Order, then BOX automatically releases the Directed Order to the BOX Book. The Exchange proposes to reduce the amount of time that an EP has to act on a Directed Order to one second.

IM–8040–1 currently provides that Market Makers are expected to act upon Directed Orders as immediately as practicable, which must not exceed three seconds. The Exchange proposes that this be reduced to one second.

When approving previous reductions in order handling and exposure periods on BOX, the Commission concluded that, in the electronic environment of BOX, ''reducing each of these exposure periods from three seconds to one second could facilitate the prompt execution of orders, while continuing to provide market participants with an opportunity to compete for exposed bids and offers.'' [5] While BOX recognizes that exposure and handling periods are different, BOX believes that reducing the handling period from three seconds to one second falls under the same rationale that the Commission approved for the reduction of the exposure period.[6] Specifically, both situations involve decision making by a Participant's systems, whether it be to respond to the exposed order or how to handle a Directed Order. Therefore, the Exchange believes that the same rational [sic] should be used in determining the validity of the proposed change. Additionally, like the reduction of the exposure period, the reduction of the handling period from three seconds to one second could result in more timely executions of orders on BOX due to the shorter decision making time for the EPs. BOX also recognizes that one second is not long enough to allow human interaction when an EP receives a Directed Order. However, all EPs on BOX operate sufficiently automated electronic systems so that they can react and respond to receipt of a Directed Order in a meaningful way within fractions of a second and no longer need the three second period.[7]

BOX believes that further reducing its Directed Order handling period from three seconds to one second will benefit customer orders submitted by OFPs. BOX believes it is in all participants' best interests to minimize the time of any order processing period. Further, BOX believes that reducing the Directed Order handling period to one second will continue to provide EPs sufficient time to appropriately respond to receipt of Directed Orders. As discussed above, reducing the handling period from three seconds to one second will result in a shorter decision making time for the EPs, which in turn could cause the Directed Orders to be handled more quickly. Thus, reducing the handling period from three seconds to one second could provide investors and other market participants with more timely executions of their orders on BOX. EPs on BOX are able to respond to orders in fractions of a second and BOX believes it is appropriate and beneficial for EPs to act upon receipt of Directed Orders within one second rather than three seconds.

Within 90 days of the proposed rule change being operative, and at least one week prior to implementation, BOX will issue a regulatory circular to inform BOX Participants of the implementation date for the reduction of the Directed Order handling period from three seconds to one second. BOX has discussed the implementation of the change with the relevant Participants and believes this will give EPs adequate time to make any necessary system modifications to coincide with the implementation date.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, reducing the handling period from three seconds to one second will result in a shorter decision making time for the EPs, which in turn could cause the Directed Orders to be handled more quickly. Accordingly, the proposed rule change may provide investors with more prompt and timely execution of Directed Orders on BOX. Therefore, the proposed rule change is consistent with the requirements above.

The Exchange believes the proposed rule change is not unfairly discriminatory because the time period for acting upon Directed Orders would be the same for all EPs. As such, the Exchange believes that a reduction in the Directed Order handling time on BOX would not be unfairly discriminatory and would benefit investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed change is not unfairly discriminatory because the handling time for Directed

[3] A Directed Order is any Customer Order to buy or sell which has been directed to a particular Market Maker by an Order Flow Provider (''OFP''). *See* BOX Rule 100(a)(19).

[4] *See* BOX Rule 7150.

[5] *See* Securities Exchange Act Release Nos. 59638 (March 27, 2009), 74 FR 15020 (April 2, 2009) (SR–BX–2009–015) (Order Granting Approval of Reduction of Certain Order Handling and Exposure Periods on BOX From Three Seconds to One Second). *See also* 68965 (February 21, 2013), 78 FR 13387 (February 27, 2013) (SR–BOX–2013–08) (Notice of Filing of Proposed Rule Change to Reduce the Directed Order Exposure Period on BOX From Three Seconds to One Second).

[6] *Id.*

[7] The Exchange spoke with BOX Participants who unanimously confirmed that their respective systems can react and respond to receipt of a Directed Order within fractions of a second.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

Orders would be the same for all Participants. All Participants on BOX have today, and will continue to have, an equal opportunity to respond to Directed Orders exposed on BOX. As such, the Exchange believes that a reduction in the Directed Order handling period on BOX would not be unfairly discriminatory and would benefit investors. For these reasons, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[14] If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.[15]

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] *Id.*

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2016–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2016–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2016–08 and should be submitted on or before March 15, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03662 Filed 2–22–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77158; File No. SR–FINRA–2016–008]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delay the Implementation Date of FINRA Rule 2242 (Debt Research Analysts and Debt Research Reports)

February 17, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 16, 2016, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to delay implementation of FINRA Rule 2242 (Debt Research Analysts and Debt Research Reports) until April 22, 2016. The proposed rule change would not make any other changes to FINRA rules.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 14, 2014, FINRA filed proposed rule change SR–FINRA–2014–048 to adopt new FINRA Rule 2242 (Debt Research Analysts and Debt Research Reports) to address conflicts of interest relating to the publication and distribution of debt research reports.[4] On February 19, 2015, FINRA filed Amendment No. 1 responding to the comments received to the proposal as well as to propose amendments in response to these comments.[5] The proposed rule change, as modified by Amendment No. 1 thereto, was approved by the Commission on July 16, 2015.[6]

Pursuant to proposed rule change SR–FINRA–2014–048, FINRA proposed to announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. FINRA further stated that the effective date will be no later than 180 days following publication of the *Regulatory Notice* announcing Commission approval. FINRA announced an effective date of February 22, 2016 in a *Regulatory Notice* published on August 26, 2015.[7]

In response to industry questions regarding implementation of the requirements of Rule 2242, FINRA believes that it is appropriate to extend the implementation date and is proposing to delay implementation of Rule 2242 until April 22, 2016.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change is consistent with the Act in that it provides members additional time to implement the requirements of Rule 2242, which addresses conflicts of interest relating to the publication and distribution of debt research reports.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed delay in implementation of Rule 2242 will reduce the burden on members by allowing additional time to implement changes to their policies and procedures.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

FINRA has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act and Rule 19b–4(f)(6) thereunder.[9] Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the operative delay is consistent with investor protection and the public interest because the proposal would allow FINRA members more time to correctly establish systems compliant with FINRA Rule 2242. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[15] to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2016–008 on the subject line.

[4] *See* Securities Exchange Act Release No. 73623 (November 18, 2014), 79 FR 69905 (November 24, 2014) (Notice of Filing File No. SR–FINRA–2014–048).

[5] *See* Securities Exchange Act Release No. 74490 (March 12, 2015), 80 FR 14198 (March 18, 2015) (Notice of Filing Amendment No. 1 to File No. SR–FINRA–2014–048).

[6] *See* Securities Exchange Act Release No. 75472 (July 16, 2015), 80 FR 43528 (July 22, 2015) (Order Approving File No. SR–FINRA–2014–048).

[7] *See Regulatory Notice* 15–31 (August 2015).

[8] 15 U.S.C. 78*o*-3(b)(6).

[9] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), FINRA provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2)(B).

Paper Comments

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2016–008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2016–008 and should be submitted on or before March 15, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03665 Filed 2–22–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Advisory Committee on Small and Emerging Companies will hold a public meeting on Thursday, February 25, in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE., Washington, DC.

The meeting will begin at 9:30 a.m. (EST) and will be open to the public. Seating will be on a first-come, first-served basis. Doors will open at 9:00 a.m. Visitors will be subject to security checks. The meeting will be webcast on the Commission's Web site at *www.sec.gov*.

On February 5, 2016, the Commission published notice of the Committee meeting (Release No. 33–10034), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging companies under the federal securities laws.

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: February 18, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–03846 Filed 2–19–16; 4:15 pm]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14619; Disaster #CA–00244]

California; Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of California, dated 02/08/2016.

Incident: Aliso Canyon Gas Leak.

Incident Period: 10/23/2015 and continuing.

Effective Date: 02/08/2016.

EIDL Loan Application Deadline Date: 11/08/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Los Angeles.

Contiguous Counties:

California: Kern, Orange, San Bernardino, Ventura.

The Interest Rates are:

	Percent
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for economic injury is 146190.

The States which received an EIDL Declaration # are California.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: February 8, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–03769 Filed 2–22–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14627 and #14628; Disaster #OK–00100]

Oklahoma; Disaster Declaration

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oklahoma (FEMA—4256—DR), dated 02/10/2016.

Incident: Severe Winter Storms and Flooding.

Incident Period: 12/26/2015 through 01/05/2016.

DATES: *Effective Date:* 02/10/2016.

Physical Loan Application Deadline Date: 04/11/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 11/10/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 02/10/2016, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Adair, Alfalfa, Beckham, Blaine, Caddo, Canadian, Cherokee, Coal, Comanche, Cotton, Craig, Custer, Delaware, Dewey, Grady, Grant, Greer, Harmon, Haskell, Hughes, Jackson, Kay, Kingfisher, Kiowa, Latimer, Major, Mayes, McCurtain, Mcintosh, Muskogee, Noble, Okfuskee, Okmulgee, Osage, Pittsburg, Pushmataha, Roger Mills, Sequoyah, Tillman, Washita, Woods.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.625
Non-Profit Organizations without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14627B and for economic injury is 14628B.

(Catalog of Federal Domestic Assistance Numbers 59008)

Lisa Lopez-Suarez,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2016–03770 Filed 2–22–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Regulatory Fairness Hearing: Region VIII—Salt Lake City, Utah

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open hearing of Region VIII small business owners in Salt Lake City, Utah.

SUMMARY: The SBA, Office of the National Ombudsman is issuing this notice to announce the location, date and time of the Salt Lake City, Utah Regulatory Fairness Hearing. This hearing is open to the public.

DATES: The hearing will be held on Wednesday, March 9, 2016, from 9:00 a.m. to 12:30 p.m. (MST).

ADDRESSES: The hearing will be at the Salt Lake City Public Library, 210 East 400 South Street, 4th Floor Meeting Room, Salt Lake City, Utah 84111.

SUPPLEMENTARY INFORMATION: Pursuant to the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121), Sec. 222, SBA announces the hearing for Small Business Owners, Business Organizations, Trade Associations, Chambers of Commerce and related organizations serving small business concerns to report experiences regarding unfair or excessive Federal regulatory enforcement issues affecting their members.

FOR FURTHER INFORMATION CONTACT: The hearing is open to the public; however, advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation at the Salt Lake City, Utah hearing must contact Elahe Zahirieh by March 5, 2016, in writing by fax at 202–481–6062 or 202–481–5719 or email at *ombudsman@sba.gov* in order to be placed on the agenda. For further information, please contact Elahe Zahirieh, Case Management Specialist, Office of the National Ombudsman, 409 3rd Street SW., Suite 330, Washington, DC 20416, by phone (202) 205–6499 and fax (202) 481–6062. Additionally, if you need accommodations because of a disability, translation services, or require additional information, please contact Elahe Zahirieh as well.

For more information on the Office of the National Ombudsman, see our Web site at *www.sba.gov/ombudsman.*

Dated: February 12, 2016.

Miguel J. L'Heureux,

SBA Committee Management Officer.

[FR Doc. 2016–03765 Filed 2–22–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14589 and #14590; Disaster Number MS–00083]

Mississippi; Disaster Declaration

AGENCY: U.S. Small Business Administration.

ACTION: Notice; Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Mississippi (FEMA–4248 DR), dated 01/04/2016.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 12/23/2015 through 12/28/2015.

DATES: *Effective Date*: 02/11/2016.

Physical Loan Application Deadline Date: 03/04/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 10/04/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of MISSISSIPPI, dated 01/04/2016, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Chickasaw.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–03766 Filed 2–22–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14625 and #14626; Disaster #TX–00464]

Texas; Disaster Declaration

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Texas (FEMA–4255–DR), dated 02/09/2016.

Incident: Severe Winter Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 12/26/2015 through 01/21/2016.

Effective Date: 02/09/2016.

Physical Loan Application Deadline Date: 04/11/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 11/09/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 02/09/2016, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Bailey, Castro, Childress, Cochran, Dallas, Deaf Smith, Dickens, Ellis, Hall, Hardeman, Harrison, Henderson, Hopkins, Kaufman, Kent, King, Lamb, Lubbock, Navarro, Parmer, Rains, Red River, Rockwall, Titus, Van Zandt.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.625
Non-Profit Organizations without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14625B and for economic injury is 14626B

(Catalog of Federal Domestic Assistance Numbers 59008)

Lisa Lopez-Suarez,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2016–03767 Filed 2–22–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14629 and #14630; Disaster #MO–00079]

Missouri; Disaster Declaration

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Missouri (FEMA–4250–DR), dated 02/10/2016.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 12/23/2015 through 01/09/2016.

Effective Date: 02/10/2016.

Physical Loan Application Deadline Date: 04/11/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 11/10/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 02/10/2016, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Barry, Bollinger, Camden, Cape Girardeau, Cedar, Crawford, Dade, Dallas, Douglas, Dunklin, Franklin, Gasconade, Greene, Howell, Iron, Jasper, Jefferson, Lawrence, Lincoln, Mcdonald, Newton, Ozark, Perry, Phelps, Pulaski, Reynolds, Saint Charles, Saint Clair, Saint Louis, Saint Louis City, Sainte Genevieve, Scott, Stoddard, Stone, Taney, Texas, Washington, Webster.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14629B and for economic injury is 14630B.

(Catalog of Federal Domestic Assistance Numbers 59008)

Lisa Lopez-Suarez,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2016–03771 Filed 2–22–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14609; Disaster #CA–00243]

California; Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of an Economic Injury Disaster Loan (EIDL) declaration for the State of California, dated 02/02/2016.

Incident: Ocean Conditions Resulting in the Delayed Commercial Dungeness Crab Season and Closure of Commercial Rock Crab Fishery.

Incident Period: 11/06/2015 and continuing.

Effective Date: 02/10/2016.

Eidl Loan Application Deadline Date: 11/02/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center,14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of an Economic Injury declaration for the State of California dated 02/02/2016, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Monterey, Santa Barbara, Santa Clara, Ventura.

Contiguous Counties:

California: Fresno, Los Angeles, Merced.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: February 10, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–03768 Filed 2–22–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Disposal of Aeronautical Property at Smyrna/Rutherford County Airport, Smyrna, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The Federal Aviation Administration is requesting public comment on a request by the Smyrna/Rutherford County Airport Authority, Smyrna, TN, to release land at the Smyrna/Rutherford County Airport. The request consists of approximately 2.01 acres of property non-contiguous to the airport on Rooker Road located three miles southeast of the airport. This property is a part of the parcel deeded to the airport from Government Service Administration (GSA) when Stewart Air Force base was closed and decommissioned in 1970. It is the former location of a Non Directional Beacon (NDB), which was deemed obsolete and decommissioned in September 2013. This release will allow the property to be sold for airport revenue. This action is taken under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before March 24, 2016.

ADDRESSES: Documents are available for review at the Smyrna/Rutherford County Airport, 278 Doug Warpoole Rd., Smyrna, TN 37167; and the FAA Memphis Airports District Office, 2600 Thousand Oaks Boulevard, Suite 2250, Memphis, TN 38118–2482. Written comments on the Sponsor's request must be delivered or mailed to: Mr. Phillip J. Braden, Manager, Memphis Airports District Office, 2600 Thousand Oaks Boulevard, Suite 2250, Memphis, TN 38118–2482.

In addition, a copy of any comments submitted to the FAA must be mailed or delivered to Mr. John Black, Executive Director, Smyrna/Rutherford County Airport Authority, 278 Doug Warpoole Rd., Smyrna, TN 37167.

FOR FURTHER INFORMATION CONTACT: Ms. Chastity N. Clark, Program Manager, Federal Aviation Administration, Memphis Airports District Office, 2600 Thousand Oaks Boulevard, Suite 2250, Memphis, TN 38118–2482. The application may be reviewed in person at this same location, by appointment.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to release property for disposal at Smyrna/Rutherford County Airport, Smyrna, TN 37167 under the provisions of AIR 21 (49 U.S.C. 47107(h)(2)).

On February 11, 2016, the FAA determined that the request to release property for non-aeronautical purposes at Smyrna/Rutherford County Airport meets the procedural requirements of the Federal Aviation Administration. The FAA may approve the request, in whole or in part, no later than March 24, 2016.

The following is a brief overview of the request:

The Smyrna/Rutherford County Airport is proposing the release of approximately 2.01 acres of property non-contiguous to the airport. This property is located on Rooker Road, approximately three miles southeast of the airport. This property was the former site of a Non Directional Beacon (NDB), which was decommissioned in September 2013. The airport authority intends to sale the property and use revenue for airport purposes.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

Issued in Memphis, TN, on February 11, 2016.

Phillip Braden,

Manager, Memphis Airports District Office.

[FR Doc. 2016–03686 Filed 2–22–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2015–62]

Petition for Exemption; Summary of Petition Received; American Airlines, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before March 14, 2016.

ADDRESSES: Send comments identified by docket number FAA–2015–4867 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Nia Daniels, (202–267–9677), 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 16, 2016.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2015–4867.

Petitioner: American Airlines, Inc.

Section(s) of 14 CFR Affected: 121.438; 121.652.

Description of Relief Sought: American Airlines, Inc. requests an exemption to use the combined line operating flight time from the Boeing 757 and Boeing 767 for the purposes of satisfying the 75 hour line operating flight time requirement for crew pairing and to combine the pilot in command (PIC) flight time from either the Boeing 757, Boeing 767, or both to satisfy the requirement of 100 hours of PIC operational flight time, in order to operate to the normal Category I and Category II minimums.

[FR Doc. 2016–03710 Filed 2–22–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2015–81]

Petition for Exemption; Summary of Petition Received; United Airlines, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before March 14, 2016.

ADDRESSES: Send comments identified by docket number FAA–2015–5566 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy*.

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Nia Daniels, (202–267–9677), 800 Independence Avenue SW, Washington, DC, 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 16, 2016.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2015–5566.

Petitioner: United Airlines, Inc.

Section(s) of 14 CFR Affected: 121.438; 121.652.

Description of Relief Sought: United Airlines, Inc. requests an exemption to allow it to pair crewmembers with less than 75 hours in either the Boeing 757 (B757) or the Boeing 767 (B767), conditioned on United requiring that the pilot in command (PIC) or second in command must have at least 75 hours of combined line operating flight time in the B757 and B767 for crew pairing requirements. The petitioner also requests to allow PIC flight times logged either in the B757 or B767 to meet the 100 hours of PIC time required in order to avoid being subject to higher minimums in either aircraft type once the combined flight time exceeds 100 hours.

[FR Doc. 2016–03709 Filed 2–22–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2015–69]

Petition for Exemption; Summary of Petition Received; Alwyn Lynch

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before March 14, 2016.

ADDRESSES: Send comments identified by docket number FAA–2015–6278 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Nia Daniels, (202–267–7626), 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 16, 2016.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2015–6278.

Petitioner: Alwyn Lynch.

Section(s) of 14 CFR Affected: 121.436(a)(3) and (c).

Description of Relief Sought:

Relief is sought from §§ 121.436(a)(3) and/or (c) with regards to the pilot in command (PIC) experience requirements so as to allow Mr. Lynch to credit 500 hours of equivalent PIC

experience, technical knowledge, and experience towards the PIC flight time requirements of § 121.436.

[FR Doc. 2016–03713 Filed 2–22–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2016–0013]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel Anchor Management; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 24, 2016.

ADDRESSES: Comments should refer to docket number MARAD–2016–0013. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel Anchor Management is:

Intended Commercial Use of Vessel: ''The vessel will be used as a small passenger vessel (UPV 6-pack) only, and may be upgraded in the future to accommodate up to 12 passengers if a USCG Certificate of Inspection is obtained. The owner is a Scuba Instructor, Captain and Veteran who has worked in the local diving and tourism industry for 15+ years. As such, the vessel will offer family friendly day trips for sightseeing, scuba instruction, and relaxation afloat.''

Geographic Region: ''Florida''.

The complete application is given in DOT docket MARAD–2016–0013 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

By Order of the Maritime Administrator.

Dated: February 11, 2016.

Gabriel Chavez,

Acting Secretary, Maritime Administration.

[FR Doc. 2016–03800 Filed 2–22–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2016–0016]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel Tua Yacht; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 24, 2016.

ADDRESSES: Comments should refer to docket number MARAD–2016–0016. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel Tua Yacht is:

Intended Commercial Use of Vessel: ''The intended commercial use of the vessel will be to carry passengers in Florida, and in conjunction with the Casa Tua Hotel and restaurant''.

Geographic Region: ''Florida''.

The complete application is given in DOT docket MARAD–2016–0016 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state

the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

By Order of the Maritime Administrator.

Dated: February 11, 2016.

Gabriel Chavez,

Acting Secretary, Maritime Administration.

[FR Doc. 2016–03797 Filed 2–22–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2016–0018]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel Islescapes; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 24, 2016.

ADDRESSES: Comments should refer to docket number MARAD–2016–0018. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.Carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel Islescapes is:

Intended Commercial Use of Vessel: Perform gourmet dinner cruises.

Geographic Region: ''Florida''.

The complete application is given in DOT docket MARAD–2016–0018 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

By Order of the Maritime Administrator.

Dated: February 11, 2016.

Gabriel Chavez,

Acting Secretary, Maritime Administration.

[FR Doc. 2016–03803 Filed 2–22–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2016–0014]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel Large Flightless Birds; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 24, 2016.

ADDRESSES: Comments should refer to docket number MARAD–2016–0014. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel Large Flightless Birds is:

Intended Commercial Use of Vessel: ''Vessel Chartering Operations, Passengers Only''.

Geographic Region: ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida,

California, Oregon, Washington and Alaska (excluding waters in Southeastern Alaska and waters north of a line between Gore Point to Cape Suckling [including the North Gulf Coast and Prince William Sound]).''

The complete application is given in DOT docket MARAD–2016–0014 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

By Order of the Maritime Administrator.

Dated: February 11, 2016.

Gabriel Chavez,

Acting Secretary, Maritime Administration.

[FR Doc. 2016–03799 Filed 2–22–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2016–0015]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel Sea Reaper; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 24, 2016.

ADDRESSES: Comments should refer to docket number MARAD–2016–0015. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel Sea Reaper is:

Intended Commercial Use of Vessel: ''Carry Passengers/Sportfishing''.

Geographic Region: ''Alabama, Florida, Mississippi, Louisiana, Texas''.

The complete application is given in DOT docket MARAD–2016–0015 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

By Order of the Maritime Administrator.

Dated: February 11, 2016.

Gabriel Chavez,

Acting Secretary, Maritime Administration.

[FR Doc. 2016–03798 Filed 2–22–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2016–0017]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel CROSSFIRE; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 24, 2016.

ADDRESSES: Comments should refer to docket number MARAD–2016–0017. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.Carr@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CROSSFIRE is:

Intended Commercial Use of Vessel: ''Vessel will be used as a sail training vessel, to each students safety at sea, navigation skills and standard procedures for sailing inshore and offshore.''

Geographic Region: Washington State and Hawaii.

The complete application is given in DOT docket MARAD–2016–0017 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: February 11, 2016.

Gabriel Chavez,

Acting Secretary, Maritime Administration.

[FR Doc. 2016–03796 Filed 2–22–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket Nos. PHMSA–2016–0004 Tennessee Gas Pipeline Company, L.L.C. (TGP); PHMSA–2016–0006 Southern Natural Gas Company, L.L.C. (SNG); PHMSA–2016–0007 El Paso Natural Gas Company, L.L.C. (EPNG); PHMSA–2016–0008 Colorado Interstate Gas Company, L.L.C. (CIG); PHMSA–2016–0009 NEXUS Gas Transmission, L.L.C. (NEXUS)]

Pipeline Safety: Request for Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice.

SUMMARY: Pursuant to the Federal pipeline safety laws, PHMSA is publishing this notice of special permit requests we have received from several natural gas pipeline operators, seeking relief from compliance with certain requirements in the Federal pipeline safety regulations. This notice seeks public comments on these requests, including comments on any safety or environmental impacts. At the conclusion of the 30-day comment period, PHMSA will evaluate the requests and determine whether to grant or deny a special permit.

DATES: Submit any comments regarding these special permit requests by March 24, 2016.

ADDRESSES: Comments should reference the docket numbers for the specific special permit request and may be submitted in the following ways:

- *E-Gov Web site: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: 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:* DOT Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

Note: Comments are posted without changes or edits to *http://www.Regulations.gov*, including any personal information provided. There is a privacy statement published on *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

General: Kay McIver by telephone at (202) 366–0113; or, email at *kay.mciver@dot.gov.*

Technical: Steve Nanney by telephone at (713) 272–2855; or, email at *steve.nanney@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA has received requests for special permits from pipeline operators who seek relief from compliance with certain pipeline safety regulations. Each request includes a technical analysis and a Draft Environment Assessment (EA) provided by the respective operator. Each request is filed in the Federal Docket Management System (FDMS) and has been assigned a separate docket number in the FDMS. We invite interested persons to participate by reviewing these special permit requests, their supporting EA, and any proposed special permit conditions to maintain pipeline integrity and safety, at *http://www.Regulations.gov*; and by submitting written comments, data or other views. Please include any comments on potential safety or environmental impacts that may result if these special permits are granted.

Before acting on these special permit requests, PHMSA will evaluate all comments received on or before the comments closing date. Comments will be evaluated after this date if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment we receive in making our decision to grant or deny the request.

PHMSA has received the following special permit request(s):

Docket No.	Requester	Regulation(s)	Nature of special permit
PHMSA–2016–0004	Tennessee Gas Pipeline Company, L.L.C. (TGP).	49 CFR 192.611(a) and (d), 192.619(a) and 192.5.	To authorize TGP Company relief from certain Federal regulations found in 49 CFR 192.611(a) and (d), 192.619(a) and 192.5, for pipeline segments where the class location of the segments had been changed in accordance with § 192.5(c) ''cluster rule''. TGP found that their procedure methodology for the determination of class location boundaries using the clustering and sliding mile criteria in 49 CFR 192.5(c) was incorrect and has updated operating procedures for usage of this cluster rule, and the sliding mile for confirmation of maximum allowable operating pressure (MAOP). The change in clustering methodology resulted in a number of new class location units, and more specifically Class 3 locations, for which pressure testing or pipe replacements are now required. TGP proposes to replace all pipeline segments that are in areas with over 10 dwellings for human occupancy within 5 years, and to implement enhanced integrity management (IM) activities over all described pipeline segments. These proposed IM activities can be reviewed on docket # PHMSA–2016–0004 at *http://www.Regulations.gov.* This change impacts 48.02 miles of TGP mainline pipelines. The special permit request covers multiple TGP interstate pipeline segments located in the states of Kentucky, Louisiana, Mississippi, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Texas and West Virginia.
PHMSA–2016–0006	Southern Natural Gas, Company, L.L.C. (SNG).	49 CFR 192.611(a) and (d), 192.619(a) and 192.5.	To authorize SNG Company relief from certain Federal regulations found in 49 CFR 192.611(a) and (d), 192.619(a) and 192.5, for pipeline segments where the class location of the segments had been changed in accordance with § 192.5(c) ''cluster rule''. SNG found that their procedure methodology for the determination of class location boundaries using the clustering and sliding mile criteria in 49 CFR 192.5(c) was incorrect and has updated operating procedures for usage of this cluster rule, and the sliding mile for confirmation of maximum allowable operating pressure (MAOP). The change in clustering methodology resulted in a number of new class location units, and more specifically Class 3 locations, for which pressure testing or pipe replacements are now required. SNG proposes to replace all pipeline segments that are in areas with over 10 dwellings for human occupancy within 5 years, and to implement enhanced integrity management (IM) activities over all described pipeline segments. These proposed IM activities can be reviewed on docket # PHMSA–2016–0006 at *http://www.Regulations.gov.* This change impacts 5.75 miles of SNG mainline pipelines. The special permit request covers multiple SNG interstate pipeline segments located in the states of Alabama, Georgia, Louisiana and Mississippi.
PHMSA–2016–0007	El Paso Natural Gas Company, L.L.C. (EPNG).	49 CFR 192.611(a) and (d), 192.619(a) and 192.5.	To authorize EPNG Company relief from certain Federal regulations found in 49 CFR 192.611(a) and (d), 192.619(a) and 192.5, for pipeline segments where the class location of the segments had been changed in accordance with § 192.5(c) ''cluster rule''.

Docket No.	Requester	Regulation(s)	Nature of special permit
			EPNG found that their procedure methodology for the determination of class location boundaries using the clustering and sliding mile criteria in 49 CFR 192.5(c) was incorrect and has updated operating procedures for usage of this cluster rule, and the sliding mile for confirmation of maximum allowable operating pressure (MAOP). The change in clustering methodology resulted in a number of new class location units, and more specifically Class 3 locations, for which pressure testing or pipe replacements are now required. EPNG proposes to replace all pipeline segments that are in areas with over 10 dwellings for human occupancy within 5 years, and to implement enhanced integrity management (IM) activities over all described pipeline segments. These proposed IM activities can be reviewed on docket # PHMSA–2016–0007 at *http://www.Regulations.gov.* This change impacts 7.25 miles of EPNG mainline pipelines. The special permit request covers multiple EPNG interstate pipeline segments located in the states of Arizona, New Mexico, and Texas.
PHMSA–2016–0008	Colorado Interstate Gas Company, L.L.C. (CIG).	49 CFR 192.611(a) and (d), 192.619(a) and 192.5.	To authorize CIG Company relief from certain Federal regulations found in 49 CFR 192.611(a) and (d), 192.619(a) and 192.5, for pipeline segments where the class location of the segments had been changed in accordance with § 192.5(c) ''cluster rule''. CIG found that their procedure methodology for the determination of class location boundaries using the clustering and sliding mile criteria in 49 CFR 192.5(c) was incorrect and has updated operating procedures for usage of this cluster rule, and the sliding mile for confirmation of maximum allowable operating pressure (MAOP). The change in clustering methodology resulted in a number of new class location units, and more specifically Class 3 locations, for which pressure testing or pipe replacements are now required. CIG proposes to replace all pipeline segments that are in areas with over 10 dwellings for human occupancy within 5 years, and to implement enhanced integrity management (IM) activities over all described pipeline segments. These proposed IM activities can be reviewed on docket # PHMSA–2016–0008 at *http://www.Regulations.gov.* This change impacts 3.47 miles of CIG mainline pipelines. The special permit request covers multiple CIG interstate pipeline segments located in the states of Colorado and Wyoming.
PHMSA–2016–0009	NEXUS Gas Transmission, L.L.C. (NEXUS).	49 CFR 192.625	To authorize NEXUS Gas Transmission, L.L.C., in the waiving of certain Federal odorization requirements found in 49 CFR 192.625, for its proposed pipeline system in Michigan. The proposed NEXUS system will consist of approximately 255 miles of new 36-inch pipeline, four (4) new compressor stations, and six (6) new meter stations with a design capacity of 1.5 billion cubic feet per day (Bcf/d). The construction and operation of the NEXUS Pipeline will be done by Spectra Energy Partners, L.P. (SEP), in partnership with DTE Energy Company. The NEXUS pipeline route primarily passes through Class 1 areas for the first 248 miles. However, approximately 55% (~4.0) miles of the last 7.3 miles leading up to the terminus of the NEXUS pipeline and the interconnect with DTE Gas Company, will pass through Class 3 areas. As a result of the Class 3 percentage, 49 CFR 192.625 requires odorization of the pipeline in the Class 3 areas of the last 7.3 miles of the NEXUS pipeline.

Docket No.	Requester	Regulation(s)	Nature of special permit
			NEXUS proposed to implement additional design, materials, construction, operations and maintenance requirements described in Sections 4.2 through 4.5, below, that would be specified conditions in their proposed special permit. These proposed conditions can be reviewed on docket # PHMSA–2016–0009 at *http://www.Regulations.gov.*

Authority: 49 U.S.C. 60118 (c)(1) and 49 CFR 1.97

Alan K. Mayberry,

Deputy Associate Administrator for Policy and Programs.

[FR Doc. 2016–03659 Filed 2–22–16; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Port Performance Freight Statistics Working Group

AGENCY: Bureau of Transportation Statistics (BTS), Office of the Assistant Secretary for Research and Technology, U.S. Department of Transportation.

ACTION: Notice of Establishment of Port Performance Freight Statistics Working Group and Solicitation of Nominations for Membership.

SUMMARY: Pursuant to section 6314 of title 49, United States Code, as codified by section 6018 of the *Fixing America's Surface Transportation* (FAST) *Act* (Pub. L. 114–94; 129 Stat. 1312) and section 9(a)(1) of the *Federal Advisory Committee Act* (FACA), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Port Performance Freight Statistics Working Group (hereafter, ''Working Group'') will be established and make its recommendations on or before December 4, 2016. Further, this notice serves as a request for nominations for representatives to the Working Group.

The establishment of the Working Group is necessary for the Department to carry out its mission and in the best interest of the public. The Working Group will operate in accordance with the provisions of the FACA and the rules and regulations issued in implementation of that Act.

DATES: The deadline for nominations for Working Group representatives must be received on or before March 24, 2016.

ADDRESSES: All nomination material should be emailed to the BTS Director Patricia Hu at: *portstatistics@dot.gov* or mailed to Office of the Assistant Secretary for Research and Technology, Bureau of Transportation Statistics, Attn: Port Performance Freight Statistics Working Group, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room # E34–429, Washington, DC 20590. Any person requiring accessibility accommodations should contact the Bureau of Transportation Statistics at (202) 366–1270; or email BTS Director Patricia Hu at: *portstatistics@dot.gov.*

FOR FURTHER INFORMATION CONTACT: Office of the Assistant Secretary for Research and Technology, Bureau of Transportation Statistics, Attn: Port Performance Freight Statistics Working Group, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room # E34–429, Washington, DC 20590; phone: (202) 366–1270; or email: *portstatistics@dot.gov.*

SUPPLEMENTARY INFORMATION: As part of meeting the requirement under 49 U.S.C. 6314(c), the BTS Director is establishing the Working Group to receive recommendations on matters related to port performance measures, including:

(a) Identifying a generally accepted industry standard for port data collection and reporting.

(b) Specifying standards for collecting data and reporting nationally consistent port performance measures.

(c) Making recommendations for statistics measuring on U.S. port capacity and throughput.

(d) Developing a process for the U.S. Department of Transportation (hereafter, ''Department'') to collect timely and consistent data, including identifying safeguards to protect proprietary information.

The Department is hereby soliciting nominations for Working Group representatives. The BTS Director on behalf of the Secretary of Transportation will appoint the Working Group members. In accordance with 49 U.S.C. 6314(c), the Working Group shall be comprised of representatives from a number of Federal agencies, organizations, and industries. The Department is seeking nominations to fill the following positions on the Working Group:

- 1 representative from the rail industry;
- 1 representative from the trucking industry;
- 1 representative from the maritime shipping industry;
- 1 representative from a labor organization for each industry [rail, trucking, and maritime shipping];
- 1 representative from the International Longshoremen's Association;
- 1 representative from the International Longshore and Warehouse Union;
- 1 representative from a port authority;
- 1 representative from a terminal operator; and
- representatives of the Transportation Research Board of the National Academies of Sciences, Engineering, and Medicine.

In establishing the Working Group, the Department shall establish a Chair and Vice Chair of the Working Group from among those selected representatives, and the Working Group is expected to meet as necessary to fulfill the purpose for which it was established. Working Group representatives shall serve without compensation and those who are not Government employees shall be appointed as Special Government Employees, subject to certain ethics restrictions, and required to submit certain information in connection with the appointment process.

The Working Group may seek subject matter experts (SMEs) from organizations which are not represented on the Working Group to serve on subcommittees. These SMEs who are called upon solely for their expertise may also be appointed as Special Government Employees and will be subject to certain ethics restrictions, and such subcommittee members will be required to submit certain information in connection with the appointment process.

Process and Deadline for Submitting Nominations: Qualified individuals may self-nominate or be nominated by any individual or organization. To be considered for the Port Performance Freight Statistics Working Group,

nominators should submit the following information:

(1) Name, title, and relevant contact information (including phone, fax, and email address) of the individual under consideration;

(2) A letter, on letterhead, from a company, union, trade or membership association, or non-profit organization containing a brief description why the nominee should be considered for membership;

(3) Short biography of nominee including professional and academic credentials;

(4) An affirmative statement that the nominee meets all Working Group eligibility requirements.

Please do not send company, trade association, or organization brochures or any other information. Materials submitted should total two pages or less. Should more information be needed, Departmental staff will contact the nominee, obtain information from the nominee's past affiliations, or obtain information from publicly available sources, such as the Internet.

Nominations may be emailed to BTS Director Patricia Hu at: *portstatistics@dot.gov* or mailed to Office of the Assistant Secretary for Research and Technology, Bureau of Transportation Statistics, Attn: Port Performance Freight Statistics Working Group, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room # E34–429, Washington, DC 20590. Nominations must be received before March 24, 2016. Nominees selected for appointment to the Working Group will be notified by return email and receive a letter of appointment.

A selection team comprising representatives from several Department operating administrations will review the nomination packages. The selection team will make recommendations regarding membership to the BTS Director based on criteria including:

(1) Professional or academic expertise, experience, and knowledge;

(2) stakeholder representation;

(3) availability and willingness to serve; and

(4) skills working collaboratively on committees and advisory panels.

Based upon the selection team's recommendations, the BTS Director on behalf of the Secretary of Transportation will select representatives. In the selection of members for the advisory committee, the Department will seek to ensure a balanced representation and consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the advisory committee.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical disability, marital status, or sexual orientation. To ensure that recommendations to the Secretary take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Rolf R. Schmitt,

Deputy Director, Bureau of Transportation Statistics.

[FR Doc. 2016–03702 Filed 2–22–16; 8:45 am]

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CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

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