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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 875

RIN 3206-AN05

Federal Long Term Care Insurance Program Eligibility; Corrections

AGENCY: U.S. Office of Personnel Management.

ACTION: Correcting amendments.

SUMMARY: The United States Office of Personnel Management (OPM) published a document in the **Federal Register** on October 30, 2015, (80 FR 66785) expanding eligibility to apply for coverage under the Federal Long Term Care Insurance Program (FLTCIP). The final rule stated that the definitions for “domestic partner” and “domestic partnership” were revised, but OPM meant to add the definitions. This correcting amendment adds those definitions to OPM’s regulations.

DATES: Effective March 30, 2016.

FOR FURTHER INFORMATION CONTACT: Ronald Brown, Policy Analyst, (202) 606-0004, or by email to Ronald.Brown@opm.gov.

SUPPLEMENTARY INFORMATION: On October 30, 2015, OPM published FLTCIP final regulations in the **Federal Register** to (1) Expand the definition of “qualified relative” under 5 U.S.C. 9001(5)(D) to include both same-sex and opposite-sex domestic partners of Federal and U.S. Postal Service employees and annuitants and members and retired members of the uniformed services; (2) expand the definition of “qualified relative” to include adult children of domestic partners of Federal and U.S. Postal Service employees and annuitants, and members and retired members of the uniformed services; and (3) make other technical conforming amendments. See 80 FR 66785–66787. This document amends the regulations

by adding the definitions of “domestic partner” and “domestic partnership” to 5 CFR 875.101.

List of Subjects in 5 CFR Part 875

Administrative practice and procedure, Employee benefit plans, Government contracts, Government employees, Health insurance, Military personnel, Organization and functions, Retirement.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

Accordingly, OPM is amending 5 CFR part 875 as follows:

PART 875—FEDERAL LONG TERM CARE INSURANCE PROGRAM

■ 1. The authority citation for 5 CFR part 875 continues to read as follows:

Authority: 5 U.S.C. 9008.

Subpart A—Administration and General Provisions

■ 2. Section 875.101 is amended by adding the definitions of “Domestic partner” and “Domestic partnership” in alphabetical order to read as follows:

§ 875.101 Definitions.

* * * * *

Domestic partner is defined as a person in a domestic partnership with an employee, annuitant, member of the uniformed services, or retired member of the uniformed services.

Domestic partnership means:

(1) A committed relationship between two adults, of the opposite sex or same sex, in which the partners—

(i) Are each other’s sole domestic partner and intend to remain so indefinitely;

(ii) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);

(iii) Are at least 18 years of age and mentally competent to consent to a contract;

(iv) Share responsibility for a significant measure of each other’s financial obligations;

(v) Are not married or joined in a civil union to anyone else;

(vi) Are not a domestic partner of anyone else;

(vii) Are not related in a way that would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed;

(viii) Provide documentation demonstrating fulfillment of the requirements of paragraphs (1)(i) through (vi) of this definition as prescribed by OPM; and

(ix) Certify that they understand that willful falsification of the documentation described in paragraph (1)(viii) of this definition may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification and may constitute a criminal violation under 18 U.S.C. 1001.

(2) You or your domestic partner must notify the employing office if at any time between the time of application and the time coverage is scheduled to go into effect, any of the conditions listed in paragraphs (1)(i) through (vi) of this definition are no longer met, in which case a domestic partnership is deemed terminated. Such notification must be made as soon as possible, but in no event later than thirty calendar days after such conditions are no longer met.

* * * * *

[FR Doc. 2016-04322 Filed 2-26-16; 8:45 am]

BILLING CODE 6325-63-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 59

[Doc. No. AMS-LPS-15-0071]

RIN 0581-AD46

Livestock Mandatory Reporting: Revision of Lamb Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Direct final rule.

SUMMARY: On April 2, 2001, the U.S. Department of Agriculture’s (USDA) Agricultural Marketing Service (AMS) implemented the Livestock Mandatory Reporting (LMR) program as required by the Livestock Mandatory Reporting Act of 1999 (1999 Act). The LMR program was reauthorized in October 2006 and again in September 2010. On September 30, 2015, the Agriculture Reauthorizations Act of 2015 (2015 Reauthorization Act) reauthorized the

LMR program for an additional 5 years and directed the Secretary of Agriculture (Secretary) to amend the LMR lamb reporting requirements by redefining terms within the Code of Federal Regulations not later than 180 days after enactment. This direct final rule incorporates the lamb reporting changes contained within the 2015 Reauthorization Act under the USDA LMR regulations.

DATES: Effective Date: This rule is effective May 31, 2016 unless the Agency receives substantive adverse comments on or before April 29, 2016. If any timely substantive adverse comments are received, this direct final rule will be withdrawn in part or in whole by publication of a document in the **Federal Register** within 30 days after the comment period ends. Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this direct final rule must be received by April 29, 2016.

ADDRESSES: Comments should be submitted electronically at <http://www.regulations.gov>. Comments may also be sent to Michael Lynch, Director; Livestock, Poultry, and Grain Market News Division; Livestock, Poultry, and Seed Program; AMS, USDA, Room 2619-S, STOP 0252; 1400 Independence Avenue SW., Washington, DC 20250-0251; telephone (202) 720-4868; fax (202) 690-3732; or email to Michael.Lynch@ams.usda.gov.

Comments should reference docket number AMS-LPS-15-0071 and the date and page number of this issue of the **Federal Register**. Submitted comments will be available for public inspection at <http://www.regulations.gov>, or during regular business hours at the above address. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

Comments that specifically pertain to the information collection and recordkeeping requirements of this action should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW., Room 725, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Michael Lynch, Director; Livestock, Poultry, and Grain Market News Division; Livestock, Poultry, and Seed Program; AMS, USDA, Room 2619-S, STOP 0252; 1400 Independence Avenue SW., Washington, DC 20250-0251; telephone (202) 720-4868; fax (202)

690-3732; or email to Michael.Lynch@ams.usda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The 1999 Act was enacted into law on October 22, 1999, [Pub. L. 106-78; 113 Stat. 1188; 7 U.S.C. 1635-1636(i)] as an amendment to the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*). On April 2, 2001, AMS Livestock, Poultry, and Seed Program's (LPS) Livestock, Poultry, and Grain Market News Division (LPGMN) implemented the LMR program as required by the 1999 Act. The purpose was to establish a program of easily understood information regarding the marketing of cattle, swine, lambs, and livestock products; improve the price and supply reporting services of the USDA; and encourage competition in the marketplace for livestock and livestock products. The LMR regulations (7 CFR part 59) set the requirements for certain packers or importers to electronically submit purchase and sales information of livestock and livestock products to meet this purpose.

The statutory authority for the program lapsed on September 30, 2005. In October 2006, Congress passed the Livestock Mandatory Reporting Reauthorization Act (2006 Reauthorization Act) [Pub. L. 109-296]. The 2006 Reauthorization Act re-established the regulatory authority for the continued operation of LMR through September 30, 2010. On July 15, 2008, the LMR final rule became effective (73 FR 28606, May 16, 2008).

On September 28, 2010, Congress passed the Mandatory Price Reporting Act of 2010 (2010 Reauthorization Act) [Pub. L. 111-239]. The 2010 Reauthorization Act reauthorized LMR for an additional 5 years through September 30, 2015. On January 7, 2013, the LMR final rule became effective (77 FR 50561, August 22, 2012).

On September 30, 2015, the Agriculture Reauthorizations Act of 2015 (2015 Reauthorization Act) [Pub. L. 114-54] reauthorized the LMR program for an additional 5 years and directed the Secretary to revise the LMR lamb reporting requirements by modifying the definitions of packer and importer within the Code of Federal Regulations not later than 180 days after enactment.

It is found and determined that good cause exists for implementing this direct final rule on May 31, 2016. This rule has been determined to be a "non-significant regulatory action" under section 3(f) of Executive Order 12866; and, AMS finds that under 5 U.S.C.

553(b)(3)(B) and 808(2) good cause exists to publish a direct final rule without prior publication of a notice of proposed rulemaking. The Agriculture Reauthorizations Act of 2015 directed the Secretary to revise the LMR lamb reporting requirements by redefining terms within the *Code of Federal Regulations* not later than 180 days after enactment which was September 30, 2015. This statutory deadline made it impracticable for AMS to publish a proposed rule prior to issuing a direct final rule. Additionally, prior notice and opportunity for comment are unnecessary because the revisions in the direct final rule are based upon lamb industry recommendations and AMS does not expect substantive public comments for this rulemaking due to the minor nature and minimal impact of the revision. The Livestock Marketing Information Center (LMIC), an independent provider of economic analyses concerning the livestock industry, conducted an analysis of the current LMR program for lamb reporting in 2013 at the request of the American Sheep Industry Association, an industry organization representing sheep producers throughout the U.S. The regulatory revisions within this rulemaking are based upon this study.¹

This direct final rule incorporates the lamb reporting changes contained within the 2015 Reauthorization Act under the USDA LMR regulations. As part of this direct final rule, interested parties may submit comments by April 29, 2016. If AMS receives substantive adverse comments on the rule, it will evaluate the comment to determine whether they are sufficiently compelling to warrant reconsideration of the effective date of the rule. Accordingly, this rule will be effective on May 31, 2016.

Section 241 of the 1999 Act gives USDA authority to establish a mandatory lamb price reporting program that will: (1) Provide timely, accurate, and reliable market information; (2) facilitate more informed marketing decisions; and (3) promote competition in the lamb slaughtering industry. AMS established submission requirements for lamb packers and lamb importers in accordance with this authority based upon its extensive knowledge of the lamb industry gained

¹ Hearing to Review Reauthorization of the Livestock Mandatory Reporting Act: Hearing before the Subcommittee on Livestock and Foreign Agriculture of the Committee on Agriculture, House of Representatives, 114th Cong., 1st sess. (Serial No. 114-12). (2015). Retrieved from GPO's Federal Digital System: <https://www.gpo.gov/fdsys/pkg/CHRG-114hhrg94372/pdf/CHRG-114hhrg94372.pdf>.

through a program of voluntary market information reporting of lamb.

Under the current LMR regulation, the term packer includes federally inspected lamb processing plants that slaughtered or processed an average of 75,000 head of lamb during the immediately preceding 5 calendar years. Additionally, a lamb processing plant that did not slaughter or process an average of 75,000 lambs during the immediately preceding 5 calendar years was required to report information if the Secretary determined the processing plant should be considered a packer based on its capacity. According to the regulation, packers are required to report information daily on domestic sales of boxed lamb cuts each reporting day including the price and quantity for each sale, the type of sale, the USDA grade, trim specification, weight range, delivery period, the product state of refrigeration, and any branded product characteristics. USDA reports on domestic boxed lamb cut sales to the public once each reporting day.

For any calendar year, a lamb importer who imported an average of 2,500 metric tons of lamb meat products per year during the immediately preceding 5 calendar years is required to report to USDA weekly the prices received for imported lamb cuts sold on the domestic market. Additionally, the term includes those that did not import an average of 2,500 metric tons of lamb meat products during the immediately preceding 5 calendar years, if USDA determines that the person should be considered an importer based on their volume of lamb imports. In the original rule, this threshold was an average of 5,000 metric tons of lamb meat products during the immediately preceding 5 calendar years, but was subsequently lowered to 2,500 metric tons in a final rule published in 2004 (69 FR 53784, September 2, 2004). Because there are not enough daily sales of imported products to meet the confidentiality guidelines and allow USDA to publish daily reports, lamb importers are required to report information on a weekly basis for sales of imported boxed lamb cuts sold on the domestic market during the prior week including the price and quantity for each sale, the type of sale, the USDA grade, trim specification, weight range, delivery period, the product state of refrigeration, and any branded product characteristics.

Since the implementation of LMR in 2001 and its subsequent revisions, the U.S. lamb industry has become more concentrated at all levels of the production system through consolidation, impacting AMS' ability

to publish certain market information in accordance with the confidentiality provisions of the 1999 Act. To help address this issue, LMIC conducted an analysis of the current LMR program for lamb reporting in 2013 at the request of the American Sheep Industry Association.² Based on this study, recommendations were proposed to amend the current LMR regulations to improve the price and supply reporting services of AMS and better align LMR lamb reporting requirements with current industry marketing practices. These recommendations are the basis for the lamb reporting changes contained within the 2015 Reauthorization Act under the USDA LMR regulations.

The 2015 Reauthorization Act revised the LMR lamb reporting requirements by modifying the definitions of packer and importer contained within the Code of Federal Regulations. Under the 2015 Reauthorization Act, the term "packer" includes any person with 50 percent or more ownership in a facility that slaughtered or processed an average of 35,000 lambs during the immediately preceding 5 calendar years, or a facility that did not slaughter or process an average of 35,000 lambs during the immediately preceding 5 calendar years if the Secretary determines that the processing plant should be considered a packer after considering its capacity.

In addition, under the 2015 Reauthorization Act, the term "importer" includes any person that imported an average of 1,000 metric tons of lamb meat products per year during the immediately preceding 4 calendar years, or did not import an average 1,000 metric tons of lamb meat products during the immediately preceding 4 calendar years and the Secretary determines that the person should be considered an importer based on their volume of lamb imports.

For consistency, the establishment of the 1,000 metric tons reporting provision on lamb importers will be comparable with the 35,000 head provision defining a lamb packer for purposes of LMR. The 1,000 metric tons provision is equal to approximately 2.2 million pounds of lamb meat product (1,000 metric tons \times 2,204.6 pounds = 2,204,600 pounds). The 35,000 head provision is equal to approximately 2.4 million pounds of lamb meat product

based upon an average lamb carcass weight of 69 pounds (National Agricultural Statistics Service data for 2014) (35,000 head \times 69 pounds = 2,415,000 pounds).

II. Requirements

As required by the 2015 Reauthorization Act, the reporting requirements for lamb are revised by modifying the definitions of packer and importer within the Code of Federal Regulations not later than 180 days after enactment. Subpart D of part 59 lists the requirements of lamb reporting beginning with § 59.300, establishing definitions for terms used throughout the subpart including those of packer and importer, which are the entities required to report under this rule. Therefore, under this direct final rule, the definition of a packer is modified within § 59.300 to include any person with 50 percent or more ownership in a facility that slaughtered or processed an average of 35,000 lambs during the immediately preceding 5 calendar years, or that did not slaughter or process an average of 35,000 lambs during the immediately preceding 5 calendar years if the Secretary determines that the processing plant should be considered a packer after considering its capacity. Additionally, under this direct final rule, the definition of an importer is modified within § 59.300 to include any person that imported an average of 1,000 metric tons of lamb meat products per year during the immediately preceding 4 calendar years, or did not import an average 1,000 metric tons of lamb meat products during the immediately preceding 4 calendar years and the Secretary determines that the person should be considered an importer based on their volume of lamb imports.

For entities that did not slaughter or process an average of 35,000 lambs during the immediately preceding 5 calendar years, AMS will project the plant's annual slaughter or production based upon the plant's estimate of annual slaughter capacity to determine which entities meet the definition of a packer as defined in these regulations.

For importers of lamb meat products, AMS will annually review import lamb volume data obtained from the U.S. Customs and Border Protection to determine which importers are required to report imported lamb information under these regulations.

² Hearing to Review Reauthorization of the Livestock Mandatory Reporting Act: Hearing before the Subcommittee on Livestock and Foreign Agriculture of the Committee on Agriculture, House of Representatives, 114th Cong., 1st sess. (Serial No. 114-12). (2015). Retrieved from GPO's Federal Digital System: <https://www.gpo.gov/fdsys/pkg/CHRG-114hhrg94372/pdf/CHRG-114hhrg94372.pdf>.

III. Classification

Executive Order 12866 and Executive Order 13563

This direct final rule is being issued by USDA with regard to the LMR program in conformance with Executive Orders 12866 and 13563.

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

This action has been designated as a “non-significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process for this action.

Regulatory Flexibility Act

In General. This direct final rule has been reviewed under the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612). The purpose of RFA is to consider the economic impact of a rule on small business entities. Alternatives, which would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the marketplace, have been evaluated. Regulatory action should be appropriate to the scale of the businesses subject to the action. The collection of information is necessary for the proper performance of the functions of AMS concerning the mandatory reporting of livestock information. Information is only available directly from those entities required to report under these regulations and exists nowhere else. Therefore, this direct final rule does not duplicate market information reasonably accessible to the USDA.

Objectives and Legal Basis. The objective of this direct final rule is to improve the price and supply reporting services of the USDA to encourage competition in the marketplace for lambs and lamb meat products as specifically directed by the 2015 Reauthorization Act and these regulations, as described in detail in the background section.

Estimated Number of Small Businesses. Under the 2015 Reauthorization Act, a lamb packer

includes any person with 50 percent or more ownership in a facility that slaughtered or processed an average of 35,000 lambs during the immediately preceding 5 calendar years, or that did not slaughter or process an average of 35,000 lambs during the immediately preceding 5 calendar years if the Secretary determines that the processing plant should be considered a packer after considering its capacity. Additionally, under the 2015 Reauthorization Act, a lamb importer includes any person that imported an average of 1,000 metric tons of lamb meat products per year during the immediately preceding 4 calendar years, or did not import an average of 1,000 metric tons of lamb meat products during the immediately preceding 4 calendar years if the Secretary determines that the person should be considered an importer based on their volume of lamb imports. AMS estimates that approximately 1 additional company operating 1 lamb slaughtering plant and approximately 3 additional firms that import lamb carcasses and/or lamb meat are required to report market information under this final rule.

For this regulatory flexibility analysis, AMS utilized the North American Industry Classification System (NAICS), the standard used by Federal statistical agencies to classify business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. This analysis compares the size of lamb packing companies and importing firms to the NAICS standards to determine the percentage of small businesses within the industry affected by this rule. Under these size standards, meat packing companies with 500 or less employees are considered small business entities.³ Based on this size standard and its knowledge of the lamb industry, AMS estimates that all lamb packing companies currently required to report under LMR are considered to be small businesses. As such, the additional company affected by this direct final rule under the 2015 Reauthorization Act is also considered to be a small business. Additionally, the NAICS small business size standard for meat importers is 100 or less employees.⁴ Based on its knowledge of the industry and previous experience with LMR, AMS estimates that the additional lamb importers affected by this direct final

rule are classified as small businesses under the NAICS standard.

The LMR regulations require lamb slaughter and processing plants and lamb importers of a certain size to report information to the USDA at prescribed times throughout the day and week. The LMR regulations already exempt many small businesses by the establishment of annual slaughter, processing, and import capacity thresholds. Based on figures published by the National Agricultural Statistics Service, there were 522 federally inspected lamb slaughter plants operating in the U.S. at the end of 2014. This LMR regulation requires 16 lamb packers and importers to report information (less than 2 percent of all federally inspected lamb plants and approximately 1 percent of all lamb importers). Therefore, approximately 98 percent of lamb packers and approximately 99 percent of lamb importers are exempt from reporting information by this direct final rule. As previously discussed, this final rule does not change this exemption. With regard to alternatives, if the definitions of a lamb packer and importer are not changed, AMS would continue to be hindered in reporting more accurate and reliable information on purchases of slaughter lambs and sales of domestic and imported boxed lamb cuts due to information confidentiality requirements of the 1999 Act.

Projected Reporting. The LMR regulations require the reporting of specific market information regarding the buying and selling of livestock and livestock products. This information is reported to AMS by electronic means and the adoption of this direct final rule will not affect this requirement. Electronic reporting involves the transfer of data from a packer’s or importer’s electronic recordkeeping system to a centrally located AMS electronic database. The packer or importer is required to organize the information in an AMS-approved format before electronically transmitting the information to AMS. Once the required information has been entered into the AMS database, it is aggregated and processed into various market reports, which are released according to the daily and weekly time schedule set forth in the LMR regulations. As an alternative, AMS also developed and made available web-based input forms for submitting data online as AMS found that some of the smaller entities covered under mandatory price reporting would benefit from such a web-based submission system. AMS estimates the total annual burden on each lamb packer to be \$7,973,

³ North American Industry Classification System, code 311611 for abattoirs.

⁴ North American Industry Classification System, code 424470 for meat and meat product merchant wholesalers.

including \$5,406 for annual costs associated with electronically submitting data, \$699 for startup/annual maintenance costs, and \$1,868 for the storage and maintenance of electronic files submitted to AMS. AMS estimates the total annual burden on each importer of lamb to be \$2,682, including \$115 for annual costs associated with electronically submitting data, \$699 for startup/annual maintenance costs, and \$1,868 for the storage and maintenance of electronic files submitted to AMS.

This rule does not substantially change these prior estimates. Adjusting the 75,000 head provision that establishes those lamb packers covered under the LMR regulation to 35,000 head increases the number of lamb packers required to report by 1 company; the estimated cost burden of \$7,973 per packer remains the same. Likewise, the amended 2,500 metric tons provision that establishes those lamb importers covered under the LMR regulations to 1,000 metric tons increases the number of lamb importers required to report by 3; the estimated annual cost burden of \$2,682 per importer remains the same.

Each packer and importer required to report information to USDA under LMR must maintain such records as are necessary to verify the accuracy of the information provided to AMS. This includes information regarding price, class, head count, weight, quality grade, yield grade, and other factors necessary to adequately describe each transaction. These records are already kept by the industry. Reporting packers and importers are required to maintain and make available the original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock, and to maintain these records for a minimum of 2 years. Packers and importers are not required to report any other new or additional information they do not generally have available or maintain. Further, they are not required to keep any information that would prove unduly burdensome to maintain. The paperwork burden imposed on the packers and importers is further discussed in the following section entitled Paperwork Reduction Act.

In addition, AMS has not identified any relevant federal rules currently in effect that duplicate, overlap, or conflict with this rule. Professional skills required for recordkeeping under the LMR regulations are not different than those already employed by the reporting entities. Reporting is accomplished

using computers or similar electronic means. This direct final rule does not affect the professional skills required for recordkeeping already employed by the reporting entities. Reporting will be accomplished using computers or similar electronic means. AMS believes the skills needed to maintain such systems are already in place in those small businesses affected by this rule.

Alternatives. This direct final rule requires lamb packing plants and lamb importers of a certain size to report information to the Secretary at prescribed times throughout the day and week. The 1999 Act and these regulations exempt the vast majority of small businesses by the establishment of slaughter, processing, and import capacity thresholds.

AMS recognizes that most of the economic impact of this direct final rule on those small entities required to report involves the manner in which information must be reported to the Secretary. However, in developing this direct final rule, AMS considered other means by which the objectives of this direct final rule could be accomplished, including reporting the required information by telephone, facsimile, and regular mail. AMS believes these alternatives are not capable of meeting the program objectives, especially timely reporting. The LMR regulations prescribe specific times that reporting entities must report to AMS and similarly prescribes specific times for publication of reports by AMS. AMS believes electronic submission to be the only method capable of allowing AMS to collect, review, process, aggregate, and publish reports while complying with the specific time-frames set forth in the 1999 Act and regulations.

To respond to concerns of smaller operations, AMS developed a web-based input form for submitting data online. Based on prior experience, AMS found that some of the smaller entities covered under mandatory price reporting would benefit from such a Web-based submission system. Accordingly, AMS developed such a system for program implementation.

Additionally, to further assist small businesses, AMS may provide for an exception to electronic reporting in emergencies, such as power failures or loss of Internet accessibility, or in cases when an alternative is agreeable between AMS and the reporting entity.

Other than these alternatives, there are no other practical and feasible alternatives to the methods of data transmission that are less burdensome to small businesses. AMS will continue to work actively with those small businesses required to report and

provide the technical assistance needed, in an effort to minimize the burden on them to the maximum extent practicable.

Paperwork Reduction Act

In accordance with OMB regulations (5 CFR part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the information collection requirements included in 7 CFR part 59 were previously approved by OMB and were assigned control number 0581–0186 Livestock Mandatory Reporting Act of 1999. The purpose of this direct final rule is to amend the LMR regulations to modify the requirement for the submission of information on domestic and imported lamb sales. All other provisions of the LMR regulations remain the same.

Adjusting the 75,000 head provision that establishes those lamb packers covered under the LMR regulation to 35,000 head, increases the number of lamb packers required to report from 7 to 8; likewise, the amended 2,500 metric tons provision that establishes those lamb importers covered under the LMR regulations to 1,000 metric tons increases the number of lamb importers required to report from 5 to 8.⁵ This change does not substantially impact the overall total burden hours from the increase of 4 entities and 16 plants (respondents).

The new collective overall burden for this collection is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .172 hours per response.

Respondents: Business or other for profit entities, individuals or households, farms, and the Federal Government.

Estimated Number of Respondents: 438 respondents.

Estimated Number Responses: 139,776 responses.

Estimated Number of Responses per Respondent: 319 responses.

Estimated Total Annual Burden on Respondents: 24,055 hours.

New Estimate of Burden: Public reporting burden for this collection of information is estimated to average .23 hours per response.

Respondents: Business or other for profit entities, individuals or households, farms, and the Federal Government.

Estimated Number of Respondents: 16 respondents.

⁵ The 4 additional entities reporting under the amended requirements own multiple plants, each of which are reflected as individual respondents under the previously approved 0581–0186.

Estimated Number Responses: 1,248 responses.

Estimated Number of Responses per Respondent: 78 responses.

Estimated Total Annual Burden on Respondents: 289 hours.

Upon publication of this direct final rule, AMS will submit a Justification for Change to OMB for approval of an increase in number of respondents and an increase in burden hours for the following forms under the currently approved OMB 0581–0186 Livestock Mandatory Reporting Act of 1999: LS–121 Live Lamb Daily Report—Current Established Prices, LS–123 Live Lamb Weekly Report, LS–124 Live Lamb Weekly Report—Formula Purchases, LS–125 Lamb Premiums and Discounts Weekly Report, LS–128 Boxed Lamb Daily Report, and LS–129 Lamb Carcass Report.

AMS is committed to implementation of the Government Paperwork Elimination Act which provides for the use of information resources to improve the efficiency and effectiveness of governmental operations, including providing the public with the option of submitting information or transacting business electronically to the extent practicable. AMS believes the burden savings resulting from electronically compiling and submitting a reduced number of sales transactions to be negligible.

It is hereby found that this direct final rule, as hereinafter set forth, is consistent with and will effectuate the declared policy of the Livestock Mandatory Reporting Act of 1999 and the Agriculture Reauthorizations Act of 2015.

Executive Order 12988

This direct final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This direct final rule is not intended to have retroactive effect. Section 259 of the 1999 Act prohibits States or political subdivisions of a State to impose any requirement that is in addition to, or inconsistent with, any requirement of the 1999 Act with respect to the submission or reporting of information, or the publication of such information, on the prices and quantities of livestock or livestock products. In addition, the 1999 Act does not restrict or modify the authority of the Secretary to administer or enforce the Packers and Stockyards Act of 1921 (7 U.S.C. 181 *et seq.*); administer, enforce, or collect voluntary reports under the 1999 Act or any other law; or access documentary evidence as provided under Sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49, 50). There are no

administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this direct final rule.

Civil Rights Review

AMS has considered the potential civil rights implications of this direct final rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. This review included persons who are employees of the entities that are subject to this regulation. This direct final rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this direct final rule will not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

Executive Order 13132

This direct final rule has been reviewed under Executive Order 13132, Federalism. This Order directs agencies to construe, in regulations and otherwise, a Federal Statute to preempt State law only when the statute contains an express preemption provision. This direct final rule is required by the 1999 Act. Section 259 of the 1999 Act, Federal Preemption states, “In order to achieve the goals, purposes, and objectives of this title on a nationwide basis and to avoid potentially conflicting State laws that could impede the goals, purposes, or objectives of this title, no State or political subdivision of a State may impose a requirement that is in addition to, or inconsistent with, any requirement of this subtitle with respect to the submission or reporting of information, or the publication of such information, on the prices and quantities of livestock or livestock products.”

Prior to the passage of the 1999 Act, several States enacted legislation mandating, to various degrees, the reporting of market information on transactions of cattle, swine, and lambs conducted within that particular State. However, since the federal LMR program was implemented on April 2, 2001, these State programs are no longer in effect. Therefore, there are no federalism implications associated with this rulemaking.

Executive Order 13175

This direct final rule has been reviewed in accordance with the

requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. AMS has considered the potential implications of this direct final rule to ensure this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

List of Subjects in 7 CFR Part 59

Cattle, Hogs, Lamb, Livestock, Sheep.

For the reasons set forth in the preamble, title 7, part 59 is amended as follows:

PART 59—LIVESTOCK MANDATORY REPORTING

■ 1. The authority citation for 7 CFR part 59 continues to read as follows:

Authority: 7 U.S.C. 1635–1636i.

■ 2. Section 59.300 is amended by revising the definitions for “Importer” and “Packer” to read as follows:

§ 59.300 Definitions.

* * * * *

Importer. The term “importer” means any person engaged in the business of importing lamb meat products with the intent to sell or ship in U.S. commerce. For any calendar year, the term includes only those that imported an average of 1,000 metric tons of lamb meat products per year during the immediately preceding 4 calendar years. Additionally, the term includes those that did not import an average 1,000 metric tons of lamb meat products during the immediately preceding 4 calendar years, if the Secretary determines that the person should be considered an importer based on their volume of lamb imports.

Packer. The term “packer” means any person with 50 percent or more ownership in a facility engaged in the business of buying lambs in commerce for purposes of slaughter, of manufacturing or preparing meat products from lambs for sale or shipment in commerce, or of marketing meats or meat products from lambs in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. For any calendar year, the term includes only a federally inspected lamb processing plant which slaughtered or processed the equivalent of an average of 35,000 head of lambs per year during the immediately preceding 5 calendar years. Additionally, the term includes a lamb processing plant that did not slaughter or process an average of 35,000 lambs during the immediately preceding 5 calendar years if the Secretary

determines that the processing plant should be considered a packer after considering its capacity.

* * * * *

Dated: February 22, 2016.

Elanor Starmer,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2016-04047 Filed 2-26-16; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 764

RIN 0560-AI33

Direct Farm Ownership Microloan; Correction

AGENCY: Farm Service Agency, USDA.

ACTION: Correcting amendments.

SUMMARY: In a final rule that was published and effective on January 21, 2016, we added Direct Farm Ownership Microloan (DFOML) to the existing Direct Loan Program. The final rule resulted in inadvertently omitting paragraphs that were previously in the Farm Loan Programs general eligibility requirements. The inadvertently removed paragraphs specified alternatives for demonstrating managerial ability. This document corrects that omission by revising the section in the regulations to reinsert that text.

DATES: *Effective date:* February 29, 2016.

FOR FURTHER INFORMATION CONTACT: Russ Clanton; telephone: (202) 690-0214. Persons with disabilities or who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

The Farm Service Agency (FSA) published a final rule in the **Federal Register** on January 21, 2016 (81 FR 3289-3293), adding DFOML to the existing Direct Loan Program. The final rule changes to 7 CFR part 764 resulted in inadvertently omitting two paragraphs that were previously in 7 CFR 764.101(i)(4), "General Eligibility Requirements," which specified alternatives for demonstrating managerial ability for microloans (MLs) for Operating Loan (OL) purposes.

The only changes the final rule intended to make in section 764.101 were to clarify that the references to MLs in paragraphs (i)(3) and (4) were only for MLs for OL purposes. In

making the change to paragraph (i)(4), we should have specified that the change was only to the introductory text of paragraph (i)(4) because the phrase "introductory text" was not specified, it resulted in paragraphs (i)(4)(i) through (ii) being inadvertently omitted from the CFR when the changes were made as specified in the final rule. Therefore, this document corrects the regulation by reinserting the previously published text for paragraphs (i)(4)(i) through (ii).

List of Subjects in 7 CFR Part 764

Agriculture, Disaster assistance, Loan programs-agriculture, Agricultural commodities, Livestock.

For reasons discussed above, FSA amends 7 CFR part 764 as follows:

PART 764—DIRECT LOAN MAKING

■ 1. The authority citation for part 764 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

■ 2. Add § 764.101(i)(4)(i) and (ii) to read as follows:

§ 764.101 General eligibility requirements.

* * * * *

(i) * * *

(4) * * *

(i) Certification of a past participation with an agriculture-related organization, such as, but not limited to, 4-H Club, FFA, beginning farmer and rancher development programs, or Community Based Organizations, that demonstrates experience in a related agricultural enterprise; or

(ii) A written description of a self-directed apprenticeship combined with either prior sufficient experience working on a farm or significant small business management experience. As a condition of receiving the loan, the self-directed apprenticeship requires that the applicant seek, receive, and apply guidance from a qualified person during the first cycle of production and marketing typical for the applicant's specific operation. The individual providing the guidance must be knowledgeable in production, management, and marketing practices that are pertinent to the applicant's operation, and agree to form a developmental partnership with the applicant to share knowledge, skills, information, and perspective of agriculture to foster the applicant's development of technical skills and management ability.

* * * * *

Val Dolcini,

Administrator, Farm Service Agency.

[FR Doc. 2016-04271 Filed 2-26-16; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Part 4

[Docket ID OCC-2016-0001]

RIN 1557-AE01

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 211

[Docket No. R-1531]

RIN 7100-AE45

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 337, 347, and 390

RIN 3064-AE42

Expanded Examination Cycle for Certain Small Insured Depository Institutions and U.S. Branches and Agencies of Foreign Banks

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint interim final rules and request for comments.

SUMMARY: The OCC, Board, and FDIC (collectively, the agencies) are jointly issuing and requesting public comment on interim final rules to implement section 83001 of the Fixing America's Surface Transportation Act (FAST Act), which was enacted on December 4, 2015. Section 83001 of the FAST Act permits the agencies to examine qualifying insured depository institutions with less than \$1 billion in total assets no less than once during each 18-month period. Prior to enactment of the FAST Act, only qualifying insured depository institutions with less than \$500 million in total assets were eligible for an 18-month on-site examination cycle. The interim final rules generally would allow well capitalized and well managed institutions with less than \$1 billion in total assets to benefit from the extended 18-month examination schedule. In addition, the interim final rules make parallel changes to the agencies' regulations governing the on-site examination cycle for U.S. branches and agencies of foreign banks, consistent with the International Banking Act of 1978. Finally, the FDIC is integrating its regulations regarding the frequency of safety and soundness examinations for State nonmember banks and State savings associations.

DATES: These interim final rules are effective on February 29, 2016. Comments on the rules must be received by April 29, 2016.

ADDRESSES:

OCC: Commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title “Expanded Examination Cycle for Certain Small Insured Depository Institutions and U.S. Branches and Agencies of Foreign Banks” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—“regulations.gov”:* Go to <http://www.regulations.gov>. Enter “Docket ID OCC–2016–0001” in the Search Box and click “Search.” Results can be filtered using the filtering tools on the left side of the screen. Click on “Comment Now” to submit public comments. Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.

- *Email:* regs.comments@occ.treas.gov.

- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

- *Hand Delivery/Courier:* 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

- *Fax:* (571) 465–4326.

Instructions: You must include “OCC” as the agency name and “Docket ID OCC–2016–0001” in your comment. In general, the OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically:* Go to <http://www.regulations.gov>. Enter “Docket ID OCC–2016–0001” in the Search box and click “Search.” Comments can be filtered by Agency using the filtering tools on the left side of the screen. Click on the “Help” tab

on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC. For security reasons, the OCC requires visitors to make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present a valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. R–1531, by any of the following methods:

- *Agency Web site:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email:* regs.comments@federalreserve.gov. Include docket 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/generalinfo/foia/ProposedRegs.cfm> 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 MP–500 of the Board’s Martin Building (20th and C Street NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Agency Web site:* <http://www.FDIC.gov/regulations/laws/federal/>.

- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

- *Hand Delivered/Courier:* The guard station at the rear of the 550 17th Street Building NW. (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

- *Email:* comments@FDIC.gov.

Instructions: Comments submitted must include “FDIC” and “RIN 3064–AE42.” Comments received will be posted without change to <http://www.FDIC.gov/regulations/laws/federal/>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

OCC: Deborah Katz, Assistant Director, or Melissa J. Lisenbee, Attorney, Legislative and Regulatory Activities Division, (202) 649–5490; Scott Schainost, Midsize and Community Bank Supervision Liaison, Midsize and Community Bank Supervision, (202) 649–8173.

Board: Division of Banking Supervision and Regulation—Richard Naylor, Associate Director, (202) 728–5854; Richard Watkins, Deputy Associate Director, (202) 452–3421; Virginia Gibbs, Manager, (202) 452–2521; or Alexander Kobulsky, Supervisory Financial Analyst, (202) 452–2031; and Legal Division—Laurie Schaffer, Associate General Counsel, (202) 452–2277; Brian Chernoff, Senior Attorney, (202) 452–2952; or Mary Watkins, Attorney, (202) 452–3722.

FDIC: Thomas F. Lyons, Chief, Policy and Program Development, (202) 898–6850, Karen J. Currie, Senior Examination Specialist, (202) 898–3981, Timothy R. Millette, Program Specialist, Policy Branch Division of Risk Management and Supervision; Mark A. Mellon, Counsel, (202) 898–3884 for revisions to 12 CFR part 337; Rodney D. Ray, Counsel, (202) 898–3556 for revisions to 12 CFR part 347; Suzanne J. Dawley, Senior Attorney, (202) 898–6509 for revisions to 12 CFR part 390.

SUPPLEMENTARY INFORMATION:

I. Background

Section 10(d) of the Federal Deposit Insurance Act (FDI Act) generally requires the appropriate Federal banking agency for an insured depository institution (IDI) to conduct a full-scope, on-site examination of the institution at least once during each 12-month period.¹ Prior to enactment of

¹ 12 U.S.C. 1820(d). Section 10(d) of the FDI Act was added by section 111 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

section 83001 of the FAST Act,² section 10(d)(4) of the FDI Act authorized the appropriate Federal banking agency to extend the on-site examination cycle for an IDI to at least once during an 18-month period if the IDI (1) had total assets of less than \$500 million; (2) was well capitalized (as defined in 12 U.S.C.1831o (prompt corrective action)); (3) was found, at its most recent examination, to be well managed³ and to have a composite condition of “outstanding” or, in the case of an institution that has total assets of not more than \$100 million, “outstanding” or “good;” (4) was not subject to a formal enforcement proceeding or order by the FDIC or its appropriate Federal banking agency; and (5) had not undergone a change in control during the previous 12-month period in which a full-scope, on-site examination otherwise would have been required. Section 10(d)(10) of the FDI Act further gave the agencies discretionary authority to raise the size limit for otherwise qualifying IDIs with an “outstanding” or “good” composite rating from \$100 million to an amount not to exceed \$500 million in total assets if the agencies determined that the higher limit would be consistent with the principles of safety and soundness.⁴

The Board and the FDIC, as the appropriate Federal banking agencies for State-chartered insured banks and savings associations, are permitted to conduct on-site examinations of such IDIs on alternating 12-month or 18-month periods with the institution’s State supervisor, if the Board or FDIC, as appropriate, determines that the alternating examination conducted by the State carries out the purposes of section 10(d) of the FDI Act.⁵

In addition, section 7(c)(1)(C) of the International Banking Act (IBA) provides that a Federal or a State branch or agency of a foreign bank shall be subject to on-site examination by its appropriate Federal banking agency or

State bank supervisor as frequently as a national or State bank would be subject to such an examination by the agency.⁶ The agencies previously adopted regulations to implement the examination cycle requirements of section 10(d) of the FDI Act and section 7(c)(1)(C) of the IBA, including the extended 18-month examination cycle available to qualifying small institutions and U.S. branches and agencies of foreign banks.⁷ The agencies have also exercised discretion under section 10(d)(10) of the FDI Act, first, in 1997 to extend the 18-month examination cycle for otherwise qualifying institutions with “good” composite ratings⁸ with total assets of \$250 million or less, and again in 2007 for such institutions with total assets of \$500 million or less.⁹

Section 83001 of the FAST Act, effective on December 4, 2015, amended section 10(d) of the FDI Act to raise, from \$500 million to \$1 billion, the total asset threshold below which an agency may apply an 18-month (rather than a 12-month) on-site examination cycle for IDIs with “outstanding” composite ratings, and to raise, from not more than \$100 million to not more than \$200 million, the total asset threshold below which an agency may apply an 18-month examination cycle to an institution with an “outstanding” or “good” composite rating.¹⁰ Section 83001 also amended section 10(d)(10) of the FDI Act to authorize the appropriate Federal banking agency to increase, by regulation, the maximum amount limitation for IDIs with “outstanding” or “good” composite ratings from not more than \$200 million to not more than \$1 billion if the appropriate Federal banking agency determines that the higher amount would be consistent with the principles of safety and soundness for IDIs.¹¹

These FAST Act amendments reduce regulatory burdens on small, well capitalized, and well managed institutions and allow the agencies to better focus their supervisory resources on those IDIs and U.S. branches and agencies of foreign banks that may

present capital, managerial, or other issues of supervisory concern.

II. Description of the Interim Final Rules

The agencies are adopting interim final rules to implement the FAST Act amendments to section 10(d) of the FDI Act. In particular, the agencies are amending their respective rules to raise, from \$500 million to \$1 billion, the total asset threshold below which an institution that meets the criteria in section 10(d) and the agencies’ rules may qualify for an 18-month, on-site examination cycle. In addition, as authorized by the FAST Act, the agencies have determined that it is consistent with the principles of safety and soundness to permit institutions with total assets of \$200 million or greater and not exceeding \$1 billion that receive a composite CAMELS or ROCA rating of “1” or “2,” and that meet the other qualifying criteria set forth in section 10(d) and the agencies’ rules to qualify for an 18-month examination cycle. The FDIC analyzed the frequency with which institutions rated a composite CAMELS rating of “1” or “2” failed within five years, versus the frequency with which institutions rated a composite CAMELS rating of “3,” “4,” or “5” failed within five years. FDIC analysis indicates that between 1985 and 2010 (using bank failure data through 2015),¹² FDIC-insured depository institutions with assets less than \$1 billion and a composite CAMELS rating of “1” or “2” had a five-year failure rate that was one-seventh as high as institutions with a CAMELS rating of “3,” “4,” or “5.” Moreover, the relationship between failure rates in the two ratings groups does not meaningfully change when the analysis is restricted to institutions with assets between \$200 million and \$500 million compared to institutions with assets between \$500 million to \$1 billion. This analysis suggests that extending the examination cycle for well-rated institutions with \$500 million to \$1 billion in assets by an additional six months, combined with the agencies’ off-site monitoring activities and ability to examine an institution more frequently as necessary or appropriate, will not negatively affect the safe and sound operations of qualifying institutions or the ability of the agencies to effectively supervise and protect the safety and soundness of institutions with total assets of less than \$1

² Public Law 114–94, 129 Stat. 1312 (2015).

³ Depository institutions are evaluated under the Uniform Financial Institutions Rating System (commonly referred to as “CAMELS”). CAMELS is an acronym that is drawn from the first letters of the individual components of the rating system: Capital adequacy, Asset quality, Management, Earnings, Liquidity, and Sensitivity to market risk. CAMELS ratings of “1” and “2” correspond with ratings of “outstanding” and “good.” In addition to having a CAMELS composite rating of “1” or “2,” an IDI is considered to be “well managed” for the purposes of section 10(d) of the FDI Act *only* if the IDI also received a rating of “1” or “2” for the management component of the CAMELS rating at its most recent examination. See 72 FR 17798 (Apr. 10, 2007).

⁴ 12 U.S.C. 1820(d)(10).

⁵ 12 U.S.C. 1820(d)(3).

⁶ 12 U.S.C. 3105(c)(1)(C).

⁷ See 12 CFR 4.6 and 4.7 (OCC), 12 CFR 208.64 and 211.26 (Board), 12 CFR 337.12, 390.351 and 347.211 (FDIC).

⁸ Corresponding to a CAMELS or Risk management, Operational controls, Compliance, and Asset quality (ROCA) rating of “2.”

⁹ See 62 FR 6449 (Feb. 12, 1997) (interim final rule); see also 63 FR 16377 (Apr. 2, 1998) (final rule); see also 72 FR 17798 (Apr. 10, 2007) (interim final rule); see also 72 FR 54347 (Sept. 25, 2007) (final rule).

¹⁰ Public Law 114–94, 129 Stat. 1312 (2015).

¹¹ *Id.*

¹² A list of failed institutions can be found on the FDIC’s Web site at <https://www.fdic.gov/bank/individual/failed/banklist.html>.

billion.¹³ Furthermore, the agencies note that, in order to qualify for an 18-month examination cycle, any institution with total assets of less than \$1 billion—including one with a CAMELS composite rating of “2”—must meet the other capital, managerial, and supervisory criteria set forth in section 10(d).

Consistent with section 7(c)(1)(C) of the IBA, the agencies also are making conforming changes to their regulations governing the on-site examination cycle for the U.S. branches and agencies of foreign banks. The interim final rules permit a U.S. branch or agency of a foreign bank with total assets of less than \$1 billion to qualify for an 18-month examination cycle if the U.S. branch or agency of a foreign bank received a composite ROCA rating of “1” or “2” at its most recent examination and meets the other applicable criteria.

The agencies estimate that the interim final rules will increase the number of institutions that may qualify for an extended 18-month examination cycle by approximately 617 institutions (371 of which are supervised by the FDIC, 142 by the OCC, and 104 by the Board), bringing the total number to 4,987 IDIs.¹⁴ Approximately 89 U.S. branches and agencies of foreign banks would be eligible for the extended examination cycle based on the interim final rules, an increase of 26 (1 of which is supervised by the FDIC, 3 by the OCC, and 22 by the Board).¹⁵

Consistent Treatment for Insured State Savings Associations Regarding Examination Frequency

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies.¹⁶ Beginning July 21, 2011, the powers, duties, and functions formerly performed by the Office of Thrift Supervision (OTS) were transferred to the FDIC, as to State savings associations, the OCC, as to Federal savings associations, and the Board, as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act¹⁷ provides the manner of treatment for all orders, resolutions,

determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS. Section 316(b) provides that if such materials were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Section 316(c) of the Dodd-Frank Act further directed the FDIC and the OCC to consult with one another and to publish a list of the continued OTS regulations that will be enforced by the FDIC and the OCC, respectively. On June 14, 2011, the FDIC’s Board of Directors approved a “List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.” This list was published by the FDIC and the OCC as a Joint Notice in the **Federal Register** on July 6, 2011.¹⁸

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act¹⁹ granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC’s existing authority to issue regulations for State savings associations under the FDI Act and other laws as the “appropriate Federal banking agency” or under similar statutory terminology. Section 312(c) of the Dodd-Frank Act²⁰ amended the definition of “appropriate Federal banking agency” contained in section 3(q) of the FDI Act²¹ to add State savings associations to the list of entities for which the FDIC is designated as the “appropriate Federal banking agency.” As a result, when the FDIC acts as the designated “appropriate Federal banking agency” (or under similar terminology) for State savings associations, as it does here, the FDIC is authorized to issue, modify, and rescind regulations involving such associations.

As noted, on June 14, 2011, operating pursuant to this authority, the FDIC’s Board of Directors reissued and re-designated certain transferring regulations of the former OTS. These transferred OTS regulations were published as new FDIC regulations in the **Federal Register** on August 5, 2011.²² When the FDIC republished the

transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred OTS regulations into other FDIC rules, amending them, or rescinding them, as appropriate.

Twelve CFR 390.351 implements the FDIC’s examination requirements for savings associations under the authority of section 4(a) of the Home Owners’ Loan Act (HOLA),²³ which provides that the FDIC will examine State savings associations for safety and soundness and under section 10(d) of the FDI Act, which covers examinations of all IDIs.²⁴

Section 390.351 requires full-scope, on-site examinations of State savings associations at least once each 12-month period and once each 18-month period for a State savings association with total assets of no more than \$500 million that is well capitalized; was assigned a CAMELS “1” or “2” for management and was rated either a CAMELS composite “1” or “2” on its most recent examination; is not currently under a formal enforcement proceeding or order by the FDIC; and has not undergone a change in control during the preceding 12-month period.

Section 390.351 is substantively identical to section 337.12 and, therefore, redundant to section 337.12. This interim final rule rescinds and removes section 390.351. The amendment to section 337.12 in the interim final rule also reflects the authority of the FDIC under section 4(a) of HOLA to provide for the examination and safe and sound operation of State savings associations. With this amendment, all FDIC-supervised institutions, including State savings associations, will be subject to the requirements of 12 CFR 337.12.

Effective Date/Request for Comment

The agencies are issuing the interim final rules without prior notice and the opportunity for public comment and the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).²⁵ Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are

¹³ The agencies continue to reserve the right in their regulations to examine an IDI or U.S. branch or agency of a foreign bank more frequently than is required by the FDI Act or IBA. See 12 CFR 4.6(c) and 4.7(c) (OCC), 12 CFR 208.64(c) and 211.26(c)(3) (Board), 12 CFR 337.12(c), 390.351(c), and 347.211(c) (FDIC).

¹⁴ Call report data, Sept. 30, 2015.

¹⁵ *Id.*

¹⁶ 12 U.S.C. 5301, *et seq.*

¹⁷ 12 U.S.C. 5414(c).

¹⁸ 76 FR 39247 (July 6, 2011).

¹⁹ 12 U.S.C. 5412(b)(2)(B)(i)(II).

²⁰ 12 U.S.C. 5412(c).

²¹ 12 U.S.C. 1813(q).

²² 76 FR 47652 (Aug. 5, 2011).

²³ 12 U.S.C. 1463.

²⁴ This section was redesignated from the former OTS regulation at section 563.171 pursuant to the Dodd-Frank Act transfer of authority for State savings associations.

²⁵ 5 U.S.C. 553.

impracticable, unnecessary, or contrary to the public interest.”²⁶ The interim final rules implement the provisions of section 83001 of the FAST Act, which became effective on December 4, 2015. The interim final rules adopt without change the statutory increase in the total asset ceiling for the 18-month examination cycle for CAMELS and ROCA 1-rated institutions and also make available, pursuant to the statutory authority, the 18-month examination cycle for CAMELS and ROCA 2-rated institutions. Consistent with the underlying statute, the interim final rules would allow well capitalized and well managed institutions with under \$1 billion in total assets to benefit from the statutorily extended 18-month examination schedule.

The agencies believe that the public interest is best served by implementing the statutorily amended thresholds as soon as possible. Immediate implementation would reduce regulatory burdens on small, well capitalized, and well managed institutions, while also allowing the agencies to better focus their supervisory resources on those institutions that may present capital, managerial, or other issues of supervisory concern. Because the affected institutions and agencies must plan and prepare for examinations in advance, the agencies believe issuing interim final rules would provide the certainty necessary to allow the institutions and agencies to begin scheduling according to the new examination cycle period. In addition, the agencies believe that providing a notice and comment period prior to issuance of the interim final rules is unnecessary because the agencies do not expect public objection to the regulations being promulgated, as these rules implement the changes specified by Congress.²⁷ Moreover, because the interim final rules would permit an agency to conduct an on-site examination of an institution more frequently than once every 18 months, the agencies retain the ability to maintain the current—or a more frequent—on-site examination schedule for an institution, if the relevant agency

determines it would be necessary or appropriate.

Similarly, the FDIC believes there is good cause to rescind and remove section 390.351 because section 337.12 will be made immediately applicable to both insured State savings associations and insured State nonmember banks. As a result, insured State savings associations will be provided the same burden reduction benefits and appropriate supervisory focus afforded to insured State nonmember banks. For these reasons, the agencies find there is good cause consistent with the public interest to issue the rules without advance notice and comment.²⁸

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.²⁹ The agencies conclude that, because the rules recognize an exemption, the interim final rules are exempt from the APA’s delayed effective date requirement.³⁰ Additionally, the agencies find good cause to publish the interim final rules with an immediate effective date for the same reasons set forth above under the discussion of section 553(b)(B) of the APA.

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),³¹ in determining the effective date and administrative compliance requirements for a new regulation that imposes additional reporting, disclosure, or other requirements on IDIs, each Federal banking agency must consider any administrative burdens that such regulation would place on depository institutions and the benefits of such regulation. In addition, section 302(b) of the RCDRIA requires such new regulation to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause. Because the interim final rules expand eligibility for an 18-month, rather than 12-month on-site examination schedule and are burden-reducing in nature, the interim final rules do not impose additional reporting, disclosure, or other requirements on IDIs, and section 302 of the RCDRIA therefore does not apply. Nevertheless, the agencies have considered the administrative burdens

that such regulations would place on depository institutions and the benefits of such regulations in determining the effective date and compliance requirements. In addition, for the same reasons set forth above under the discussion of section 553(b)(B) of the APA, the agencies find good cause would exist under section 302 of RCDRIA to publish these interim final rules with an immediate effective date.

While the agencies believe there is good cause to issue the rules without advance notice and comment and with an immediate effective date, the agencies are interested in the views of the public and request comment on all aspects of the interim final rules.

III. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act³² requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Federal banking agencies invite your comments on how to make these interim final rules easier to understand. For example:

- *Have the agencies organized the material to suit your needs? If not, how could this material be better organized?*
- *Are the requirements in the interim final rules clearly stated? If not, how could the interim final rules be more clearly stated?*
- *Do the interim final rules contain language or jargon that is not clear? If so, which language requires clarification?*
- *Would a different format (grouping and order of sections, use of headings, paragraphing) make the interim final rules easier to understand? If so, what changes to the format would make the interim final rules easier to understand?*
- *What else could the agencies do to make the regulation easier to understand?*

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)³³ applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed above, consistent with section 553(b)(B) of the APA, the agencies have determined for good cause that general notice and opportunity for public comment is not necessary. Accordingly, the RFA’s requirements relating to initial and final regulatory flexibility analysis do not

²⁶ 5 U.S.C. 553(b)(B).

²⁷ All eleven commenters supported the agencies’ 2007 interim final rules implementing section 605 of the Financial Services Regulatory Relief Act of 2006 (FSRRA), which revised section 10(d) to allow institutions with up to \$500 million in total assets to qualify for an 18-month on-site examination cycle. Prior to the enactment of FSRRA, only institutions with less than \$250 million were eligible for an 18-month on-site examination cycle. See 72 FR 54347 (final rule); see also 72 FR 17798 (interim rule).

²⁸ 5 U.S.C. 553(b)(B); 553(d)(3).

²⁹ 5 U.S.C. 553(d).

³⁰ 5 U.S.C. 553(d)(1).

³¹ 12 U.S.C. 4802(a).

³² Pub. L. 106–102, section 722, 113 Stat. 1338, 1471 (1999).

³³ Pub. L. 96–354, Sept. 19, 1980, codified to 5 U.S.C. 601 *et seq.*

apply. Nonetheless, the agencies observe that the extension of the periodic examination cycle for certain small institutions from 12 to 18 months should not have a significant adverse economic impact on a substantial number of small entities, and, in fact, should reduce regulatory burdens on these entities. The agencies request comment on these conclusions.

V. Paperwork Reduction Act

The Paperwork Reduction Act of 1995³⁴ states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Because the interim final rules do not create a new, or revise an existing, collection of information, no information collection request submission needs to be made to the OMB.

VI. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA),³⁵ the agencies are required to conduct a review at least once every 10 years to identify any outdated or otherwise unnecessary regulations. The agencies completed the last comprehensive review of their regulations under EGRPRA in 2006 and are currently conducting the next decennial review. The burden reduction evidenced in these interim final rules is consistent with the objectives of the EGRPRA review process.

VII. OCC Unfunded Mandates Reform Act of 1995 Determination

Consistent with section 202 of the Unfunded Mandates Reform Act of 1995, before promulgating any final rule for which a general notice of proposed rulemaking was published, the OCC prepares an economic analysis of the final rule. As discussed above, the OCC has determined that the publication of a general notice of proposed rulemaking was unnecessary. Accordingly, the OCC has not prepared an economic analysis of the joint interim final rules.

List of Subjects

12 CFR Part 4

Administrative practice and procedure, Freedom of information, Individuals with disabilities, Minority businesses, Organization and functions

(Government agencies), Reporting and recordkeeping requirements, Women.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Safety and soundness, Securities.

12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

12 CFR Part 337

Banks, banking, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 347

Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Credit, Foreign banking, Reporting and recordkeeping requirements, United States investments abroad.

12 CFR Part 390

Administrative practice and procedure, Advertising, Aged, Civil rights, Conflict of interests, Credit, Crime, Equal employment opportunity, Fair housing, Government employees, Individuals with disabilities, Reporting and recordkeeping requirements, Savings associations.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the joint preamble, the OCC amends part 4 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS

■ 1. The authority citation for part 4 is revised to read as follows:

Authority: 5 U.S.C. 301, 552; 12 U.S.C. 1, 93a, 161, 481, 482, 484(a), 1442, 1462a, 1463, 1464 1817(a), 1818, 1820, 1821, 1831m, 1831p–1, 1831o, 1833e, 1867, 1951 *et seq.*, 2601 *et seq.*, 2801 *et seq.*, 2901 *et seq.*, 3101 *et seq.*, 3401 *et seq.*, 5321, 5412, 5414; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 5318(g)(2), 9701; 42 U.S.C. 3601; 44 U.S.C.

3506, 3510; E.O. 12600 (3 CFR, 1987 Comp., p. 235).

■ 2. Section 4.6 is revised to read as follows:

§ 4.6 Frequency of examination of national banks and Federal savings associations.

(a) *General.* The OCC examines national banks and Federal savings associations pursuant to authority conferred by 12 U.S.C. 481 (with respect to national banks) and 1463(a)(1) and 1464 (with respect to Federal savings associations) and the requirements of 12 U.S.C. 1820(d) (with respect to national banks and Federal savings associations). The OCC is required to conduct a full-scope, on-site examination of every national bank and Federal savings association at least once during each 12-month period.

(b) *18-month rule for certain small institutions.* The OCC may conduct a full-scope, on-site examination of a national bank or a Federal savings association at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the following conditions are satisfied:

(1) The bank or Federal savings association has total assets of less than \$1 billion;

(2) The bank or Federal savings association is well capitalized as defined in part 6 of this chapter;

(3) At the most recent examination;

(i) The bank or Federal savings association was assigned a rating of 1 or 2 for management as part of the bank's or association's rating under the Uniform Financial Institutions Rating System; and

(ii) The bank or Federal savings association was assigned a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System;

(4) The bank or Federal savings association currently is not subject to a formal enforcement proceeding or order by the FDIC, OCC, OTS or the Federal Reserve System; and

(5) No person acquired control of the bank or Federal savings association during the preceding 12-month period in which a full-scope, on-site examination would have been required but for this section.

(c) *Authority to conduct more frequent examinations.* This section does not limit the authority of the OCC to examine any national bank or Federal savings association as frequently as the agency deems necessary.

■ 3. Section 4.7 is revised to read as follows:

³⁴ 44 U.S.C. 3501–3521.

³⁵ Pub. L. 104–208, 110 Stat. 3009 (1996).

§ 4.7 Frequency of examination of Federal agencies and branches.

(a) *General.* The OCC examines Federal agencies and Federal branches (as these entities are defined in § 28.11 (g) and (h), respectively, of this chapter) pursuant to the authority conferred by 12 U.S.C. 3105(c)(1)(C). Except as noted in paragraph (b) of this section, the OCC will conduct a full-scope, on-site examination of every Federal branch and agency at least once during each 12-month period.

(b) *18-month rule for certain small institutions—(1) Mandatory standards.* The OCC may conduct a full-scope, on-site examination at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the Federal branch or agency:

(i) Has total assets of less than \$1 billion;

(ii) Has received a composite ROCA supervisory rating (which rates risk management, operational controls, compliance, and asset quality) of 1 or 2 at its most recent examination;

(iii) Satisfies the requirements of either paragraph (b)(1)(iii)(A) or (B) of this section:

(A) The foreign bank's most recently reported capital adequacy position consists of, or is equivalent to, common equity tier 1, tier 1 and total risk-based capital ratios that satisfy the definition of "well capitalized" set forth at 12 CFR 6.4, respectively, on a consolidated basis; or

(B) The branch or agency has maintained on a daily basis, over the past three quarters, eligible assets in an amount not less than 108 percent of the preceding quarter's average third party liabilities (determined consistent with applicable federal and state law), and sufficient liquidity is currently available to meet its obligations to third parties;

(iv) Is not subject to a formal enforcement action or order by the Federal Reserve Board, the Federal Deposit Insurance Corporation, or the OCC; and

(v) Has not experienced a change in control during the preceding 12-month period in which a full-scope, on-site examination would have been required for this section.

(2) Discretionary standards. In determining whether a Federal branch or agency that meets the standards of paragraph (b)(1) of this section should not be eligible for an 18-month examination cycle pursuant to this paragraph (b), the OCC may consider additional factors, including whether:

(i) Any of the individual components of the ROCA rating of the Federal branch or agency is rated "3" or worse;

(ii) The results of any off-site supervision indicate a deterioration in the condition of the Federal branch or agency;

(iii) The size, relative importance, and role of a particular office when reviewed in the context of the foreign bank's entire U.S. operations otherwise necessitate an annual examination; and

(iv) The condition of the foreign bank gives rise to such a need.

(c) *Authority to conduct more frequent examinations.* Nothing in paragraph (a) or (b) of this section limits the authority of the OCC to examine any Federal branch or agency as frequently as the OCC deems necessary.

Federal Reserve System**12 CFR Chapter II****Authority and Issuance**

For the reasons set forth in the joint preamble, the Board amends parts 208 and 211 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 4. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, 3353, and 3906–3909; 15 U.S.C. 78b, 781(b), 781(i), 780–4(c)(5), 78q, 78q–1, 78w, 1681s, 1681w, 6801 and 6805, 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104b, 4106, and 4128.

■ 5. Amend § 208.64 by revising paragraph (b)(1) to read as follows:

§ 208.64 Frequency of examination.

* * * * *

(b) * * *

(1) The bank has total assets of less than \$1 billion;

* * * * *

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

■ 6. The authority citation for part 211 continues to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1835a, 1841 *et seq.*, 3101 *et seq.*, 3901 *et seq.*, and 5101 *et seq.*; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

■ 7. Amend § 211.26 by revising paragraph (c)(2)(i)(A) to read as follows:

§ 211.26 Examinations of offices and affiliates of foreign banks.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(A) Has total assets of less than \$1 billion;

* * * * *

Federal Deposit Insurance Corporation**12 CFR Chapter III****Authority and Issuance**

For the reasons set forth in the joint preamble, the Board of Directors of the FDIC amends parts 337, 347, and 390 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 337—UNSAFE AND UNSOUND BANK PRACTICES

■ 8. The authority citation for part 337 is revised to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1463(a)(1), 1816, 1818(a), 1818(b), 1819, 1820(d), 1828(j)(2), 1831, 1831f, 5412.

■ 9. Section 337.12 is revised to read as follows:

§ 337.12 Frequency of examination.

(a) *General.* The Federal Deposit Insurance Corporation examines insured state nonmember banks pursuant to authority conferred by section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820) and examines insured State savings associations pursuant to authority conferred by section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820) and section 4 of the Home Owners' Loan Act (12 U.S.C. 1463). The FDIC is required to conduct a full-scope, on-site examination of every insured state nonmember bank and insured State savings association at least once during each 12-month period.

(b) *18-month rule for certain small institutions.* The FDIC may conduct a full-scope, on-site examination of an insured state nonmember bank or insured State savings association at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the following conditions are satisfied:

(1) The institution has total assets of less than \$1 billion;

(2) The institution is well capitalized as defined in § 324.403(b)(1) of this chapter;

(3) At the most recent FDIC or applicable State agency examination, the FDIC:

(i) Assigned the institution a rating of 1 or 2 for management as part of the institution's composite rating under the Uniform Financial Institutions Rating System (commonly referred to as CAMELS); and

(ii) Assigned the institution a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (copies of which are available at the addresses specified in § 309.4 of this chapter);

(4) The institution currently is not subject to a formal enforcement proceeding or order by the FDIC, OCC, or the Board of Governors of the Federal Reserve System; and

(5) No person acquired control of the institution during the preceding 12-month period in which a full-scope, on-site examination would have been required but for this section.

(c) Authority to conduct more frequent examinations. This section does not limit the authority of the FDIC to examine any insured state nonmember bank or insured State savings association as frequently as the agency deems necessary.

PART 347—INTERNATIONAL BANKING

■ 10. The authority citation for part 347 is revised to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820(d), 1828, 3103, 3104, 3105, 3108, 3109; Title IX, Publ. L. 98–181, 97 Stat. 1153 (12 U.S.C. 3901 *et seq.*).

■ 11. Amend § 347.211 by revising paragraph (b)(1)(i) to read as follows:

§ 347.211 Examination of branches of foreign banks.

* * * * *

(b) * * *

(1) * * *

(i) Has total assets of less than \$1 billion;

* * * * *

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

■ 12. The authority citation for part 390 continues to read in part as follows:

Authority: 12 U.S.C. 1819.

* * * * *

Subpart S also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1468a; 1817; 1820; 1828; 1831e; 1831o; 1831p–1; 1881–1884; 3207; 3339; 15 U.S.C. 78b, 78l; 78m; 78n; 78p; 78q; 78w; 31 U.S.C. 5318; 42 U.S.C. 4106.

* * * * *

§ 390.351 [Removed]

■ 13. Remove § 390.351.

Dated: January 21, 2016.
Thomas J. Curry,
Comptroller of the Currency.

Board of Governors of the Federal Reserve System, February 10, 2016.

Robert deV. Frierson,
Secretary of the Board.

Dated: January 21, 2016.
Federal Deposit Insurance Corporation.

Robert E. Feldman,
Executive Secretary.

[FR Doc. 2016–03877 Filed 2–26–16; 8:45 am]

BILLING CODE 6714–01–P; 4810–33–P; 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3633; Directorate Identifier 2014–NM–097–AD; Amendment 39–18416; AD 2016–04–22]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Fokker Services B.V. Model F.27 Mark 200, 300, 400, 500, 600, and 700 airplanes. This AD was prompted by a design review conducted by Fokker Services B.V. that indicated no controlled bonding provisions were present on many critical locations outside the fuel tank or connected to the fuel tank wall. This AD requires installing the additional bonding provisions, and revising the maintenance or inspection program, as applicable, by incorporating fuel airworthiness limitation items and critical design configuration control limitations. We are issuing this AD to prevent an ignition source in the fuel tank vapor space, which could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD becomes effective April 4, 2016.

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

ADDRESSES: For service information identified in this final rule, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–

6280–111; email *technicalservices@fokker.com*; Internet <http://www.myfokkerfleet.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2015–3633.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2015–3633; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Fokker Services B.V. Model F.27 Mark 200, 300, 400, 500, 600, and 700 airplanes. The NPRM published in the **Federal Register** on September 18, 2015 (80 FR 56413) (“the NPRM”).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0100, dated April 30, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for all Fokker Services B.V. Model F.27 Mark 200, 300, 400, 500, 600, and 700 airplanes. The MCAI states:

Prompted by an accident * * *, the FAA published Special Federal Aviation Regulation (SFAR) 88 [(66 FR 23086, May 7, 2001)], and the Joint Aviation Authorities (JAA) published Interim Policy INT/POL/25/12.

The review conducted by Fokker Services on the Fokker 27 design in response to these regulations revealed that no controlled

bonding provisions are present on a number of critical locations outside the fuel tanks.

This condition, if not corrected, could create an ignition source in the fuel tank vapour space, possibly resulting in a fuel tank explosion and consequent loss of the aeroplane.

To address this potential unsafe condition, Fokker Services developed a set of bonding modifications, introduced with [a service bulletin] * * *, that do[es] not require opening of the fuel tank access panels.

More information on this subject can be found in Fokker Services All Operators Message AOF27.043#03.

For the reasons described above, this [EASA] AD requires installation of additional bonding provisions that do not require opening of the fuel tank access panels.

Required actions also include revising the maintenance or inspection program, as applicable, by incorporating fuel airworthiness limitation items and critical design configuration control limitations. You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-3633.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 14 CFR Part 39

Fokker Services B.V. has issued Fokker F27 Proforma Service Bulletin SBF27-28-072, Revision 1, dated March 6, 2014, including Fokker F27 Service Bulletin Appendix SBF27-28-072/APP01, dated July 17, 2014, including List of Drawings/Part Lists, dated July 17, 2014. The service information describes procedures for installing additional bonding provisions.

Fokker Services B.V. has also issued Fokker Manual Change Notification—Maintenance Documentation MCNM-F27-027, dated September 9, 2014. The service information describes fuel airworthiness limitations items and critical design configuration control limitations.

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

Costs of Compliance

We estimate that this AD affects 15 airplanes of U.S. registry.

We also estimate that it will take about 8 work-hours per product to comply with the basic requirements of this AD. The average labor rate is \$85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be \$10,200, or \$680 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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):

2016-04-22 Fokker Services B.V.:

Amendment 39-18416. Docket No. FAA-2015-3633; Directorate Identifier 2014-NM-097-AD.

(a) Effective Date

This AD becomes effective April 4, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Fokker Services B.V. Model F.27 Mark 200, 300, 400, 500, 600, and 700 airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by a design review conducted by Fokker Services B.V. that indicated no controlled bonding provisions were present on many critical locations outside the fuel tank or connected to the fuel tank wall. We are issuing this AD to prevent an ignition source in the fuel tank vapor space, which could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Installation

Within 24 months after the effective date of this AD, install additional bonding provisions, in accordance with the Accomplishment Instructions of Fokker F27 Proforma Service Bulletin SBF27-28-072, Revision 1, dated March 6, 2014, including Fokker F27 Service Bulletin Appendix SBF27-28-072/APP01, dated July 17, 2014, including List of Drawings/Part Lists, dated July 17, 2014.

(h) Maintenance or Inspection Program Revision

At the later of the times specified in paragraphs (h)(1) and (h)(2) of this AD: Revise the airplane maintenance or inspection program, as applicable, by incorporating the fuel airworthiness limitations items and critical design configuration control limitations as identified in Fokker Manual Change Notification—Maintenance Documentation MCNM-F27-027, dated September 9, 2014.

(1) Before further flight after accomplishing the installation required by paragraph (g) of this AD.

(2) Within 30 days after the effective date of this AD.

(i) No Alternative Actions, Intervals, and/or Critical Design Configuration Control Limitations (CDCCLs)

After the maintenance or inspection program, as applicable, has been revised as required by paragraph (h) of this AD, no alternative actions (e.g., inspections), intervals, and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an alternative method of compliance in accordance with the procedures specified in paragraph (j)(1) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1137; fax 425-227-1149. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Fokker B.V. Service's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014-0100, dated April 30, 2014, for related information. This

MCAI may be found in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-3633.

(l) Material Incorporated by Reference

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

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

(i) Fokker F27 Proforma Service Bulletin SBF27-28-072, Revision 1, dated March 6, 2014, including Fokker F27 Service Bulletin Appendix SBF27-28-072/APP01, dated July 17, 2014, including List of Drawings/Part Lists, dated July 17, 2014.

(ii) Fokker Manual Change Notification—Maintenance Documentation MCNM-F27-027, dated September 9, 2014.

(3) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88-6280-350; fax +31 (0)88-6280-111; email technicalservices@fokker.com; Internet <http://www.myfokkerfleet.com>.

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

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

Issued in Renton, Washington, on February 18, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016-04137 Filed 2-26-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2015-1423; Directorate Identifier 2014-NM-173-AD; Amendment 39-18418; AD 2016-04-24]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Model 757-200 Series Airplanes Modified by Supplemental Type Certificate (STC) ST01529SE or STC ST02278SE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 757-200 series airplanes modified by particular STCs. This AD was prompted by reports of a main cargo door being blown past its full open position while on the ground during gusty wind conditions, which resulted in uncontrolled fall down to its closed position. This AD requires installing a new placard and bracket, replacing an existing placard, and replacing the main cargo door control panel. We are issuing this AD to prevent damage to the main cargo door, which could result in rapid decompression of the airplane, or injury to maintenance and ground crew during ground operations.

DATES: This AD is effective April 4, 2016.

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

ADDRESSES: For service information identified in this final rule, contact Precision Conversions LLC, 4900 SW Griffith Drive, Suite 133, Beaverton, OR 97005; ATTN: Steven A. Lopez; phone: 503-601-3001; email: Steven.Lopez@precisionaircraft.com. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-1423.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-1423; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800-647-5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Narinder Luthra, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6513;

fax: 425-917-6590; email: Narinder.Luthra@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 757-200 series airplanes modified by particular STCs. The NPRM published in the **Federal Register** on June 5, 2015 (80 FR 32061) (“the NPRM”). The NPRM was prompted by reports of a main cargo door being blown past its full open position while on the ground during gusty wind conditions, which resulted in uncontrolled fall down to its closed position. The NPRM proposed to require installation of a new placard and bracket, replacement of an existing placard, and replacement of the main cargo door control panel. We are issuing this AD to prevent damage to the main cargo door, which could result in rapid decompression of the airplane, or injury to maintenance and ground crew during ground operations.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA’s response to each comment.

Request To Revise Description of the Unsafe Condition

Precision Conversions, LLC requested that we revise the SUMMARY and Discussion sections of the NPRM and the unsafe condition section of the proposed AD. Precision Conversions, LLC stated that it was concerned by certain conclusions stated in the NPRM for which it does not believe there is a factual basis. Precision Conversions, LLC noted that the NPRM stated that wind damage to a cargo door could result in rapid decompression, leading to in-flight breakup. However, even

without the accomplishment of Precision Conversions Service Bulletin PC-757-11-0023, dated August 1, 2014, Precision Conversions, LLC stated that the suggested scenario would not occur. If, during ground operations, the main cargo door were to deflect beyond the fully open position enough to be of concern, its damaged operating system would prevent the cargo door from closing as usual, which would not go unnoticed by the crew, and the airplane would not be dispatched. Thus, a potential unsafe condition would occur only on the ground, not in the air.

Precision Conversions, LLC stated that a potential for an unsafe condition does arise from the possibility of ground crew operating the main cargo door outside of the wind limits published in the aircraft maintenance manual and operations manual supplements. Precision Conversions, LLC asserted that exceeding published limits could result in damage to the door operating system and loss of control of the door, creating an unsafe condition, but only during ground operations; thus, Precision Conversions, LLC believed that the proposed language regarding rapid decompression and in-flight breakup had no basis, given the relevant factual scenario, and should not be included in the final rule. Precision Conversions, LLC requested that we revise the unsafe condition to indicate that the NPRM will “prevent wind damage to the main cargo door operating system and ensure its safe use during ground operations.”

We partially agree with the request. We disagree that a damaged door will always be detected because of human factors. We agree, however, that rapid decompression might not necessarily lead to in-flight breakup, which would depend on the decompression. We have therefore revised the SUMMARY and Discussion sections of this final rule and paragraph (e), Unsafe Condition, of this AD to remove reference to in-flight

breakup, and to include injury to maintenance and ground crew during ground operations.

Statement Regarding Content of NPRM

Boeing stated that the NPRM does not address or affect any Boeing designs; therefore, Boeing can neither review the data nor comment on the content of the NPRM.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

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

Related Service Information Under 1 CFR Part 51

We reviewed Precision Conversions LLC Service Bulletin PC-757-11-0023, dated August 1, 2014. The service information describes procedures for installing a new placard and bracket, replacement of an existing placard, and replacement of the main cargo door control panel. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 9 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
Installation	6 work-hours × \$85 per hour = \$510	\$0*	\$510	\$4,590

* According to the manufacturer, the kits will be provided at no charge to operators.

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):

2016-04-24 The Boeing Company:
Amendment 39-18418; Docket No. FAA-2015-1423; Directorate Identifier 2014-NM-173-AD.

(a) Effective Date

This AD is effective April 4, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 757-200 series airplanes, certificated in any category, modified by the applicable supplemental type certificate identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) ST01529SE ([http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/0af09c3701a237ee86257a5d0064b3aa/\\$FILE/ST01529SE.pdf](http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/0af09c3701a237ee86257a5d0064b3aa/$FILE/ST01529SE.pdf)).

(2) ST02278SE ([http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/e54b5289a2e9f6ef86257b7f0056edaf/\\$FILE/ST02278SE.pdf](http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/e54b5289a2e9f6ef86257b7f0056edaf/$FILE/ST02278SE.pdf)).

(d) Subject

Air Transport Association (ATA) of America Code 11, Placards and Markings.

(e) Unsafe Condition

This AD was prompted by reports of a main cargo door being blown past its full open position while on the ground during gusty wind conditions, which resulted in uncontrolled fall down to its closed position. We are issuing this AD to prevent damage to the main cargo door, which could result in rapid decompression of the airplane, or injury to maintenance and ground crew during ground operations.

(f) Compliance

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

(g) Installation

Within 90 days after the effective date of this AD, install a new placard and bracket, replace the existing placard, and replace the main cargo door control panel, in accordance with the Accomplishment Instructions of Precision Conversions Service Bulletin PC-757-11-0023, dated August 1, 2014.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Related Information

For more information about this AD, contact Narinder Luthra, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6513; fax: 425-917-6590; email: Narinder.Luthra@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) Precision Conversions Service Bulletin PC-757-11-0023, dated August 1, 2014.

(ii) Reserved.

(3) For service information identified in this AD, contact Precision Conversions LLC, 4900 SW Griffith Drive, Suite 133, Beaverton, OR 97005; ATTN: Steven A. Lopez; phone: 503-601-3001; email: Steven.Lopez@precisionaircraft.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 16, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016-04036 Filed 2-26-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2016-3981; Directorate Identifier 2015-NM-053-AD; Amendment 39-18417; AD 2016-04-23]

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 an inspection of the station 337 (door number 1) outboard partitions for a tie rod and quick release pins, and to ensure that both partition supports are engaged in the structural bracket at each outboard partition, and corrective actions if necessary. This AD was prompted by reports of missing right and left outboard partition tie rods at door number 1. We are issuing this AD to detect and correct partitions with missing tie rods or release pins or with supports that are not engaged in the structural bracket. These partitions could come loose during a high-acceleration event and strike the flight attendant seats in the door 1 location, causing serious injury to the seat occupants, or could affect safe egress from the airplane.

DATES: This AD is effective March 15, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 15, 2016.

We must receive comments on this AD by April 14, 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 2016-3981.

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-2016-3981; 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:

Francis Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM-150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone 425-917-6596; fax 425-917-6590; email: francis.smith@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

We have received reports of missing right and left outboard partition tie rods at station 337 (door number 1) on Model 787-8 airplanes as a result of a manufacturing escape (*i.e.*, insufficient documentation to show engineering details). We are issuing this AD to detect and correct partitions with missing tie rods or release pins or with supports that are not engaged in the structural bracket. These partitions could come loose during a high-acceleration event and strike the flight attendant seats in the door 1 location, causing serious injury to the seat occupants, or could affect safe egress from the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Service Bulletin B787-81205-SB250081-00, Issue 001, dated December 9, 2014. The service bulletin describes procedures for an inspection of the station 337 outboard partitions for a tie rod and quick release pins, and also to determine that both partition supports are engaged in the structural bracket, and corrective actions. 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 accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the AD and the Service Information."

The phrase "corrective actions" is used in this AD. "Corrective actions"

are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between the AD and the Service Information

Boeing Service Bulletin B787-81205-SB250081-00, Issue 001, dated December 9, 2014, specifies to do the general visual inspection "in accordance with the Tasks in Table 6" of the service information. However "Table 6" does not exist. The tasks are identified in Table 4 of the service information. Therefore, this AD requires that the inspection be done in accordance with the tasks in Table 4 of the Accomplishment Instructions of Boeing Service Bulletin B787-81205-SB250081-00, Issue 001, dated December 9, 2014.

FAA's Justification and Determination of the Effective Date

Since there are currently no domestic operators of this product, 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 "Docket Number FAA-2016-3981; Directorate Identifier 2015-NM-053-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
Inspection	3 work-hours × \$85 per hour = \$255	\$0	\$255	\$0

We estimate the following costs to do any necessary repairs that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these repairs:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Corrective action	1 work-hour × \$85 per hour = \$85	\$1,027	\$1,112

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:
Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

2016–04–23 The Boeing Company:
 Amendment 39–18417; Docket No. FAA–2016–3981; Directorate Identifier 2015–NM–053–AD.

(a) Effective Date

This AD is effective March 15, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 787–8 airplanes, certificated in any category, as identified in Boeing Service Bulletin B787–81205–SB250081–00, Issue 001, dated December 9, 2014.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Unsafe Condition

This AD was prompted by reports of missing right and left outboard partition tie rods at station 337 (door number 1). We are issuing this AD to detect and correct partitions with missing tie rods or release pins or with supports that are not engaged in the structural bracket. These partitions could come loose during a high-acceleration event and strike the flight attendant seats in the door 1 location, causing serious injury to the seat occupants, or could affect safe egress from the airplane.

(f) Compliance

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

(g) Inspection and Corrective Actions

Within 60 months after the effective date of this AD: Do a general visual inspection of the applicable station 337 outboard partitions for a tie rod and quick release pins, and to ensure that both partition supports are engaged in the structural bracket at each outboard partition; and do all applicable corrective actions; in accordance with the Accomplishment Instructions of Boeing Service Bulletin B787–81205–SB250081–00, Issue 001, dated December 9, 2014; except where Boeing Service Bulletin B787–81205–SB250081–00, Issue 001, dated December 9, 2014, specifies to do the general visual inspection “in accordance with the Tasks in Table 6,” this AD requires that the inspection be done in accordance with the tasks in Table 4 of the Accomplishment Instructions of Boeing Service Bulletin B787–81205–SB250081–00, Issue 001, dated December 9, 2014. Do all applicable corrective actions before further flight.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as

appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (i) 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 Francis Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM-150S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone 425-917-6596; fax 425-917-6590; email: francis.smith@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 Service Bulletin B787-81205-SB250081-00, Issue 001, dated December 9, 2014.

(ii) Reserved.

(3) For Boeing 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 the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

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

Issued in Renton, Washington, on February 18, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016-04138 Filed 2-26-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31063; Amdt. No. 3684]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 29, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 29, 2016.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590-0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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/code_of_federal_regulations/ibr_locations.html.

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Nichols, Flight Procedure Standards Branch (AFS-420) Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954-4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P-NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each

separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where

applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on February 12, 2016.

John S. Duncan,
Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14,

Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [AMENDED]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
31-Mar-16	WY	Casper	Casper/Natrona County Intl.	5/0128	01/26/16	ILS OR LOC RWY 3, Amdt 7.
31-Mar-16	WY	Casper	Casper/Natrona County Intl.	5/0129	01/26/16	VOR/DME RWY 21, Amdt 9.
31-Mar-16	WY	Casper	Casper/Natrona County Intl.	5/0130	01/26/16	VOR/DME RWY 3, Amdt 6B.
31-Mar-16	WY	Fort Bridger	Fort Bridger	5/0252	01/26/16	RNAV (GPS) RWY 22, Amdt 1.
31-Mar-16	WA	Olympia	Olympia Rgnl	5/0275	01/26/16	ILS OR LOC RWY 17, Amdt 12A.
31-Mar-16	AK	New Stuyahok	New Stuyahok	5/0563	01/27/16	RNAV (GPS) RWY 14, Orig.
31-Mar-16	AK	New Stuyahok	New Stuyahok	5/0564	01/27/16	RNAV (GPS) RWY 32, Orig.
31-Mar-16	MT	Lewistown	Lewistown Muni	5/0890	01/27/16	Takeoff Minimums and (Obstacle) DP, Amdt 3A.
31-Mar-16	CO	Buena Vista	Central Colorado Rgnl ..	5/0908	01/26/16	RNAV (GPS) RWY 33, Orig-A.
31-Mar-16	UT	Moab	Canyonlands Field	5/1609	01/27/16	VOR-A, Amdt 10A.
31-Mar-16	TN	Nashville	Nashville Intl	5/1824	02/03/16	RNAV (RNP) Z RWY 2C, Amdt 2A.
31-Mar-16	TN	Nashville	Nashville Intl	5/1825	02/03/16	RNAV (RNP) Z RWY 2L, Amdt 2A.
31-Mar-16	TN	Nashville	Nashville Intl	5/1827	02/03/16	RNAV (GPS) Y RWY 2R, Amdt 2B.
31-Mar-16	NE	Scribner	Scribner State	5/1842	02/09/16	RNAV (GPS) RWY 35, Amdt 1A.
31-Mar-16	FL	Winter Haven	Winter Haven's Gilbert	5/1857	01/28/16	RNAV (GPS) RWY 5, Amdt 1A.
31-Mar-16	CA	Oceanside	Oceanside Muni	5/1877	02/08/16	VOR-A, Amdt 3D.
31-Mar-16	CA	Oceanside	Oceanside Muni	5/1879	02/08/16	GPS RWY 24, Orig-B.
31-Mar-16	CA	Oceanside	Oceanside Muni	5/1881	02/08/16	GPS RWY 6, Orig-B.
31-Mar-16	CA	Tracy	Tracy Muni	5/2063	01/28/16	RNAV (GPS) RWY 30, Orig-A.
31-Mar-16	LA	New Orleans	Lakefront	5/2080	02/09/16	RNAV (GPS) RWY 36L, Orig.
31-Mar-16	OR	Tillamook	Tillamook	5/2116	01/27/16	RNAV (GPS) RWY 13, Orig-A.
31-Mar-16	NC	Raleigh/Durham	Raleigh-Durham Intl	5/2439	01/28/16	VOR RWY 5R, Amdt 13C.
31-Mar-16	UT	Duchesne	Duchesne Muni	5/2465	01/28/16	Takeoff Minimums and (Obstacle) DP, Orig.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
31-Mar-16	UT	Roosevelt	Roosevelt Muni	5/2474	01/28/16	Takeoff Minimums and (Obstacle) DP, Amdt 1.
31-Mar-16	MN	St Paul	St Paul Downtown Holman Fld.	5/2707	02/08/16	RNAV (GPS) RWY 32, Orig.
31-Mar-16	AK	Central	Central	5/2890	01/26/16	RNAV (GPS) RWY 8, Orig.
31-Mar-16	AK	Central	Central	5/2891	01/26/16	RNAV (GPS) RWY 26, Orig.
31-Mar-16	AK	Togiak Village	Togiak	5/2972	01/28/16	NDB-B, Amdt 1.
31-Mar-16	AK	Togiak Village	Togiak	5/2974	01/28/16	NDB/DME-A, Amdt 1.
31-Mar-16	GA	Cedartown	Polk County Airport-Cornelius Moore Field.	5/3368	02/03/16	RNAV (GPS) RWY 10, Orig.
31-Mar-16	GA	Cedartown	Polk County Airport-Cornelius Moore Field.	5/3369	02/03/16	RNAV (GPS) RWY 28, Orig.
31-Mar-16	AK	Gambell	Gambell	5/3400	01/26/16	RNAV (GPS) RWY 16, Orig.
31-Mar-16	AK	Gambell	Gambell	5/3402	01/26/16	RNAV (GPS) RWY 34, Orig.
31-Mar-16	MT	Helena	Helena Rgnl	5/4154	01/26/16	NDB-D, Amdt 3A.
31-Mar-16	MT	Helena	Helena Rgnl	5/4156	01/26/16	VOR-A, Amdt 15.
31-Mar-16	AK	Wales	Wales	5/4651	01/27/16	RNAV (GPS) RWY 18, Orig-B.
31-Mar-16	WA	Shelton	Sanderson Field	5/4663	01/27/16	RNAV (GPS) RWY 5, Orig.
31-Mar-16	AK	Bettles	Bettles	5/5221	01/27/16	VOR/DME RWY 1, Amdt 1.
31-Mar-16	WV	Wheeling	Wheeling Ohio Co	5/5312	01/28/16	Takeoff Minimums and (Obstacle) DP, Amdt 3.
31-Mar-16	FL	Plant City	Plant City	5/5679	01/28/16	RNAV (GPS) RWY 10, Amdt 1B.
31-Mar-16	AK	Minchumina	Minchumina	5/5730	01/26/16	Takeoff Minimums and (Obstacle) DP, Amdt 2.
31-Mar-16	CA	Tracy	Tracy Muni	5/5796	01/26/16	RNAV (GPS) RWY 26, Orig.
31-Mar-16	CA	Tracy	Tracy Muni	5/5797	01/26/16	RNAV (GPS) RWY 12, Amdt 1B.
31-Mar-16	CA	Tracy	Tracy Muni	5/5798	01/26/16	VOR/DME RWY 26, Orig.
31-Mar-16	AK	Point Hope	Point Hope	5/6615	01/26/16	NDB RWY 1, Amdt 2B.
31-Mar-16	AK	Point Hope	Point Hope	5/6622	01/26/16	NDB RWY 19, Amdt 2B.
31-Mar-16	AL	Tuskegee	Moton Field Muni	5/6923	01/28/16	RNAV (GPS) RWY 13, Amdt 2A.
31-Mar-16	AL	Tuskegee	Moton Field Muni	5/6924	01/28/16	RNAV (GPS) RWY 31, Amdt 2A.
31-Mar-16	AL	Tuskegee	Moton Field Muni	5/6925	01/28/16	VOR-A, Amdt 4A.
31-Mar-16	CA	Placerville	Placerville	5/7082	01/26/16	RNAV (GPS) RWY 5, Amdt 2.
31-Mar-16	WY	Jackson	Jackson Hole	5/7342	01/26/16	RNAV (GPS) Z RWY 19, Amdt 1.
31-Mar-16	WY	Jackson	Jackson Hole	5/7343	01/26/16	RNAV (RNP) Y RWY 19, Amdt 1.
31-Mar-16	WY	Jackson	Jackson Hole	5/7345	01/26/16	ILS Z OR LOC/DME RWY 19, Orig.
31-Mar-16	FL	Key West	Key West Intl	5/7346	01/28/16	RNAV (GPS) RWY 27, Orig.
31-Mar-16	AK	Seward	Seward	5/7353	01/26/16	RNAV (GPS)-A, Orig.
31-Mar-16	IL	Flora	Flora Muni	5/7383	02/09/16	RNAV (GPS) RWY 21, Amdt 2A.
31-Mar-16	CA	Oxnard	Oxnard	5/7768	01/27/16	ILS OR LOC RWY 25, Amdt 13A.
31-Mar-16	CA	Oxnard	Oxnard	5/7772	01/27/16	VOR RWY 25, Amdt 10A.
31-Mar-16	CA	Oxnard	Oxnard	5/7773	01/27/16	RNAV (GPS) RWY 25, Amdt 1A.
31-Mar-16	CA	Camarillo	Camarillo	5/7866	01/26/16	RNAV (GPS) RWY 8, Orig.
31-Mar-16	WY	Pinedale	Ralph Wenz Field	5/7931	01/28/16	NDB-A, Orig.
31-Mar-16	AK	Yakutat	Yakutat	5/7940	01/26/16	RNAV (GPS) RWY 11, Amdt 4.
31-Mar-16	CA	San Diego	Brown Field Muni	5/7981	01/27/16	RNAV (GPS) RWY 8L, Amdt 1A.
31-Mar-16	AK	Wainwright	Wainwright	5/8173	01/28/16	NDB RWY 5, Amdt 1.
31-Mar-16	AK	Homer	Homer	5/8184	01/27/16	RNAV (GPS) Z RWY 22, Amdt 1B.
31-Mar-16	AK	Brevig Mission	Brevig Mission	5/8215	01/27/16	RNAV (GPS) RWY 12, Orig.
31-Mar-16	AK	Brevig Mission	Brevig Mission	5/8216	01/27/16	RNAV (GPS) RWY 30, Orig.
31-Mar-16	AK	Allakaket	Allakaket	5/8218	01/27/16	RNAV (GPS) RWY 23, Amdt 1.
31-Mar-16	AK	Allakaket	Allakaket	5/8221	01/27/16	RNAV (GPS) RWY 5, Amdt 1A.
31-Mar-16	CO	Denver	Front Range	5/8292	01/27/16	ILS OR LOC RWY 17, Amdt 1.
31-Mar-16	CO	Denver	Front Range	5/8293	01/27/16	RNAV (GPS) RWY 17, Amdt 1.
31-Mar-16	CO	Denver	Front Range	5/8294	01/27/16	ILS OR LOC RWY 26, Amdt 5.
31-Mar-16	CO	Denver	Front Range	5/8295	01/27/16	NDB RWY 26, Amdt 5.
31-Mar-16	CO	Denver	Front Range	5/8297	01/27/16	RNAV (GPS) RWY 26, Amdt 1.
31-Mar-16	CO	Denver	Front Range	5/8298	01/27/16	ILS OR LOC RWY 35, Amdt 1.
31-Mar-16	CO	Denver	Front Range	5/8299	01/27/16	RNAV (GPS) RWY 35, Amdt 1.
31-Mar-16	AZ	Prescott	Ernest A Love Field	5/8468	02/08/16	RNAV (RNP) Z RWY 3R, Amdt 1.
31-Mar-16	AZ	Bullhead City	Laughlin/Bullhead Intl	5/8471	01/27/16	RNAV (GPS) RWY 16, Amdt 2.
31-Mar-16	OR	Sunriver	Sunriver	5/8576	01/26/16	RNAV (GPS) RWY 18, Orig-C.
31-Mar-16	OR	Sunriver	Sunriver	5/8577	01/26/16	VOR/DME RWY 18, Amdt 1B.
31-Mar-16	TX	Navasota	Navasota Muni	5/8997	02/03/16	RNAV (GPS) RWY 35, Orig-A.
31-Mar-16	TX	Navasota	Navasota Muni	5/8999	02/03/16	VOR-A, Amdt 2.
31-Mar-16	TX	Navasota	Navasota Muni	5/9001	02/03/16	RNAV (GPS) RWY 17, Orig-A.
31-Mar-16	LA	Slidell	Slidell	5/9020	02/09/16	VOR/DME RWY 18, Amdt 4A.
31-Mar-16	LA	Slidell	Slidell	5/9023	02/09/16	RNAV (GPS) RWY 36, Orig-B.
31-Mar-16	LA	Slidell	Slidell	5/9025	02/09/16	RNAV (GPS) RWY 18, Orig-A.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
31-Mar-16	IL	Monee	Bult Field	5/9026	02/09/16	RNAV (GPS) RWY 27, Orig.
31-Mar-16	IL	Monee	Bult Field	5/9027	02/09/16	RNAV (GPS) RWY 9, Orig.
31-Mar-16	CA	Blythe	Blythe	5/9352	01/27/16	RNAV (GPS) RWY 26, Amdt 1.
31-Mar-16	NE	Lexington	Jim Kelly Field	5/9468	02/03/16	RNAV (GPS) RWY 14, Amdt 1A.
31-Mar-16	WY	Afton	Afton Muni	5/9483	01/26/16	RNAV (GPS) RWY 34, Amdt 2.
31-Mar-16	WY	Afton	Afton Muni	5/9484	01/26/16	RNAV (GPS) RWY 16, Amdt 2.
31-Mar-16	CA	Napa	Napa County	5/9545	01/28/16	VOR RWY 6, Amdt 13.
31-Mar-16	CA	Napa	Napa County	5/9546	01/28/16	RNAV (GPS) Y RWY 36L, Amdt 2.
31-Mar-16	CA	Napa	Napa County	5/9547	01/28/16	ILS OR LOC RWY 36L, Orig-A.
31-Mar-16	CA	Petaluma	Petaluma Muni	5/9550	01/28/16	RNAV (GPS) RWY 29, Orig-A.
31-Mar-16	CA	Groveland	Pine Mountain Lake	5/9796	01/28/16	Takeoff Minimums and (Obstacle) DP, Orig.
31-Mar-16	CA	Palo Alto	Palo Alto	5/9799	01/27/16	VOR/DME RWY 31, Orig-D.
31-Mar-16	WA	Richland	Richland	5/9908	01/28/16	RNAV (GPS) RWY 26, Amdt 2.
31-Mar-16	CA	Bakersfield	Bakersfield Muni	6/0829	01/27/16	VOR/DME RWY 34, Amdt 1A.
31-Mar-16	CA	Bakersfield	Bakersfield Muni	6/0830	01/27/16	RNAV (GPS) RWY 34, Orig-A.
31-Mar-16	CA	Groveland	Pine Mountain Lake	6/1151	02/09/16	GPS RWY 27, Orig.
31-Mar-16	CA	Groveland	Pine Mountain Lake	6/1152	02/09/16	RNAV (GPS) RWY 9, Orig.
31-Mar-16	PA	Ebensburg	Ebensburg	6/1283	01/27/16	RNAV (GPS) RWY 25, Orig-B.
31-Mar-16	PA	Ebensburg	Ebensburg	6/1366	01/27/16	RNAV (GPS) RWY 7, Orig-A.
31-Mar-16	AZ	Chandler	Chandler Muni	6/2401	02/09/16	NDB RWY 4R, Orig-B.
31-Mar-16	MT	Roundup	Roundup	6/2450	02/08/16	RNAV (GPS) RWY 25, Orig-A.
31-Mar-16	MN	Grand Rapids	Grand Rapids/Itasca Co-Gordon Newstrom Fld.	6/2954	02/09/16	ILS OR LOC RWY 34, Amdt 2.
31-Mar-16	TX	Jasper	Jasper County-Bell Field.	6/2957	02/09/16	RNAV (GPS) RWY 36, Orig.
31-Mar-16	IL	Lincoln	Logan County	6/2960	02/08/16	Takeoff Minimums and (Obstacle) DP, Amdt 1.
31-Mar-16	MI	Marshall	Brooks Field	6/2961	02/09/16	RNAV (GPS) RWY 28, Orig-A.
31-Mar-16	MI	Marshall	Brooks Field	6/2962	02/09/16	VOR/DME-A, Orig.
31-Mar-16	AL	Wetumpka	Wetumpka Muni	6/3254	02/08/16	RNAV (GPS) RWY 27, Orig.
31-Mar-16	FL	Marathon	The Florida Keys Marathon.	6/3260	01/27/16	NDB-A, Orig.
31-Mar-16	FL	Marathon	The Florida Keys Marathon.	6/3261	01/27/16	RNAV (GPS) RWY 7, Orig.
31-Mar-16	FL	Marathon	The Florida Keys Marathon.	6/3262	01/27/16	RNAV (GPS) RWY 25, Amdt 1.
31-Mar-16	FL	Marathon	The Florida Keys Marathon.	6/3263	01/27/16	Takeoff Minimums and (Obstacle) DP, Amdt 1B.
31-Mar-16	NH	Claremont	Claremont Muni	6/3441	02/08/16	NDB-A, Amdt 1.
31-Mar-16	AL	Wetumpka	Wetumpka Muni	6/3453	02/08/16	RNAV (GPS) RWY 9, Orig.
31-Mar-16	AL	Wetumpka	Wetumpka Muni	6/3454	02/08/16	VOR-A, Amdt 2.
31-Mar-16	TN	Camden	Benton County	6/4091	02/03/16	RNAV (GPS) RWY 22, Orig-B.
31-Mar-16	TN	Camden	Benton County	6/4092	02/03/16	RNAV (GPS) RWY 4, Orig.
31-Mar-16	AZ	Prescott	Ernest A Love Field	6/4364	02/08/16	RNAV (GPS) Y RWY 3R, Orig.
31-Mar-16	GA	Cairo	Cairo-Grady County	6/4711	02/08/16	RNAV (GPS) RWY 13, Amdt 1A.
31-Mar-16	AZ	Prescott	Ernest A Love Field	6/4865	02/08/16	RNAV (GPS) RWY 12, Orig.
31-Mar-16	AZ	Prescott	Ernest A Love Field	6/4867	02/08/16	ILS OR LOC/DME RWY 21L, Amdt 4A.
31-Mar-16	AZ	Prescott	Ernest A Love Field	6/4868	02/08/16	RNAV (GPS) RWY 21L, Amdt 2A.
31-Mar-16	KY	Ashland	Ashland Rgnl	6/5224	01/26/16	RNAV (GPS) RWY 28, Amdt 1B.
31-Mar-16	KY	Ashland	Ashland Rgnl	6/5225	01/26/16	RNAV (GPS) RWY 10, Amdt 1B.
31-Mar-16	AZ	Kingman	Kingman	6/6420	01/28/16	VOR/DME RWY 21, Amdt 7A.
31-Mar-16	AZ	Kingman	Kingman	6/6421	01/28/16	RNAV (GPS) Y RWY 21, Orig-A.
31-Mar-16	AZ	Kingman	Kingman	6/6422	01/28/16	RNAV (GPS) RWY 3, Orig-A.
31-Mar-16	AZ	Kingman	Kingman	6/6423	01/28/16	RNAV (GPS) Z RWY 21, Orig-B.
31-Mar-16	UT	Moab	Canyonlands Field	6/7780	02/03/16	RNAV (GPS) RWY 3, Orig.

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 97**

[Docket No. 31062; Amdt. No. 3683]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 29, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 29, 2016.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590-0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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/code_of_federal_regulations/ibr_locations.html.

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS-420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954-4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPs, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The applicable FAA forms are FAA Forms 8260-3, 8260-4, 8260-5, 8260-15A, and 8260-15B when required by an entry on 8260-15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff

Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on February 12, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 31 MARCH 2016

- Deadhorse, AK, Deadhorse, RNAV (RNP) Z RWY 5, Orig-C, CANCELED
- Deadhorse, AK, Deadhorse, RNAV (RNP) Z RWY 23, Orig-C, CANCELED
- Muscle Shoals, AL, Northwest Alabama Rgnl, VOR RWY 29, Amdt 27A, CANCELED
- El Dorado, AR, South Arkansas Rgnl at Goodwin Field, VOR RWY 22, Amdt 13D, CANCELED
- Washington, DC, Ronald Reagan Washington National, VOR RWY 15, Amdt 2 CANCELED
- Washington, DC, Ronald Reagan Washington National, VOR RWY 19, Amdt 10, CANCELED
- Washington, DC, Ronald Reagan Washington National, VOR/DME RWY 1, Amdt 14B, CANCELED
- Charles City, IA, Northeast Iowa Rgnl, LOC RWY 12, Amdt 1
- Charles City, IA, Northeast Iowa Rgnl, NDB RWY 12, Amdt 1, CANCELED
- Charles City, IA, Northeast Iowa Rgnl, RNAV (GPS) RWY 12, Amdt 1
- Charles City, IA, Northeast Iowa Rgnl, RNAV (GPS) RWY 30, Amdt 1
- West Union, IA, George L Scott Muni, RNAV (GPS) RWY 17, Amdt 1
- West Union, IA, George L Scott Muni, RNAV (GPS) RWY 35, Amdt 1
- West Union, IA, George L Scott Muni, Takeoff Minimums and Obstacle DP, Amdt 3
- Salmon, ID, Lemhi County, RNAV (GPS) RWY 17, Orig
- Salmon, ID, Lemhi County, RNAV (GPS)–C, Orig-B, CANCELED
- Salmon, ID, Lemhi County, RNAV (GPS)–D, Amdt 1
- Salmon, ID, Lemhi County, VOR/DME–B, Amdt 1
- Champaign/Urbana, IL, University of Illinois-Willard, RNAV (GPS) RWY 18, Orig-A, CANCELED
- Champaign/Urbana, IL, University of Illinois-Willard, VOR RWY 18, Orig-A, CANCELED
- Indianapolis, IN, Eagle Creek Airpark, LOC RWY 21, Amdt 4
- Indianapolis, IN, Eagle Creek Airpark, RNAV (GPS) RWY 21, Amdt 1
- Indianapolis, IN, Greenwood Muni, Takeoff Minimums and Obstacle DP, Amdt 4A
- Warsaw, IN, Warsaw Muni, VOR RWY 27, Amdt 7, CANCELED
- Bedford, MA, Laurence G Hanscom Fld, NDB RWY 29, Amdt 8, CANCELED
- Salisbury, MD, Salisbury-Ocean City Wicomico Rgnl, VOR RWY 23, Amdt 10A, CANCELED
- Salisbury, MD, Salisbury-Ocean City Wicomico Rgnl, VOR RWY 32, Amdt 10, CANCELED
- Escanaba, MI, Delta County, VOR RWY 9, Amdt 14B, CANCELED
- Escanaba, MI, Delta County, VOR RWY 27, Amdt 12B, CANCELED
- Manistee, MI, Manistee Co-Blacker, VOR RWY 28, Amdt 1B, CANCELED
- Litchfield, MN, Litchfield Muni, VOR/DME RWY 13, Orig-B, CANCELED
- Mankato, MN, Mankato Rgnl, VOR RWY 33, Amdt 8A, CANCELED
- St James, MN, St James Muni, NDB RWY 33, Amdt 1B
- St James, MN, St James Muni, RNAV (GPS) RWY 15, Amdt 1
- St James, MN, St James Muni, RNAV (GPS) RWY 33, Amdt 1
- Worthington, MN, Worthington Muni, VOR RWY 36, Amdt 6A, CANCELED
- Brookfield, MO, North Central Missouri Rgnl, RNAV (GPS) RWY 18, Orig
- Brookfield, MO, North Central Missouri Rgnl, RNAV (GPS) RWY 36, Amdt 2
- Brookfield, MO, North Central Missouri Rgnl, Takeoff Minimums and Obstacle DP, Amdt 3
- Greensboro, NC, Piedmont Triad Intl, ILS Y OR LOC/DME Y RWY 32, Orig
- Greensboro, NC, Piedmont Triad Intl, ILS Z OR LOC/DME Z RWY 32, Orig
- New Bern, NC, Coastal Carolina Regional, VOR RWY 4, Amdt 4B, CANCELED
- Devils Lake, ND, Devils Lake Rgnl, VOR RWY 21, Orig-B, CANCELED
- Mc Cook, NE, Mc Cook Ben Nelson Rgnl, VOR RWY 12, Amdt 12A, CANCELED
- Mc Cook, NE, Mc Cook Ben Nelson Rgnl, VOR RWY 22, Amdt 4F, CANCELED
- Ogallala, NE, Searle Field, VOR RWY 8, Amdt 6B, CANCELED
- Ogallala, NE, Searle Field, VOR RWY 26, Amdt 6B, CANCELED
- Ogallala, NE, Searle Field, VOR/DME RWY 8, Amdt 1B, CANCELED
- Sidney, NE, Sidney Muni/Lloyd W Carr Field, VOR RWY 13, Amdt 7, CANCELED
- Sidney, NE, Sidney, Muni/Lloyd W Carr Field, VOR RWY 31, Amdt 8, CANCELED
- Readington, NJ, Solberg-Hunterdon, VOR–A, Amdt 9A, CANCELED
- Farmington, NM, Four Corners Rgnl, VOR RWY 23, Orig, CANCELED
- Farmington, NM, Four Corners Rgnl, VOR RWY 25, Amdt 10, CANCELED
- Las Vegas, NM, Las Vegas Muni, VOR RWY 2, Amdt 11A, CANCELED
- Lovelock, NV, Derby Field, VOR OR GPS–C, Orig-B, CANCELED
- Binghamton, NY, Greater Binghamton/Edwin A Link Field, VOR RWY 10, Amdt 7, CANCELED
- Ithaca, NY, Ithaca Tompkins Rgnl, VOR RWY 32, Amdt 2A, CANCELED
- New York, NY, LaGuardia, VOR/DME–G, Amdt 2C, CANCELED
- Rochester, NY, Greater Rochester Intl, VOR/DME RWY 4, Amdt 4A, CANCELED
- Circleville, OH, Pickaway County Memorial, RNAV (GPS) RWY 1, Orig
- Circleville, OH, Pickaway County Memorial, RNAV (GPS) RWY 19, Orig
- Circleville, OH, Pickaway County Memorial, VOR RWY 19, Amdt 3
- Newark, OH, Newark-Heath, NDB OR GPS RWY 9, Amdt 6A, CANCELED
- Ada, OK, Ada Muni, VOR/DME–A, Orig-E, CANCELED
- Cushing, OK, Cushing Muni, NDB RWY 36, Amdt 5, CANCELED
- Norman, OK, University of Oklahoma Westheimer, NDB RWY 3, Amdt 1A, CANCELED
- Norman, OK, University of Oklahoma Westheimer, NDB RWY 35, Orig-C, CANCELED
- Stillwater, OK, Stillwater Rgnl, NDB RWY 17, Amdt 1A, CANCELED
- North Bend, OR, Southwest Oregon Rgnl, NDB RWY 4, Amdt 6, CANCELED
- Bloomsburg, PA, Bloomsburg Muni, RNAV (GPS)–B, Amdt 1
- Bloomsburg, PA, Bloomsburg Muni, VOR–A, Amdt 1
- Hartsville, SC, Hartsville Rgnl, NDB RWY 3, Amdt 1A, CANCELED
- Mitchell, SD, Mitchell Muni, VOR RWY 31, Amdt 5A, CANCELED
- Yankton, SD, Chan Gurney Muni, VOR RWY 31, Amdt 3B, CANCELED
- Athens, TN, McMinn County, NDB RWY 20, Amdt 7A, CANCELED
- Bowie, TX, Bowie Muni, NDB RWY 35, Amdt 4, CANCELED
- Brownwood, TX, Brownwood Rgnl, VOR RWY 17, Amdt 11A, CANCELED
- Dallas, TX, Dallas Love Field, Takeoff Minimums and Obstacle DP, Amdt 16A
- Del Rio TX, Del Rio Intl, VOR/DME–B, Amdt 1, CANCELED
- Houston, TX, William P Hobby, VOR/DME RWY 35, Amdt 3A, CANCELED
- La Porte, TX, La Porte Muni, NDB RWY 30, Amdt 2A, CANCELED
- Wendover, UT, Wendover, VOR/DME–B, Amdt 2
- Lynchburg, VA, Lynchburg Rgnl/Preston Glenn Fld, VOR RWY 4, Amdt 12A, CANCELED
- Melfa, VA, Accomack County, LOC RWY 3, Orig
- Auburn, WA, Auburn Muni, BLAKO ONE, Graphic DP
- Auburn, WA, Auburn Muni, Takeoff Minimums and Obstacle DP, Amdt 1
- Kenosha, WI, Kenosha Rgnl, VOR RWY 15, Amdt 1, CANCELED
- Milwaukee, WI, Lawrence J Timmerman, VOR RWY 15L, Amdt 14B, CANCELED

Martinsburg, WV, Eastern WV Rgnl/
Shepherd Fld, Takeoff Minimums and
Obstacle DP, Amdt 7

[FR Doc. 2016-04216 Filed 2-26-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 700, 701, 702, 705, 730, 732, 734, 736, 738, 740, 742, 743, 744, 746, 747, 748, 750, 754, 756, 758, 760, 762, 764, 766, 768, 770, 772, and 774

[Docket No. 160212107-6107-01]

RIN 0694-AG84

Updated Legal Authority Citations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule updates the Code of Federal Regulations (CFR) legal authority citations in the National Security Industrial Base Regulations (NSIBR) and the Export Administration Regulations (EAR). The citation updates reflect recent editorial reclassifications within the United States Code, the repeal of certain statutory authorities, the continuation of an emergency declared in an executive order, and minor stylistic edits. This is a non-substantive rule that only updates legal authority paragraphs of the NSIBR and the EAR. It does not alter any right, obligation or prohibition that applies to any person under the NSIBR or the EAR.

DATES: The rule is effective February 29, 2016.

FOR FURTHER INFORMATION CONTACT: William Arvin, Regulatory Policy Division, Bureau of Industry and Security, Telephone: (202) 482-2440.

SUPPLEMENTARY INFORMATION:

Background

Authority for various parts of 15 CFR Chapter VII is based on the Defense Production Act of 1950 as amended, the Military Selective Service Act, the Export Administration Act of 1979 as amended and the Trading with the Enemy Act. This rule updates authority citations in 15 CFR Chapter VII to include the most recent applicable United States Code (“U.S.C.”) citations for those statutes. Additionally, the authority for parts 730 and 744 of that chapter rests, in part, on Executive Order 12947—Prohibiting Transactions With Respect to Terrorists Who Threaten To Disrupt the Middle East Peace Process (60 FR 5079, 3 CFR, 1995 Comp., p. 356) and on the annual notice

continuing the emergency declared in that executive order. This rule updates the authority citations for those parts to cite the most recent such notice. This rule also removes citations to Section 103 of the Energy Policy and Conservation Act, which has been repealed, and adds citations to the Annual Compilation of Presidential Documents for Presidential documents that have been compiled therein. Finally, this rule makes stylistic edits to conform citations to the style prescribed in the **Federal Register** Document Drafting Handbook.

The specific reasons for the revisions are as follows:

- Parts 700, 701 and 702 to cite the most recent U.S.C. codification of the Defense Production Act of 1950 as amended;
- Part 700 to cite the most recent U.S.C. codification of the Military Selective Service Act;
- Parts 730 through 744 and 746 through 774 to cite the most recent U.S.C. codification of the Export Administration Act;
- Parts 730, 738, 754 and 774 to remove the citation to Section 103 of the Energy Policy and Conservation Act, 42 U.S.C. 6212, which dealt with, *inter alia*, restrictions on exports of crude oil and has been repealed;
- Parts 730, 738 and 774 to cite the most recent U.S.C. codification of the Trading With the Enemy Act;
- Parts 730 and 744 to cite the presidential notice of January 22, 2016 continuing the emergency declared in E.O. 12947; and
- Parts 743, 746, 747 and 750 to cite the Title 3 CFR Annual Compilation of Presidential Documents for Presidential documents that have been compiled therein.

All other changes to the authority citations made by this rule are stylistic changes made to conform to the style of the **Federal Register** Document Drafting Handbook.

This rule is purely procedural, and makes no changes other than to revise CFR authority paragraphs for the purpose of making the authority citations current and to conform to **Federal Register** Document Drafting Handbook style. It does not change the text of any section of Chapter VII nor does it alter any right, obligation or prohibition that applies to any person under that chapter.

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). This rule does not impose any regulatory burden on the public and is consistent with the goals of Executive Order 13563. 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 shall any person 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 rule does not involve any collection of information.

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

4. 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 requiring prior notice and the opportunity for public comment because they are unnecessary. This rule only updates legal authority citations. It clarifies information and is non-discretionary. This rule does not alter any right, obligation or prohibition that applies to any person under the EAR. Because these revisions are not substantive changes, it is unnecessary to provide notice and opportunity for public comment. In addition, the 30-day delay in effectiveness otherwise required by 5 U.S.C. 553(d) is not applicable because this rule is not a substantive rule. Because neither the Administrative Procedure Act nor any other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no Final Regulatory Flexibility Analysis is required and none has been prepared.

List of Subjects

15 CFR Part 700

Administrative practice and procedure, Business and industry, Government contracts, National defense, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Part 701

Administrative practice and procedure, Arms and munitions, Business and industry, Exports, Government contracts, Reporting and recordkeeping requirements.

15 CFR Part 702

Business and industry, Confidential business information, Employment, National defense, Penalties, Research, Science and technology.

15 CFR Part 705

Administrative practice and procedure, Business and industry, Classified information, Confidential business information, Investigations, National defense.

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Parts 732, 740, 748, 750, and 758

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

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research, Science and technology.

15 CFR Parts 736, 738, 770, and 772

Exports.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 743

Administrative practice and procedure, Reporting and recordkeeping requirements.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Parts 746 and 774

Exports, Reporting and recordkeeping requirements.

15 CFR Part 747

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 754

Agricultural commodities, Exports, Forests and forest products, Horses, Petroleum, Reporting and recordkeeping requirements.

15 CFR Part 756

Administrative practice and procedure, Exports, Penalties.

15 CFR Part 760

Boycotts, Exports, Reporting and recordkeeping requirements.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.

15 CFR Part 764

Administrative practice and procedure, Exports, Law enforcement, Penalties.

15 CFR Part 766

Administrative practice and procedure, Confidential business information, Exports, Law enforcement, Penalties.

15 CFR Part 768

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements, Science and technology.

Accordingly, 15 CFR Chapter VII is amended as follows:

PART 700—[AMENDED]

■ 1. The authority citation for 15 CFR part 700 is revised to read as follows:

Authority: 50 U.S.C. 4501 *et seq.*; 42 U.S.C. 5195, *et seq.*; 50 U.S.C. 3816; 10 U.S.C. 2538; 50 U.S.C. 82; E.O. 12656, 53 FR 226, 3 CFR, 1988 Comp., p. 585; E.O. 12742, 56 FR 1079, 3 CFR, 1991 Comp., p. 309; E.O. 13603, 77 FR 16651, 3 CFR, 2012 Comp., p. 225.

PART 701—[AMENDED]

■ 2. The authority citation for 15 CFR part 701 is revised to read as follows:

Authority: 50 U.S.C. 4568; E.O. 12919, 59 FR 29525, 3 CFR, 1994 Comp., p. 901; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

PART 702—[AMENDED]

■ 3. The authority citation for 15 CFR part 702 is revised to read as follows:

Authority: 50 U.S.C. 4501 *et seq.*; E.O. 13603, 77 FR 16651, 3 CFR, 2012 Comp., p. 225.

PART 705—[AMENDED]

■ 4. The authority citation for 15 CFR part 705 is revised to read as follows:

Authority: 19 U.S.C. 1862.

PART 730—[AMENDED]

■ 5. The authority citation for 15 CFR part 730 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p. 133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; 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. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; 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; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of May 6, 2015, 80 FR 26815 (May 8, 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); Notice of January 20, 2016, 81 FR 3937 (January 22, 2016).

PART 732—[AMENDED]

■ 6. The authority citation for 15 CFR part 732 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

PART 734—[AMENDED]

■ 7. The authority citation for 15 CFR part 734 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015).

PART 736—[AMENDED]

■ 8. The authority citation for 15 CFR part 736 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 note; E.O.

12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of May 6, 2015, 80 FR 26815 (May 8, 2015); Notice of August 7, 2015, 80 FR 48233 (August 11, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015).

PART 738—[AMENDED]

- 9. The authority citation for 15 CFR part 738 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

PART 740—[AMENDED]

- 10. The authority citation for 15 CFR part 740 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

PART 742—[AMENDED]

- 11. The authority citation for 15 CFR part 742 is revised to read as follows:

Authority: 50 U.S.C. 4601 *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; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; 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. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015).

PART 743—[AMENDED]

- 12. The authority citation for 15 CFR part 743 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; 78 FR 16129; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

PART 744—[AMENDED]

- 13. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. 4601 *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 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); Notice of January 20, 2016, 81 FR 3937 (January 22, 2016).

PART 746—[AMENDED]

- 14. The authority citation for 15 CFR part 746 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Presidential Determination 2007–7, 72 FR 1899, 3 CFR, 2006 Comp., p. 325; Notice of May 6, 2015, 80 FR 26815 (May 8, 2015); Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

PART 747—[AMENDED]

- 15. The authority citation for 15 CFR part 747 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

PART 748—[AMENDED]

- 16. The authority citation for 15 CFR part 748 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

PART 750—[AMENDED]

- 17. The authority citation for 15 CFR part 750 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66

FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

PART 754—[AMENDED]

- 18. The authority citation for 15 CFR part 754 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 30 U.S.C. 185(s), 185(u); 43 U.S.C. 1354; 15 U.S.C. 1824a; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

PART 756—[AMENDED]

- 19. The authority citation for 15 CFR part 756 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

PART 758—[AMENDED]

- 20. The authority citation for 15 CFR part 758 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

PART 760—[AMENDED]

- 21. The authority citation for 15 CFR part 760 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

PART 762—[AMENDED]

- 22. The authority citation for 15 CFR part 762 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

PART 764—[AMENDED]

- 23. The authority citation for 15 CFR part 764 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

PART 766—[AMENDED]

- 24. The authority citation for 15 CFR part 766 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

PART 768—[AMENDED]

■ 25. The authority citation for 15 CFR part 768 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

PART 770—[AMENDED]

■ 26. The authority citation for 15 CFR part 770 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

PART 772—[AMENDED]

■ 27. The authority citation for 15 CFR part 772 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

PART 774—[AMENDED]

■ 28. The authority citation for 15 CFR part 774 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

Dated: February 23, 2016.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2016-04324 Filed 2-26-16; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 117**

[Docket No. USCG-2016-0135]

Drawbridge Operation Regulation; Lake Washington Ship Canal, Seattle, WA

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 Montlake Bridge across the Lake Washington Ship

Canal, mile 5.2, at Seattle, WA. The deviation is necessary to accommodate a bike ride by the Cascade Bicycle Club. This deviation allows the bridge to remain in the closed-to-navigation position to allow for the safe movement of event participants.

DATES: This deviation is effective from 7 a.m. on April 2, 2016 to 12:30 p.m. on April 3, 2016.

ADDRESSES: The docket for this deviation, [USCG-2016-0135] 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 temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206-220-7282, email d13-pf-d13bridges@uscg.mil.

SUPPLEMENTARY INFORMATION: The Washington State Department of Transportation requested permission for the Montlake Bridge across the Lake Washington Ship Canal to remain in the closed-to-navigation position to facilitate the safe, uninterrupted roadway passage of event participants. The deviation is necessary to accommodate the grand opening of the new Evergreen Point Floating Bridge bike ride by the Cascade Bicycle Club. The Montlake Bridge in the closed position provides 30 feet of vertical clearance throughout the navigation channel, and 46 feet of vertical clearance throughout the center 60 feet of the bridge; vertical clearance references to the Mean Water Level of Lake Washington. The deviation period is from 7 a.m. to 6 p.m. on April 2, 2016, and from 6:30 a.m. to 12:30 p.m. on April 3, 2016. The normal operating schedule for the Montlake Bridge operates in accordance with 33 CFR 117.1051(e).

Waterway usage on the Lake Washington Ship Canal ranges from commercial tug and barge to small pleasure craft. Vessels able to pass through the bridge in the closed-to-navigation position may do so at any time. The bridge will be able to open for emergencies. The Lake Washington Ship Canal has no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: February 23, 2016.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2016-04244 Filed 2-26-16; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 117**

[Docket No. USCG-2016-0139]

Drawbridge Operation Regulation; Long Creek & Sloop Channel, Hempstead, NY

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 Loop Parkway Bridge, mile 0.7, across Long Creek, and the Meadowbrook State Parkway Bridge, mile 12.8, across Sloop Channel, both at Hempstead, New York. This temporary deviation is necessary to facilitate the Dee Snider's Motorcycle Ride to Fight Hunger on Long Island.

DATES: This deviation is effective from 11 a.m. to 1 p.m. on September 18, 2016.

ADDRESSES: The docket for this deviation, [USCG-2016-0139] 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 temporary deviation, call or email Ms. Judy K. Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 514-4330, email judy.k.leung-ye@uscg.mil.

SUPPLEMENTARY INFORMATION:

Long Island Cares, Inc. requested and the bridge owner for both bridges, the State of New York Department of Transportation, concurred with this temporary deviation from the normal operating schedule to facilitate a public event, the Dee Snider's Motorcycle Ride to Fight Hunger.

The Loop Parkway Bridge, mile 0.7, across Long Creek has a vertical clearance in the closed position of 21

feet at mean high water and 25 feet at mean low water. The existing bridge operating regulations are found at 33 CFR 117.799(f).

The Meadowbrook State Parkway Bridge, mile 12.8, across Sloop Channel has a vertical clearance in the closed position of 22 feet at mean high water and 25 feet at mean low water. The existing bridge operating regulations are found at 33 CFR 117.799(h).

Long Creek and Sloop Channel are transited by commercial fishing and recreational vessel traffic.

Under this temporary deviation, the Loop Parkway and the Meadowbrook State Parkway Bridges may remain in the closed position between 11 a.m. and 1 p.m. on September 18, 2016.

Vessels able to pass under the bridge in the closed position may do so at any time. The bridges will not be able to open for emergencies and there are no immediate alternate routes for vessels to pass.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: February 23, 2016.

C.J. Bisignano,

*Supervisory Bridge Management Specialist,
First Coast Guard District.*

[FR Doc. 2016-04278 Filed 2-26-16; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Atlantic Ocean South of Entrance to Chesapeake Bay Off Camp Pendleton, Virginia; Firing Range

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is establishing a permanent danger zone in waters of the Atlantic Ocean south of Rudee Inlet in Virginia Beach, Virginia. The Camp Pendleton firing range supports a myriad of stakeholders that include all components of the

Department of Defense, including: U.S. Army, Army National Guard, Army Reserve, U.S. Navy, Navy Reserve, U.S. Marine Corps, U.S. Marine Corps Reserve, U.S. Air Force, Air Force National Guard, Air Force Reserve, U.S. Coast Guard, and the U.S. Coast Guard Reserve, as well as many non-Department of Defense units. Camp Pendleton, VA will provide an economical, safe training environment for individual live fire exercises, and collective units to conduct the minimum requirements for weapons qualification. The danger zone will increase the level of safety to the public in the vicinity of the live firing operations by providing additional notice of the hazards present.

DATES: *Effective date:* March 30, 2016.

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW-CO (David Olson), 441 G Street NW., Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202-761-4922, or Ms. Nicole Woodward, Corps of Engineers, Norfolk District, Regulatory Branch, at 757-201-7122.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the June 22, 2015, edition of the **Federal Register** (80 FR 35621) and the regulations.gov docket number was COE-2015-0006. In response to the proposal, three comments were received. The comments received from the Virginia Department of Historic Resources and Virginia Department of Conservation and Recreation stated that the proposed rule will have no adverse effect on historic properties and no adverse impacts on natural heritage resources. In addition, a comment was received in response to the proposal in the **Federal Register** objecting to the creation of a firing range and the environmental effects associated with it. This action is the establishment of a danger zone at an existing firing range which has been in use for the last century, therefore no new environmental impacts are proposed as a result of the action.

In response to a request by the United States Navy, and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is amending 33 CFR part 334 for a permanent danger zone, in waters of the Atlantic Ocean south of Rudee Inlet in Virginia Beach, Virginia. The establishment of a permanent danger zone is necessary to protect the public

from hazards associated with live firing operations.

Administrative Requirements

a. Review under Executive Order 12866. This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review under the Regulatory Flexibility Act. This final rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The danger zone is necessary to protect public safety and satisfy Department of Defense and other government agency requirements for small arms training. Small entities can utilize navigable waters outside of the danger zone when the danger zone is activated. After considering the economic impacts of this final danger zone regulation on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

c. Review under the National Environmental Policy Act. This rule will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment has been prepared. It may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT** section, above.

d. Unfunded Mandates Act. This rule does not impose an enforceable duty among the private sector and, therefore, is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Public Laws 104-4, 109 Stat. 48, 2 U.S.C. 1501 *et seq.*). We have also found under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rule.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Add § 334.405 to read as follows:

§ 334.405 South of entrance to Chesapeake Bay off Camp Pendleton, Virginia; firing range.

(a) *The danger zone.* An area directly from Camp Pendleton extending offshore as denied by lines drawn as follows: Beginning at latitude 36°49'00" N., longitude 75°58'04" W.; thence to latitude 36°49'19" N., longitude 75°57'41" W.; thence to latitude 36°49'21" N., longitude 75°57'32" W.; thence to latitude 36°49'13" N., longitude 75°56'44" W.; thence to latitude 36°49'22" N., longitude 75°55'48" W.; thence to latitude 36°49'12" N., longitude 75°55'46" W.; thence to latitude 36°49'02" N., longitude 75°55'45" W.; thence to latitude 36°48'52" N., longitude 75°55'45" W.; thence to latitude 36°48'54" N., longitude 75°56'42" W.; thence to latitude 36°48'41" N., longitude 75°57'28" W.; thence to latitude 36°48'41" N., longitude 75°57'37" W.; thence to latitude 36°48'57" N., longitude 75°58'04" W. The datum for these coordinates is WGS84.

(b) *The regulations.* (1) Persons and vessels shall proceed through the area with caution and shall remain therein no longer than necessary for purpose of transit.

(2) When firing is in progress during daylight hours, red flags will be displayed at conspicuous locations on the beach. No firing will be done during the hours of darkness or low visibility.

(3) Firing on the ranges shall be suspended as long as any persons or vessels are within the danger zone.

(4) Lookout posts shall be manned by the activity or agency operating the firing range State Military Reservation, Camp Pendleton.

(5) There shall be no firing on the range during periods of low visibility which would prevent the recognition of a vessel (to a distance of 7,500 yards) which is property displaying navigation lights, or which would preclude a vessel from observing the red range flags or lights.

(c) *Enforcement.* The regulations in this section shall be enforced by the Adjutant General of Virginia, and such agencies as he or she may designate.

Dated: February 17, 2016.

Edward E. Belk, Jr.,

Chief, Operations and Regulatory Division,
Directorate of Civil Works.

[FR Doc. 2016-04215 Filed 2-26-16; 8:45 am]

BILLING CODE 3720-58-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2016-0006; FRL-9942-90-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Prevention of Significant Deterioration; Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Commonwealth of Virginia State Implementation Plan (SIP) submitted by the Virginia Department of Environmental Quality (VADEQ) on behalf of the Commonwealth on July 22, 2014. VADEQ's submittal revises Virginia's Prevention of Significant Deterioration (PSD) air quality preconstruction permitting program to be consistent with the federal PSD regulations regarding the use of the significant monitoring concentration (SMC) and significant impact levels (SILs) for fine particulate matter (PM_{2.5}) emissions. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on April 29, 2016 without further notice, unless EPA receives adverse written comment by March 30, 2016. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2016-0006 at <http://www.regulations.gov>, or via email to johansen.amy@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI)

or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Himanshu Vyas, (215) 814-2112, or by email at vyas.himanshu@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The CAA at section 110(a)(2)(C) requires states to develop and submit to the EPA for approval into the SIP preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants for attainment and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the New Source Review (NSR) SIP. The CAA NSR SIP program is composed of three separate programs: PSD, Nonattainment New Source Review (NNSR), and Minor NSR. PSD is established in part C of title I of the CAA and applies in areas that meet the National Ambient Air Quality Standards (NAAQS)—"attainment areas," as well as areas where there is insufficient information to determine if the area meets the NAAQS—"unclassifiable areas." The NNSR SIP program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS—"nonattainment areas." The Minor NSR SIP program addresses construction or modification activities that do not emit, or have the potential to emit, beyond certain major source thresholds, and thus do not qualify as "major" and applies regardless of the designation of the area in which a source is located. The EPA regulations governing the criteria that states must satisfy for EPA approval of the NSR programs as part of the SIP are contained in 40 CFR 51.160-51.166.

On October 20, 2010, EPA promulgated revisions to the existing

requirements of the federal PSD permitting program as it pertains to emissions of PM_{2.5}.¹ As relevant here for this rulemaking, those revisions included two screening tools which outlined the extent to which certain sources were required as part of a permit application to demonstrate the impact of the proposed project on ambient air quality. A SMC was established to determine whether a PSD permit application may be exempted from the 1-year air monitoring requirement for PM_{2.5} based on the grounds that the increase of the pollutant is de minimis and would have a limited impact on ambient air quality. Additionally, SILs were established, below which a source was presumed to have met its statutory obligation to demonstrate that the proposed project would not cause or contribute to a violation of the NAAQS. In response to a request from EPA and a petition from a third party, the United States Court of Appeals for the District of Columbia Circuit (the Court) subsequently vacated and remanded to the EPA the portions of the 2010 PSD regulations establishing the PM_{2.5} SMC and SILs. *Sierra Club v. EPA*, 705 F.3d 458, 463–64 (D.C. Cir. 2013). As a result of this decision, EPA subsequently revised its regulations to amend the SMC for PM_{2.5} and to remove the SILs for PM_{2.5} altogether. See 78 FR 73698 (December 9, 2013).²

Prior to the Court's decision, on August 25, 2011, VADEQ submitted a formal revision to its SIP to incorporate changes to its PM_{2.5} regulations in accordance with the federal PSD program in effect at that time. In light of the Court's decision, by letter dated February 13, 2013, Virginia officially withdrew from the August 25, 2011 submittal those portions of the Virginia Administrative Code (VAC) which pertained to the PM_{2.5} SILs and SMC. Specifically, Virginia withdrew the PM_{2.5} SIL regulation at paragraph A(2) of 9VAC5–80–1715 and the portion of paragraph E(1) of 9VAC5–80–1695 pertaining to the PM_{2.5} SMC. On February 25, 2014, EPA approved the remaining portions of VADEQ's submittal without addressing the PM_{2.5} SMC and SILs. See 79 FR 10377.

¹ See "Prevention of Significant Deterioration (PSD) for Particulate Matter less than 2.5 Micrometers (PM_{2.5})—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)." 75 FR 64864 (October 20, 2010).

² Rather than remove the PM_{2.5} SMC in its entirety, EPA revised the value to zero micrograms per cubic meter (µg/m³) in order to be clear that there is no air quality impact level below which a permitting authority has the discretion to exempt a source from PM_{2.5} monitoring requirements. See 78 FR at 73699.

Virginia subsequently revised the VAC to comport with EPA's December 9, 2013 rulemaking for SILs and SMC and submitted those amended regulations to EPA as a formal SIP revision on July 22, 2014.

II. Summary of SIP Revision

Virginia's July 22, 2014 SIP submittal consists of revisions to Virginia's PSD permitting regulations at 9VAC5–80, sections 1695 and 1715 to reflect federal requirements relating to PM_{2.5} SMC and SILs. Specifically, 9VAC5–80–1695E(1) establishes a SMC of 0 µg/m³ of PM_{2.5}, and expressly states that no exemption from monitoring is available with regard to PM_{2.5}. As previously discussed, VADEQ's PM_{2.5} SILs provision, formerly codified at 9VAC5–80–1715A(2) was never approved by EPA into Virginia's SIP and was subsequently removed by Virginia from the VAC. Therefore, this approval action does not include a substantive revision to 9VAC5–80–1715A. Rather, EPA's action involves approval of Virginia's administrative recodification, necessitated by the Commonwealth's revision of state regulations (*i.e.*, the removal of the SILs from 9VAC5–80–1715). The Virginia regulations, 9VAC5–80, sections 1695 and 1715, are consistent with federal PSD requirements for PM_{2.5} in the CAA and its implementing regulations, including specifically 40 CFR 51.166, and were effective in Virginia on June 4, 2014.

III. Final Action

EPA is approving VADEQ's July 22, 2014 SIP submittal, including revised provisions of the VAC, 9VAC5–80, sections 1695 and 1715, as a revision to the Virginia SIP because the revision meets CAA requirements in the CAA and its implementing regulations. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of this **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on April 29, 2016 without further notice unless EPA receives adverse comment by March 30, 2016. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties

interested in commenting must do so at this time.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . ." The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval." Virginia's Immunity law, Va. Code Sec.

10.1–1199, provides that “[t]o the extent consistent with requirements imposed by Federal law,” any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General’s January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its PSD program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Incorporation by Reference

In this rulemaking action, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of VADEQ rules regarding PM_{2.5} SILs and SMC discussed in Section III of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or may be viewed at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices,

provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
 - does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
 - is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
 - does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
 - is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
 - is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
 - does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides

that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action.

This action pertaining to Virginia’s PSD requirements for PM_{2.5} may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 12, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

under Chapter 80 for Sections 5–80–1695 and 5–80–1715 to read as follows:

(c) * * *

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by revising the entries

§ 52.2420 Identification of plan.

* * * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation	Title/Subject	State effective date	EPA Approval date	Explanation [former SIP citation]
*	*	*	*	*
9 VAC 5, Chapter 80 Permits for Stationary Sources [Part VIII]				
*	*	*	*	*
Article 8 Permits—Major Stationary Sources and Major Modifications Located in Prevention of Significant Deterioration Areas				
5–80–1695	Exemptions	6/4/14	2/29/16 [Insert Federal Register Citation].	Revised paragraph E(1) to add value for PM _{2.5} . Limited approval remains in effect.
5–80–1715	Source impact analysis	6/4/14	2/29/16 [Insert Federal Register Citation].	Revised paragraph A. Limited approval remains in effect.
*	*	*	*	*

* * * * *
 [FR Doc. 2016–04245 Filed 2–26–16; 8:45 am]
 BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 600

[CMS–2396–FN]

RIN 0938–ZB21

Basic Health Program; Federal Funding Methodology for Program Years 2017 and 2018

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

ACTION: Final methodology.

SUMMARY: This document provides the methodology and data sources necessary to determine Federal payment amounts made in program years 2017 and 2018 to states that elect to establish a Basic Health Program under the Affordable Care Act to offer health benefits coverage to low-income individuals otherwise eligible to purchase coverage through Affordable Insurance Exchanges (hereinafter referred to as the Exchanges).

DATES: These regulations are effective on January 1, 2017.

FOR FURTHER INFORMATION CONTACT: Christopher Truffer, (410) 786–1264; or Stephanie Kaminsky (410) 786–4653.

SUPPLEMENTARY INFORMATION:

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Acronyms

- To assist the reader, the following acronyms are used in this document.
- ΔAV Change in Actuarial Value
 - APTC Advance payment of the premium tax credit
 - ARP Adjusted reference premium
 - AV Actuarial value
 - BHP Basic Health Program
 - CCIIO CMS' Center for Consumer Information and Insurance Oversight
 - CDC Centers for Disease Control and Prevention
 - CHIP Children's Health Insurance Program
 - CPI–U Consumer price index for all urban consumers
 - CSR Cost-sharing reduction
 - EHB Essential Health Benefit
 - FPL Federal poverty line
 - FRAC Factor for removing administrative costs
 - IRF Income reconciliation factor
 - IRS Internal Revenue Service
 - IUF Induced utilization factor
 - QHP Qualified health plan
 - OTA Office of Tax Analysis [of the U.S. Department of Treasury]
 - PHF Population health factor
 - PTC Premium tax credit
 - PTCF Premium tax credit formula
 - PTF Premium trend factor
 - RP Reference premium
 - SBE State Based Exchange

TRAF Tobacco rating adjustment factor

I. Background

Section 1331 of the Patient Protection and Affordable Care Act (Pub. L. 111–148, enacted on March 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, enacted on March 30, 2010) (collectively referred as the Affordable Care Act) provides states with an option to establish a Basic Health Program (BHP). In the states that elect to operate BHP, BHP will make affordable health benefits coverage available for individuals under age 65 with household incomes between 133 percent and 200 percent of the Federal poverty level (FPL) who are not otherwise eligible for Medicaid, the Children’s Health Insurance Program (CHIP), or affordable employer-sponsored coverage, or for individuals whose income is below these levels but are lawfully present non-citizens ineligible for Medicaid. (For those states that have expanded Medicaid coverage under section 1902(a)(10)(A)(i)(VIII) of the Social Security Act (the Act), the lower income threshold for BHP eligibility is effectively 138 percent due to the application of a required 5 percent income disregard in determining the upper limits of Medicaid income eligibility (section 1902(e)(14)(I) of the Act)).

BHP provides another option for states in providing affordable health benefits to individuals with incomes in the ranges previously described. States may find BHP a useful option for several reasons, including the ability to potentially coordinate standard health plans in BHP with their Medicaid managed care plans, or to potentially reduce the costs to individuals by lowering premiums or cost-sharing requirements.

Federal funding will be available for BHP based on the amount of premium tax credit (PTC) and cost-sharing reductions (CSRs) that BHP enrollees would have received had they been enrolled in qualified health plans (QHPs) through Exchanges. These funds are paid to trust funds dedicated to BHP in each state, and the states then administer the payments to standard health plans within BHP.

In the March 12, 2014 **Federal Register** (79 FR 14112), we published a final rule entitled the “Basic Health Program: State Administration of Basic Health Programs; Eligibility and Enrollment in Standard Health Plans; Essential Health Benefits in Standard Health Plans; Performance Standards for Basic Health Programs; Premium and Cost Sharing for Basic Health Programs;

Federal Funding Process; Trust Fund and Financial Integrity” (hereinafter referred to as the BHP final rule) implementing section 1331 of the Affordable Care Act), which directs the establishment of BHP. The BHP final rule establishes the standards for state and Federal administration of BHP, including provisions regarding eligibility and enrollment, benefits, cost-sharing requirements and oversight activities. While the BHP final rule codifies the overall statutory requirements and basic procedural framework for the funding methodology, it does not contain the specific information necessary to determine Federal payments. We anticipated that the methodology would be based on data and assumptions that would reflect ongoing operations and experience of BHP programs, as well as the operation of the Exchanges. For this reason, the BHP final rule indicated that the development and publication of the funding methodology, including any data sources, would be addressed in a separate annual BHP Payment Notice.

In the BHP final rule, we specified that the BHP Payment Notice process would include the annual publication of both a proposed and final BHP Payment Notice. The proposed BHP Payment Notice would be published in the **Federal Register** each October, and would describe the proposed methodology for the upcoming BHP program year, including how the Secretary considered the factors specified in section 1331(d)(3) of the Affordable Care Act, along with the proposed data sources used to determine the Federal BHP payment rates. The final BHP Payment Notice would be published in the **Federal Register** in February, and would include the final BHP funding methodology, as well as the Federal BHP payment rates for the next BHP program year. For example, payment rates published in February 2016 would apply to BHP program year 2017, beginning in January 2017. As discussed in section III.C of this methodology, and as referenced in § 600.610(b)(2), state data needed to calculate the Federal BHP payment rates for the final BHP Payment Notice must be submitted to CMS.

As described in the BHP final rule, once the final methodology has been published, we will only make modifications to the BHP funding methodology on a prospective basis with limited exceptions. The BHP final rule provided that retrospective adjustments to the state’s BHP payment amount may occur to the extent that the prevailing BHP funding methodology for a given program year permits

adjustments to a state’s Federal BHP payment amount due to insufficient data for prospective determination of the relevant factors specified in the payment notice. Additional adjustments could be made to the payment rates to correct errors in applying the methodology (such as mathematical errors).

Under section 1331(d)(3)(A)(ii) of the Affordable Care Act, the funding methodology and payment rates are expressed as an amount per eligible individual enrolled in a BHP standard health plan (BHP enrollee) for each month of enrollment. These payment rates may vary based on categories or classes of enrollees. Actual payment to a state would depend on the actual enrollment of individuals found eligible in accordance with a state’s certified blueprint eligibility and verification methodologies in coverage through the state BHP. A state that is approved to implement BHP must provide data showing quarterly enrollment of eligible individuals in the various Federal BHP payment rate cells. Such data should include the following:

- Personal identifier;
- Date of birth;
- County of residence;
- Indian status;
- Family size;
- Household income;
- Number of person in household enrolled in BHP;
- Family identifier;
- Months of coverage;
- Plan information; and
- Any other data required by CMS to properly calculate the payment.

In the February 24, 2015 **Federal Register** (80 FR 9636), we published the final payment notice entitled “Basic Health Program; Federal Funding Methodology for Program Year 2016” (hereinafter referred to as the 2016 payment methodology) that sets forth the methodology that will be used to calculate the Federal BHP payments for the 2016 program year.

II. Summary of Proposed Provisions and Analysis of and Responses to Public Comments on the Proposed Methodology

The following sections, arranged by subject area, include a summary of the public comments that we received, and our responses. For a complete and full description of the BHP proposed funding methodology, see the “Basic Health Program; Federal Funding Methodology for Program Years 2017 and 2018” proposed rule published in the October 22, 2015 **Federal Register** (80 FR 63936).

We received a total of 5 timely comments from individuals and

organizations. The public comments received ranged from general support or opposition to the BHP, but did not address the proposed methodology.

A. Background

In the October 22, 2015 (80 FR 63936) proposed rule, we specified the methodology of how the Federal BHP payments would be calculated. For specific discussions, please refer to the October 22, 2015 proposed rule (80 FR 63936).

We received the following comments on the background information included in the proposed methodology:

Comment: Some commenters expressed general opposition to or support for the BHP.

Response: The comments were outside of the scope of the BHP payment methodology.

Comment: Some commenters expressed general support for the BHP payment methodology.

Response: We appreciate the comments in support of the payment methodology.

Final Decision: We are finalizing our proposed methodology for how the Federal BHP payments will be calculated.

B. Overview of the Funding Methodology and Calculation of the Payment Amount

We proposed in the overview of the funding methodology to calculate the PTC and CSR as consistently as possible and in general alignment with the methodology used by Exchanges to calculate the advance payments of the PTC and CSR, and by the Internal Revenue Service (IRS) to calculate the allowable PTC. We proposed in this section 4 equations that compose the overall BHP funding methodology. For specific discussions, please refer to the October 22, 2015 proposed rule (80 FR 63936).

We received no comments regarding the overview of the funding methodology and calculation of the payment amount. We are finalizing the BHP overview of the funding methodology and the payment amount for 2017 and 2018 as proposed.

C. Required Rate Cells

In this section, we proposed that a state implementing BHP provide us with an estimate of the number of BHP enrollees it will enroll in the upcoming BHP program, by applicable rate cell, to determine the Federal BHP payment amounts. For each state, we proposed using rate cells that separate the BHP population into separate cells based on the following 5 factors: Age; geographic

rating area; coverage status; household size; and income. For specific discussions, please refer to the October 22, 2015 proposed rule (80 FR 63936).

We received no comments regarding the rate cells used to calculate the Federal BHP payment amounts. We are finalizing the criteria and definitions of the rate cells to determine the Federal BHP payment amounts for 2017 and 2018.

D. Sources and State Data Considerations

We proposed in this section to use, to the extent possible, data submitted to the Federal government by QHP issuers seeking to offer coverage through an Exchange to determine the Federal BHP payment cell rates. However, in states operating a State Based Exchange (SBE), we proposed that such states submit required data for CMS to calculate the Federal BHP payment rates in those states. For specific discussions, please refer to the October 22, 2015 proposed rule (80 FR 63936).

We did not receive any comments on the “Sources and State Data Considerations” section and are finalizing the BHP methodology as proposed.

E. Discussion of Specific Variables Used in Payment Equations

In this section, we proposed 11 specific variables to use in the payment equations that compose the overall BHP funding methodology. (10 variables are described in section III.D of this document, and the premium trend factor is described in section III.F.) For each proposed variable, we included a discussion on the assumptions and data sources used in developing the variables. For specific discussions, please refer to the October 22, 2015 proposed rule (80 FR 63936).

We did not receive any comments on the “Specific Variables Used in Payment Equations” section and are finalizing the BHP methodology as proposed.

F. Adjustments for American Indians and Alaska Natives

We proposed to make several adjustments for American Indians and Alaska Natives when calculating the CSR portion of the Federal BHP payment rate to be consistent with the Exchange rules. For specific discussions, please refer to the October 22, 2015 proposed rule (80 FR 63936).

We did not receive any comments on the “Adjustments for American Indians and Alaska Natives” section and are finalizing the BHP methodology as proposed.

G. State Option To Use 2016 or 2017 QHP Premiums for BHP Payments

In this section, we proposed to provide states implementing BHP with the option to use the 2016 or 2017 QHP premiums multiplied by a premium trend factor to calculate the Federal BHP payment rates instead of using the 2017 or 2018 QHP premiums, for the 2017 and 2018 BHP program years, respectively. For specific discussions, please refer to the October 22, 2015 proposed rule (80 FR 63936).

We did not receive any comments on the “State Option to Use 2016 or 2017 QHP Premiums for BHP Payments” section and are finalizing the BHP methodology as proposed.

H. State Option To Include Retrospective State-Specific Health Risk Adjustment in Certified Methodology

In this section, we proposed to provide states implementing BHP the option to develop a methodology to account for the impact that including the BHP population in the Exchange would have had on QHP premiums based on any differences in health status between the BHP population and persons enrolled through the Exchange. For specific discussions, please refer to the October 22, 2015 proposed rule (80 FR 63936).

We did not receive any comments on the “State Option to Include Retrospective State-specific Health Risk Adjustment in Certified Methodology” section and are finalizing the BHP methodology as proposed.

III. Provisions of the Final Methodology

A. Overview of the Funding Methodology and Calculation of the Payment Amount

Section 1331(d)(3) of the Affordable Care Act directs the Secretary to consider several factors when determining the Federal BHP payment amount, which, as specified in the statute, must equal 95 percent of the value of the PTC and CSRs that BHP enrollees would have been provided had they enrolled in a QHP through an Exchange. Thus, the BHP funding methodology is designed to calculate the PTC and CSRs as consistently as possible and in general alignment with the methodology used by Exchanges to calculate the PTC and CSR components of advance payments, and by the IRS to calculate final PTCs. In general, we rely on values for factors in the payment methodology specified in statute or other regulations as available, and we have developed values for other factors not otherwise specified in statute, or previously calculated in other

regulations, to simulate the values of the PTC and CSRs that BHP enrollees would have received if they had enrolled in QHPs offered through an Exchange. In accordance with section 1331(d)(3)(A)(iii) of the Affordable Care Act, the final funding methodology must be certified by the Chief Actuary of CMS, in consultation with the Office of Tax Analysis (OTA) of the Department of the Treasury, as having met the requirements of section 1331(d)(3)(A)(ii) of the Affordable Care Act.

Section 1331(d)(3)(A)(ii) of the Affordable Care Act specifies that the payment determination shall take into account all relevant factors necessary to determine the value of the premium tax credits and CSRs that would have been provided to eligible individuals, including the age and income of the enrollee, whether the enrollment is for self-only or family coverage, geographic differences in average spending for health care across rating areas, the health status of the enrollee for purposes of determining risk adjustment payments and reinsurance payments that would have been made if the enrollee had enrolled in a qualified health plan through an Exchange, and whether any reconciliation of PTC and CSR would have occurred if the enrollee had been so enrolled. This payment methodology takes each of these factors into account. This methodology is the same as the 2016 payment methodology, with minor changes to update the value of certain factors used to calculate the payments, but with no changes in methods. These updates are explained in later sections of this notice.

Through this notice, we are establishing a payment methodology for the 2017 and 2018 BHP program years. The same methodology will apply for both years, but the values of a number of factors will be updated for 2018, as noted throughout this notice. We reserve the right to specify a different methodology for 2018.

The methodology will be the same methodology as used for 2015 and 2016. We have developed a methodology that the total Federal BHP payment amount would be based on multiple rate cells in each state. Each rate cell would represent a unique combination of age range, geographic area, coverage category (for example, self-only or two-

adult coverage through BHP), household size, and income range as a percentage of FPL. Thus, there would be distinct rate cells for individuals in each coverage category within a particular age range who reside in a specific geographic area and are in households of the same size and income range. We note that the development of the BHP payment rates will be consistent with those states' rules on age rating. Thus, in the case of a state that does not use age as a rating factor on the Marketplace, the BHP payment rates would not vary by age.

The rate for each rate cell would be calculated in 2 parts. The first part (as described in Equation (1)) will equal 95 percent of the estimated PTC that would have been paid if a BHP enrollee in that rate cell had instead enrolled in a QHP in the Exchange. The second part (as described in Equation (2)) will equal 95 percent of the estimated CSR payment that would have been made if a BHP enrollee in that rate cell had instead enrolled in a QHP in the Exchange. These 2 parts will be added together and the total rate for that rate cell would be equal to the sum of the PTC and CSR rates.

To calculate the total Federal BHP payment, Equation (1) will be used to calculate the estimated PTC for eligible individuals enrolled in the BHP in each rate cell and Equation (2) will be used to calculate the estimated CSR payments for eligible individuals enrolled in the BHP in each rate cell. (Indeed, we note that throughout the payment notice, when we refer to enrollees and enrollment data, we mean data regarding individuals who are enrolled in the BHP who have been found eligible for the BHP using the eligibility and verification requirements that are applicable in the state's most recent certified Blueprint.) By applying the equations separately to rate cells based on age, income and other factors, we effectively take those factors into account in the calculation. In addition, the equations reflect the estimated experience of individuals in each rate cell if enrolled in coverage through the Exchange, taking into account additional relevant variables. Each of the variables in the equations is defined in this section, and further detail is provided later in this section of the payment notice.

In addition, we describe how we will calculate the adjusted reference premium (ARP), which is the value of the premium accounting for specified adjustments (such as the relative health status of BHP enrollees or the projected annual increase in the premium) (described later in this section of the payment notice) that is used in Equations (1) and (2). This is defined in Equation (3a) and Equation (3b).

Equation 1: Estimated PTC by Rate Cell

The estimated PTC, on a per enrollee basis, will be calculated for each rate cell for each state based on age range, geographic area, coverage category, household size, and income range. The PTC portion of the rate will be calculated in a manner consistent with the methodology used to calculate the PTC for persons enrolled in a QHP, with 3 adjustments. First, the PTC portion of the rate for each rate cell will represent the mean, or average, expected PTC that all persons in the rate cell would receive, rather than being calculated for each individual enrollee. Second, the reference premium (RP) used to calculate the PTC (described in more detail later in the section) will be adjusted for BHP population health status, and in the case of a state that elects to use 2016 premiums for the basis of the BHP Federal payment, for the projected change in the premium from the 2016 to 2017, to which the rates announced in the final payment methodology would apply. These adjustments are described in Equation (3a) and Equation (3b). Third, the PTC will be adjusted prospectively to reflect the mean, or average, net expected impact of income reconciliation on the combination of all persons enrolled in BHP; this adjustment, as described in section III.D.5. of this methodology, will account for the impact on the PTC that would have occurred had such reconciliation been performed. Finally, the rate is multiplied by 95 percent, consistent with section 1331(d)(3)(A)(i) of the Affordable Care Act. We note that in the situation where the average income contribution of an enrollee would exceed the ARP, we would calculate the PTC to be equal to 0 and would not allow the value of the PTC to be negative.

Consistent with this description, Equation (1) is defined as:

$$\text{Equation (1): } PTC_{a,g,c,h,i} = \left[ARP_{a,g,c} - \frac{\sum_j I_{h,i,j} \times PTCF_{h,i,j}}{n} \right] \times IRF \times 95\%$$

$PTC_{a,g,c,h,i}$ = Premium tax credit portion of BHP payment rate.
 a = Age range.
 g = Geographic area.
 c = Coverage status (self-only or applicable category of family coverage) obtained through BHP.
 h = Household size.
 i = Income range (as percentage of FPL).
 $ARP_{a,g,c}$ = Adjusted reference premium.
 $I_{h,i,j}$ = Income (in dollars per month) at each 1 percentage-point increment of FPL.
 j = j th percentage-point increment FPL.
 n = Number of income increments used to calculate the mean PTC.
 $PTCF_{h,i,j}$ = Premium Tax Credit Formula percentage.
 IRF = Income reconciliation factor.

Equation 2: Estimated CSR Payment by Rate Cell

The CSR portion of the rate will be calculated for each rate cell for each state based on age range, geographic area, coverage category, household size,

and income range defined as a percentage of FPL. The CSR portion of the rate will be calculated in a manner consistent with the methodology used to calculate the CSR component of advance payments for persons enrolled in a QHP, as described in the “HHS Notice of Benefit and Payment Parameters for 2016” final rule published in the February 27, 2015 **Federal Register** (80 FR 10749), with 3 principal adjustments. (We will make a separate calculation that includes different adjustments for American Indian/Alaska Native BHP enrollees, as described in section III.D.1 of this methodology.) For the first adjustment, the CSR rate, like the PTC rate, will represent the mean expected CSR subsidy that would be paid on behalf of all persons in the rate cell, rather than being calculated for each individual

enrollee. Second, this calculation will be based on the ARP, as described in section III.A.3. of this methodology. Third, this equation uses an ARP that reflects premiums charged to non-tobacco users, rather than the actual premium that is charged to tobacco users to calculate the CSR component of advance payments for tobacco users enrolled in a QHP. Accordingly, the equation will include a tobacco rating adjustment factor that would account for BHP enrollees’ estimated tobacco-related health costs that are outside the premium charged to non-tobacco-users. Finally, the rate will be multiplied by 95 percent, as provided in section 1331(d)(3)(A)(i) of the Affordable Care Act.

Consistent with the methodology previously described, Equation (2) is defined as:

$$\text{Equation (2): } CSR_{a,g,c,h,i} = \frac{ARP_{a,g,c} \times TRAF \times FRAC}{AV} \times IUF_{h,i} \times \Delta AV_{h,i} \times 95\%$$

$CSR_{a,g,c,h,i}$ = Cost-sharing reduction subsidy portion of BHP payment rate.
 a = Age range.
 g = Geographic area.
 c = Coverage status (self-only or applicable category of family coverage) obtained through BHP.
 h = Household size.
 i = Income range (as percentage of FPL).
 $ARP_{a,g,c}$ = Adjusted reference premium.
 $TRAF$ = Tobacco rating adjustment factor.
 $FRAC$ = Factor removing administrative costs.
 AV = Actuarial value of plan (as percentage of allowed benefits covered by the applicable QHP without a cost-sharing reduction subsidy).
 $IUF_{h,i}$ = Induced utilization factor.

$\Delta AV_{h,i}$ = Change in actuarial value (as percentage of allowed benefits).

Equation 3a and Equation 3b: Adjusted Reference Premium Variable (Used in Equations 1 and 2)

As part of these calculations for both the PTC and CSR components, we will calculate the value of the ARP as described below in this methodology. Consistent with the approach in previous years, we will allow states to choose between using the actual 2017 and 2018 QHP premiums or the 2016 and 2017 QHP premiums multiplied by the premium trend factor (for the 2017 and 2018 program years, respectively,

and as described in section III.F). Therefore, we describe how we would calculate the ARP under each option.

In the case of a state that elected to use the RP based on the 2017 premiums for the 2017 program year, we will calculate the value of the ARP as specified in Equation (3a). The ARP will be equal to the RP, which will be based on the second lowest cost silver plan premium in 2017, multiplied by the BHP population health factor (described in section III.D of this methodology), which will reflect the projected impact that enrolling BHP-eligible individuals in QHPs on an Exchange would have had on the average QHP premium.

$$\text{Equation (3a): } ARP_{a,g,c} = RP_{a,g,c} \times PHF$$

$ARP_{a,g,c}$ = Adjusted reference premium.
 a = Age range.
 g = Geographic area.
 c = Coverage status (self-only or applicable category of family coverage) obtained through BHP.
 $RP_{a,g,c}$ = Reference premium.
 PHF = Population health factor.

In the case of a state that elected to use the RP based on the 2016 premiums

for the 2017 program year (as described in section III.F of this methodology), we will calculate the value of the ARP as specified in Equation (3b). The ARP will be equal to the RP, which will be based on the second lowest cost silver plan premium in 2016, multiplied by the BHP population health factor (described in section III.D of this methodology), which will reflect the projected impact

that enrolling BHP-eligible individuals in QHPs on an Exchange would have had on the average QHP premium, and by the premium trend factor, which will reflect the projected change in the premium level between 2016 and 2017 (including the estimated impact of changes resulting from the transitional reinsurance program established in section 1341 of the Affordable Care Act).

$$\text{Equation (3b): } ARP_{a,g,c} = RP_{a,g,c} \times PHF \times PTF$$

$ARP_{a,g,c}$ = Adjusted reference premium.
 a = Age range.
 g = Geographic area.
 c = Coverage status (self-only or applicable category of family coverage) obtained through BHP.
 $RP_{a,g,c}$ = Reference premium.
 PHF = Population health factor.
 PTF = Premium trend factor.

This methodology will also apply for the 2018 program year, using either

actual 2018 QHP premiums or the 2017 QHP premiums multiplied by a premium trend factor.

Equation 4: Determination of Total Monthly Payment for BHP Enrollees in Each Rate Cell

In general, the rate for each rate cell will be multiplied by the number of BHP enrollees in that cell (that is, the

number of enrollees that meet the criteria for each rate cell) to calculate the total monthly BHP payment. This calculation is shown in Equation 4.

$$\text{Equation (4): } PMT = \sum [(PTC_{a,g,c,h,i} + CSR_{a,g,c,h,i}) \times E_{a,g,c,h,i}]$$

PMT = Total monthly BHP payment.
 $PTC_{a,g,c,h,i}$ = Premium tax credit portion of BHP payment rate.
 $CSR_{a,g,c,h,i}$ = Cost-sharing reduction subsidy portion of BHP payment rate.
 $E_{a,g,c,h,i}$ = Number of BHP enrollees.
 a = Age range.
 g = Geographic area.
 c = Coverage status (self-only or applicable category of family coverage) obtained through BHP.
 h = Household size.
 i = Income range (as percentage of FPL).

B. Federal BHP Payment Rate Cells

The use of Federal BHP payment rate cells will be the same as in the 2015 and 2016 methodologies. We will require that a state implementing BHP provide us an estimate of the number of BHP enrollees it projects will enroll in the upcoming BHP program year, by applicable rate cell, prior to the first quarter and each subsequent quarter of program operations until actual enrollment data is available. Upon our approval of such estimates as reasonable, they will be used to calculate the prospective payment for the first and subsequent quarters of program operation until the state has provided us actual enrollment data. These data will be required to calculate the final BHP payment amount, and make any necessary reconciliation adjustments to the prior quarters' prospective payment amounts due to differences between projected and actual enrollment. Subsequent, quarterly deposits to the state's trust fund will be based on the most recent actual enrollment data submitted to us. Actual enrollment data must be based on individuals enrolled for the quarter submitted who the state found eligible and whose eligibility was verified using eligibility and verification requirements as agreed to by the state in its applicable BHP Blueprint for the quarter that enrollment data is submitted. Procedures will ensure that Federal payments to a state reflect actual BHP enrollment during a year, within each applicable category, and prospectively

determined Federal payment rates for each category of BHP enrollment, with such categories defined in terms of age range, geographic area, coverage status, household size, and income range, as explained above in this section.

We will require the use of certain rate cells as part of the methodology. For each state, we will use rate cells that separate the BHP population into separate cells based on the 5 factors described as follows:

Factor 1—Age: We will separate enrollees into rate cells by age, using the following unchanged age ranges that capture the widest variations in premiums under Department of Health and Human Services' (HHS) Default Age Curve:¹

- Ages 0–20.
- Ages 21–34.
- Ages 35–44.
- Ages 45–54.
- Ages 55–64.

Factor 2—Geographic area: For each state, we will separate enrollees into rate cells by geographic areas within which a single RP is charged by QHPs offered through the state's Exchange. Multiple, non-contiguous geographic areas will be incorporated within a single cell, so long as those areas share

¹ This curve is used to implement the Affordable Care Act's 3:1 limit on age-rating in states that do not create an alternative rate structure to comply with that limit. The curve applies to all individual market plans, both within and outside the Exchange. The age bands capture the principal allowed age-based variations in premiums as permitted by this curve. More information can be found at <http://www.cms.gov/CCIIO/Resources/Files/Downloads/market-reforms-guidance-2-25-2013.pdf>. Both children and adults under age 21 are charged the same premium. For adults age 21–64, the age bands in this notice divide the total age-based premium variation into the three most equally-sized ranges (defining size by the ratio between the highest and lowest premiums within the band) that are consistent with the age-bands used for risk-adjustment purposes in the HHS-Developed Risk Adjustment Model. For such age bands, see Table 5, "Age-Sex Variables," in HHS-Developed Risk Adjustment Model Algorithm Software, June 2, 2014, <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/ra-tables-03-27-2014.xlsx>.

a common RP.² This provision would also be unchanged from the current method.

Factor 3—Coverage status: We will separate enrollees into rate cells by coverage status, reflecting whether an individual is enrolled in self-only coverage or persons are enrolled in other-than-self-only coverage (or "family coverage") through BHP, as provided in section 1331(d)(3)(A)(ii) of the Affordable Care Act, consistent with the current methodology. Among recipients of family coverage through BHP, separate rate cells, as explained below in this methodology, will apply based on whether such coverage involves 2 adults alone or whether it involves children.

Factor 4—Household size: We will separate enrollees into rate cells by household size that states use to determine BHP enrollees' income as a percentage of the FPL under § 600.320 (Administration, eligibility, essential health benefits, performance standards, service delivery requirements, premium and cost sharing, allotments, and reconciliation; Determination of eligibility for and enrollment in a standard health plan), consistent with the current methodology. We will require separate rate cells for several specific household sizes. For each additional member above the largest specified size, we will publish instructions for how we will develop additional rate cells and calculate an appropriate payment rate based on data for the rate cell with the closest specified household size. We will

² For example, a cell within a particular state might refer to "County Group 1," "County Group 2," etc., and a table for the state would list all the counties included in each such group. These geographic areas are consistent with the geographic areas established under the 2014 Market Reform Rules. They also reflect the service area requirements applicable to qualified health plans, as described in 45 CFR 155.1055, except that service areas smaller than counties are addressed as explained in this methodology.

publish separate rate cells for household sizes of 1 through 10.

Factor 5—Income: For households of each applicable size, we will create separate rate cells by income range, as a percentage of FPL, consistent with the current methodology. The PTC that a person would receive if enrolled in a QHP varies by income, both in level and as a ratio to the FPL, and the CSR varies by income as a percentage of FPL. Thus, separate rate cells will be used to calculate Federal BHP payment rates to reflect different bands of income measured as a percentage of FPL. We will use the following income ranges, measured as a ratio to the FPL:

- 0 to 50 percent of the FPL.
- 51 to 100 percent of the FPL.
- 101 to 138 percent of the FPL.³
- 139 to 150 percent of the FPL.
- 151 to 175 percent of the FPL.
- 176 to 200 percent of the FPL.

These rate cells will only be used to calculate the Federal BHP payment amount. A state implementing BHP will not be required to use these rate cells or any of the factors in these rate cells as part of the state payment to the standard health plans participating in BHP or to help define BHP enrollees' covered benefits, premium costs, or out-of-pocket cost-sharing levels.

We will use averages to define Federal payment rates, both for income ranges and age ranges, rather than varying such rates to correspond to each individual BHP enrollee's age and income level. We believe that this approach will increase the administrative feasibility of making Federal BHP payments and reduce the likelihood of inadvertently erroneous payments resulting from highly complex methodologies. We believe that this approach should not significantly change Federal payment amounts, since within applicable ranges, the BHP-eligible population is distributed relatively evenly.

C. Sources and State Data Considerations

To the extent possible, we will continue to use data submitted to the Federal government by QHP issuers seeking to offer coverage through an Exchange to perform the calculations that determine Federal BHP payment cell rates. In this methodology, we make some clarifications regarding the submission of state data in this section, and is otherwise consistent with the current methodology.

States operating a State Based Exchange in the individual market,

however, must provide certain data, including premiums for second lowest cost silver plans, by geographic area, for CMS to calculate the Federal BHP payment rates in those states. A state operating a State Based Exchange interested in obtaining the applicable Federal BHP payment rates for its state must submit such data accurately, completely, and as specified by CMS, by no later than October 15, 2016, for CMS to calculate the applicable rates for 2017 and by October 15, 2017 for 2018. If additional state data (that is, in addition to the second lowest cost silver plan premium data) are needed to determine the Federal BHP payment rate, such data must be submitted in a timely manner, and in a format specified by CMS to support the development and timely release of annual BHP payment notices. The specifications for data collection to support the development of BHP payment rates will be published in CMS guidance and will be available at <http://www.medicaid.gov/Federal-Policy-Guidance/Federal-Policy-Guidance.html>.

States must submit to CMS enrollment data on a quarterly basis and should be technologically prepared to begin submitting data at the start of their BHP. This requirement is necessary for us to implement the payment methodology that is tied to a quarterly reconciliation based on actual enrollment data.

We make 2 additional clarifications regarding state-submitted data. First, for states that have BHP enrollees who do not file Federal tax returns (non-filers), the state must develop a methodology which they must submit to CMS at the time of their Blueprint submission to determine the enrollees' household income and household size consistently with Exchange requirements. We reserve the right to approve or disapprove the state's methodology to determine income and household size for non-filers.

Second, as the Federal payments are determined quarterly and the enrollment data is required to be submitted by the states to CMS quarterly, we clarify that the quarterly payment would be based on the characteristics of the enrollee at the beginning of the quarter (or their first month of enrollment in BHP in each quarter). Thus, if an enrollee were to experience a change in county of residence, income, household size, or other factors related to the BHP payment determination during the quarter, the payment for the quarter would be based on the data as of the beginning of the quarter. Payments will still be made only for months that the person is

enrolled in and eligible for BHP. We do not anticipate that this will have a significant effect on the Federal BHP payment. The states must maintain data that are consistent with our verification requirements, including auditable records for each individual enrolled, indicating an eligibility determination and a determination of income and other criteria relevant to the payment methodology as of the beginning of each quarter.

As described in § 600.610 (Secretarial determination of BHP payment amount), the state is required to submit certain data in accordance with this Notice. We require that this data be collected and validated by states operating BHP and that this data be submitted to CMS.

D. Discussion of Specific Variables Used in Payment Equations

1. Reference Premium (RP)

To calculate the estimated PTC that would be paid if individuals enrolled in QHPs through the Exchange, we must calculate a RP because the PTC is based, in part, on the premiums for the applicable second lowest cost silver plan as explained in section III.C.4 of this methodology, regarding the Premium Tax Credit Formula (PTCF). Accordingly, for the purposes of calculating the BHP payment rates, the RP, in accordance with 26 U.S.C. 36B(b)(3)(C), is defined as the adjusted monthly premium for an applicable second lowest cost silver plan. The applicable second lowest cost silver plan is defined in 26 U.S.C. 36B(b)(3)(B) as the second lowest cost silver plan of the individual market in the rating area in which the taxpayer resides, which is offered through the same Exchange. We will use the adjusted monthly premium for an applicable second lowest cost silver plan in 2017 and 2018 as the RP (except in the case of a state that elects to use the 2016 or 2017 premium, respectively, as the basis for the Federal BHP payment, as described in section III.F of this final notice). The use of the RP and the determination of the RP is consistent with the current methodology.

The RP will be the premium applicable to non-tobacco users. This is consistent with the provision in 26 U.S.C. 36B(b)(3)(C) that bases the PTC on premiums that are adjusted for age alone, without regard to tobacco use, even for states that allow insurers to vary premiums based on tobacco use in accordance with 42 U.S.C. 300gg(a)(1)(A)(iv).

Consistent with the policy set forth in 26 CFR 1.36B-3(f)(6) to calculate the PTC for those enrolled in a QHP through

³ The three lowest income ranges would be limited to lawfully present immigrants who are ineligible for Medicaid because of immigration status.

an Exchange, we will not update the payment methodology, and subsequently the Federal BHP payment rates, in the event that the second lowest cost silver plan used as the RP, or the lowest cost silver plan, changes (that is, terminates or closes enrollment during the year).

The applicable second lowest cost silver plan premium will be included in the BHP payment methodology by age range, geographic area, and self-only or applicable category of family coverage obtained through BHP.

American Indians and Alaska Natives with household incomes between 100 percent and 300 percent of the FPL are eligible for a full cost sharing subsidy regardless of the plan they select (as described in sections 1402(d) and 2901(a) of the Affordable Care Act). We assume that American Indians and Alaska Natives would be more likely to enroll in bronze plans as a result, as it would reduce the amount of the premium they would pay compared to the costs of enrolling in a silver plan; thus, for American Indian/Alaska Native BHP enrollees, we will use the lowest cost bronze plan as the basis for the RP for the purposes of calculating the CSR portion of the Federal BHP payment as described further in section III.E of this methodology.

We note that the choice of the second lowest cost silver plan for calculating BHP payments relies on several simplifying assumptions in its selection. For the purposes of determining the second lowest cost silver plan for calculating PTC for a person enrolled in a QHP through an Exchange, the applicable plan may differ for various reasons. For example, a different second lowest cost silver plan may apply to a family consisting of 2 adults, their child, and their niece than to a family with 2 adults and their children, because 1 or more QHPs in the family's geographic area might not offer family coverage that includes the niece. We believe that it would not be possible to replicate such variations for calculating the BHP payment and believe that in aggregate they would not result in a significant difference in the payment. Thus, we will use the second lowest cost silver plan available to any enrollee for a given age, geographic area, and coverage category.

This choice of RP relies on 2 assumptions about enrollment in the Exchanges. First, we assume that all persons enrolled in BHP would have elected to enroll in a silver level plan if they had instead enrolled in a QHP through the Exchanges. It is possible that some persons would have chosen not to enroll at all or would have chosen

to enroll in a different metal-level plan (in particular, a bronze level plan with a premium that is less than the PTC for which the person was eligible). We do not believe it is appropriate to adjust the payment for an assumption that some BHP enrollees would not have enrolled in QHPs for purposes of calculating the BHP payment rates, since section 1331(d)(3)(A)(ii) of the Affordable Care Act requires the calculation of such rates as if the enrollee had enrolled in a qualified health plan through an Exchange.

Second, we assume that, among all available silver plans, all persons enrolled in BHP would have selected the second-lowest cost plan. Both this and the prior assumption allow an administratively feasible determination of Federal payment levels. They also have some implications for the CSR portion of the rate. If persons were to enroll in a bronze level plan through the Exchange, they would not be eligible for CSRs, unless they were an eligible American Indian or Alaska Native; thus, assuming that all persons enroll in a silver level plan, rather than a plan with a different metal level, would increase the BHP payment. Assuming that all persons enroll in the second lowest cost silver plan for the purposes of calculating the CSR portion of the rate may result in a different level of CSR payments than would have been paid if the persons were enrolled in different silver level plans on the Exchanges (with either lower or higher premiums). We believe that it would be difficult to project how many BHP enrollees would have enrolled in different silver level QHPs, and thus will use the second lowest cost silver plan as the basis for the RP and calculating the CSR portion of the rate. While some data is available from the Exchanges, developing projections of how persons in different income ranges choose plans and extrapolating that to other states, with different numbers of plans and different premiums, would not be an improvement upon the current methodology. For American Indian/Alaska Native BHP enrollees, we will use the lowest cost bronze plan as the basis for the RP as described further in section III.E. of this methodology.

The applicable age bracket will be one dimension of each rate cell. We will assume a uniform distribution of ages and estimate the average premium amount within each rate cell. We believe that assuming a uniform distribution of ages within these ranges is a reasonable approach and will produce a reliable determination of the PTC and CSR components. We also believe this approach will avoid

potential inaccuracies that could otherwise occur in relatively small payment cells if age distribution were measured by the number of persons eligible or enrolled.

We will use geographic areas based on the rating areas used in the Exchanges. We will define each geographic area so that the RP is the same throughout the geographic area. When the RP varies within a rating area, we are defining geographic areas as aggregations of counties with the same RP. Although plans are allowed to serve geographic areas smaller than counties after obtaining our approval, no geographic area, for purposes of defining BHP payment rate cells, will be smaller than a county. We do not believe that this assumption will have a significant impact on Federal payment levels and it would likely simplify both the calculation of BHP payment rates and the operation of BHP.

Finally, in terms of the coverage category, the Federal payment rates will only recognize self-only and two-adult coverage, with exceptions that account for children who are potentially eligible for BHP. First, in states that set the upper income threshold for children's Medicaid and CHIP eligibility below 200 percent of FPL (based on modified adjusted gross income), children in households with incomes between that threshold and 200 percent of FPL would be potentially eligible for BHP. Currently, the only states in this category are Arizona, Idaho, and North Dakota.⁴ Second, BHP would include lawfully present immigrant children with incomes at or below 200 percent of FPL in states that have not exercised the option under the sections 1903(v)(4)(A)(ii) and 2107(e)(1)(E) of the Act to qualify all otherwise eligible, lawfully present immigrant children for Medicaid and CHIP. States that fall within these exceptions would be identified based on their Medicaid and CHIP State Plans, and the rate cells would include appropriate categories of BHP family coverage for children. For example, Idaho's Medicaid and CHIP eligibility is limited to families with MAGI at or below 185 percent FPL. If Idaho implemented BHP, Idaho children with incomes between 185 and 200 percent could qualify. In other states, BHP eligibility will generally be restricted to adults, since children who are citizens or lawfully present immigrants and who live in households with incomes at or below 200 percent of FPL will qualify for Medicaid or CHIP and thus be ineligible for BHP under

⁴ CMCS. "State Medicaid and CHIP Income Eligibility Standards Effective January 1, 2014."

section 1331(e)(1)(C) of the Affordable Care Act, which limits BHP to individuals who are ineligible for minimum essential coverage (as defined in section 5000A(f) of the Internal Revenue Code of 1986).

2. Population Health Factor (PHF)

The population health factor will be included in the methodology to account for the potential differences in the average health status between BHP enrollees and persons enrolled in the Exchange. To the extent that BHP enrollees would have been enrolled in the Exchange in the absence of BHP in a state, the exclusion of those BHP enrollees in the Exchange may affect the average health status of the overall population and the expected QHP premiums. The use and determination of the PHF as described below is consistent with the current methodology.

We currently do not believe that there is evidence that the BHP population would have better or poorer health status than the Exchange population. At this time, there is a lack of experience available in the Exchange that limits the ability to analyze the health differences between these groups of enrollees. Exchanges have been in operation since 2014, and 2 states have operated BHP in 2015, but we do not have the data available to do the analysis necessary to make this adjustment at this time. In addition, differences in population health may vary across states. Thus, at this time, we believe that it is not feasible to develop a methodology to make a prospective adjustment to the population health factor that is reliably accurate.

Given these analytic challenges and the limited data about Exchange coverage and the characteristics of BHP-eligible consumers that will be available by the time we establish Federal payment rates for 2017 and 2018, we believe that the most appropriate adjustment for 2017 and 2018 would be 1.00.

In the 2015 and 2016 payment methodologies, we included an option for states to include a retrospective population health status adjustment. Similarly, for the 2017 and 2018 payment methodology we will provide states with the same option, as described further in section III.G of this methodology, to include a retrospective population health status adjustment in the certified methodology, which is subject to our review and approval. (Regardless of whether a state elects to include a retrospective population health status adjustment, we anticipate that, in future years, when additional

data become available about Exchange coverage and the characteristics of BHP enrollees, we may estimate this factor differently.)

While the statute requires consideration of risk adjustment payments and reinsurance payments insofar as they would have affected the PTC and CSRs that would have been provided to BHP-eligible individuals had they enrolled in QHPs, we will not require that a BHP program's standard health plans receive such payments. As explained in the BHP final rule, BHP standard health plans are not included in the risk adjustment program operated by HHS on behalf of states. Further, standard health plans do not qualify for payments from the transitional reinsurance program established under section 1341 of the Affordable Care Act.⁵ To the extent that a state operating a BHP determines that, because of the distinctive risk profile of BHP-eligible consumers, BHP standard health plans should be included in mechanisms that share risk with other plans in the state's individual market, the state would need to use other methods for achieving this goal.

3. Income (I)

Household income is a significant determinant of the amount of the PTC and CSRs that are provided for persons enrolled in a QHP through the Exchange. Accordingly, the BHP payment methodology incorporates income into the calculations of the payment rates through the use of income-based rate cells. The use and determination of income is consistent with the current methodology. We will define income in accordance with the definition of modified adjusted gross income in 26 U.S.C. 36B(d)(2)(B) and consistent with the definition in 45 CFR 155.300. Income will be measured relative to the FPL, which is updated periodically in the **Federal Register** by the Secretary under the authority of 42 U.S.C. 9902(2), based on annual changes in the consumer price index for all urban consumers (CPI-U). In this methodology, household size and income as a percentage of FPL will be used as factors in developing the rate cells. We will use the following income

⁵ See 45 CFR 153.400(a)(2)(iv) (BHP standard health plans are not required to submit reinsurance contributions), 45 CFR 153.20 (definition of "Reinsurance-eligible plan" as not including "health insurance coverage not required to submit reinsurance contributions"), and 45 CFR 153.230(a) (reinsurance payments under the national reinsurance parameters are available only for "Reinsurance-eligible plans").

ranges measured as a percentage of FPL:⁶

- 0–50 percent.
- 51–100 percent.
- 101–138 percent.
- 139–150 percent.
- 151–175 percent.
- 176–200 percent.

We will assume a uniform income distribution for each Federal BHP payment cell. We believe that assuming a uniform income distribution for the income ranges will be reasonably accurate for the purposes of calculating the PTC and CSR components of the BHP payment and would avoid potential errors that could result if other sources of data were used to estimate the specific income distribution of persons who are eligible for or enrolled in BHP within rate cells that may be relatively small.

Thus, when calculating the mean, or average, PTC for a rate cell, we will calculate the value of the PTC at each 1 percentage point interval of the income range for each Federal BHP payment cell and then calculate the average of the PTC across all intervals. This calculation would rely on the PTC formula described in section III.4 of this methodology.

As the PTC for persons enrolled in QHPs would be calculated based on their income during the open enrollment period, and that income would be measured against the FPL at that time, we will adjust the FPL by multiplying the FPL by a projected increase in the CPI-U between the time that the BHP payment rates are calculated and the QHP open enrollment period, if the FPL is expected to be updated during that time. The projected increase in the CPI-U will be based on the intermediate inflation forecasts from the most recent OASDI and Medicare Trustees Reports.⁷

4. Premium Tax Credit Formula (PTCF)

As is consistent with the current methodology, in Equation 1 described in section III.A.1 of this methodology, we will use the formula described in 26 U.S.C. 36B(b) to calculate the estimated PTC that would be paid on behalf of a person enrolled in a QHP on an Exchange as part of the BHP payment methodology. This formula is used to determine the contribution amount (the

⁶ These income ranges and this analysis of income apply to the calculation of the PTC. Many fewer income ranges and a much simpler analysis apply in determining the value of CSRs, as specified in this methodology.

⁷ See Table IV A1 from the 2015 reports in <http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/ReportsTrustFunds/Downloads/TR2015.pdf>.

amount of premium that an individual or household theoretically would be required to pay for coverage in a QHP on an Exchange), which is based on (A) the household income; (B) the household income as a percentage of FPL for the family size; and (C) the schedule specified in 26 U.S.C. 36B(b)(3)(A) and shown below in this section. The difference between the contribution amount and the adjusted monthly premium for the applicable

second lowest cost silver plan is the estimated amount of the PTC that would be provided for the enrollee. The PTC amount provided for a person enrolled in a QHP through an Exchange is calculated in accordance with the methodology described in 26 U.S.C. 36B(b)(2). The amount is equal to the lesser of the premium for the plan in which the person or household enrolls, or the adjusted premium for the applicable second lowest cost silver plan minus the contribution amount.

The applicable percentage is defined in 26 U.S.C. 36B (b)(3)(A) and 26 CFR 1.36B-3(g) as the percentage that applies to a taxpayer's household income that is within an income tier specified in Table 1, increasing on a sliding scale in a linear manner from an initial premium percentage to a final premium percentage specified in Table 1. The methodology is unchanged, but we will update the percentages:

TABLE 1—APPLICABLE PERCENTAGE TABLE FOR CY 2016⁸

In the case of household income (expressed as percent of poverty line) within the following income tier:	The initial premium percentage is—	The final premium percentage is—
Up to 133%	2.03%	2.03%
133% but less than 150%	3.05	4.07
150% but less than 200%	4.07	6.41
200% but less than 250%	6.41	8.18
250% but less than 300%	8.18	9.66
300% but not more than 400%	9.66	9.66

These are the applicable percentages for calendar year (CY) 2016 and will be used for the 2017 payment methodology. We plan to use the CY 2017 percentages when they become available for the 2018 payment methodology, as the percentages are indexed annually and published by the IRS. The applicable percentages will be updated in future years in accordance with 26 U.S.C. 36B (b)(3)(A)(ii).

5. Income Reconciliation Factor (IRF)

For persons enrolled in a QHP through an Exchange who receive the benefit of advance payments of the premium tax credit (APTC), there will be an annual reconciliation following the end of the year to compare the advance payments to the correct amount of PTC based on household circumstances shown on the Federal income tax return. Any difference between the latter amounts and the advance payments made during the year would either be refundable to the taxpayer (if too little APTC was paid) or charged to the taxpayer as additional tax (if too much APTC was made, subject to any limitations in statute or regulation), as provided in 26 U.S.C. 36B(f).

Section 1331(e)(2) of the Affordable Care Act specifies that an individual eligible for BHP may not be treated as a qualified individual under section

1312 eligible for enrollment in a QHP offered through an Exchange. We are defining “eligible” to mean anyone for whom the state agency or the Exchange assesses or determines, based on the single streamlined application or renewal form, as eligible for enrollment in the BHP. Because enrollment in a QHP is a requirement for PTC for the enrolled individual's coverage, individuals determined or assessed as eligible for a BHP are not eligible to receive APTC assistance for coverage in the Exchange. Because they do not receive APTC assistance, BHP enrollees, on whom the 2017 and 2018 payment methodology is based, are not subject to the same income reconciliation as Exchange consumers. Nonetheless, there may still be differences between a BHP enrollee's household income reported at the beginning of the year and the actual income over the year. These may include small changes (reflecting changes in hourly wage rates, hours worked per week, and other fluctuations in income during the year) and large changes (reflecting significant changes in employment status, hourly wage rates, or substantial fluctuations in income). There may also be changes in household composition. Thus, we believe that using unadjusted income as reported prior to the BHP program year may result in calculations of estimated PTC that are inconsistent with the actual incomes of BHP enrollees during the year. Even if the BHP program adjusts household income determinations and corresponding claims of Federal payment amounts

based on household reports during the year or data from third-party sources, such adjustments may not fully capture the effects of tax reconciliation that BHP enrollees would have experienced had they been enrolled in a QHP through an Exchange and received APTC assistance.

Therefore, in accordance with current practice, we will include in Equation 1 an income adjustment factor that would account for the difference between calculating estimated PTC using: (a) Income relative to FPL as determined at initial application and potentially revised mid-year, under proposed § 600.320, for purposes of determining BHP eligibility and claiming Federal BHP payments; and (b) actual income relative to FPL received during the plan year, as it would be reflected on individual Federal income tax returns. This adjustment will prospectively account for the average effect of income reconciliation aggregated across the BHP population had those BHP enrollees been subject to tax reconciliation after receiving APTC assistance for coverage provided through QHPs. For 2017 and 2018, we will estimate the reconciliation effects based on tax data for 2 years, reflecting income and tax unit composition changes over time among BHP-eligible individuals.

The OTA maintains a model that combines detailed tax and other data, including Marketplace enrollment and PTC claimed, to project Exchange premiums, enrollment, and tax credits. For each enrollee, this model compares the APTC based on household income

⁸ IRS Revenue Procedure 2014-56, 2014-50 I.R.B. 948, Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. <http://www.irs.gov/pub/irs-drop/rp-14-62.pdf>.

and family size estimated at the point of enrollment with the PTC based on household income and family size reported at the end of the tax year. The former reflects the determination using enrollee information furnished by the applicant and tax data furnished by the IRS. The latter would reflect the PTC eligibility based on information on the tax return, which would have been determined if the individual had not enrolled in BHP. The ratio of the reconciled PTC to the initial estimation of PTC will be used as the income reconciliation factor in Equation (1) for estimating the PTC portion of the BHP payment rate.

For 2017, OTA has estimated that the income reconciliation factor for states that have implemented the Medicaid eligibility expansion to cover adults up to 133 percent of the FPL will be 100.40 percent, and for states that have not implemented the Medicaid eligibility expansion and do not cover adults up to 133 percent of the FPL will be 100.35 percent. The value of the income reconciliation factor for 2017 will be 100.38 percent, which is the average of the factors, rounded to the nearest hundredth of one-percent.

6. Tobacco Rating Adjustment Factor (TRAF)

As described previously, the RP is estimated, for purposes of determining both the PTC and related Federal BHP payments, based on premiums charged for non-tobacco users, including in states that allow premium variations based on tobacco use, as provided in 42 U.S.C. 300gg(a)(1)(A)(iv). In contrast, as described in 45 CFR 156.430, the CSR component of the advance payments is based on the total premium for a policy, including any adjustment for tobacco use. Accordingly, we will incorporate a tobacco rating adjustment factor into Equation 2 that reflects the average percentage increase in health care costs that results from tobacco use among the BHP-eligible population and that would not be reflected in the premium charged to non-users. This factor will also take into account the estimated proportion of tobacco users among BHP-eligible consumers. The use and determination of this factor is consistent with the current methodology.

To estimate the average effect of tobacco use on health care costs (not reflected in the premium charged to non-users), we will calculate the ratio between premiums that silver level QHPs charge for tobacco users to the premiums they charge for non-tobacco users at selected ages. To calculate estimated proportions of tobacco users,

Disease Control and Prevention (CDC) to estimate tobacco utilization rates by state and relevant population characteristic.⁹ For each state, we will calculate the tobacco usage rate based on the percentage of persons by age who use cigarettes and the percentage of persons by age that use smokeless tobacco, and calculate the utilization rate by adding the 2 rates together. The data is available for 3 age intervals: 18–24; 25–44; and 45–64. For the BHP payment rate cell for persons ages 21–34, we will calculate the factor as $(4/14 * \text{the utilization rate of 18–24 year olds}) + (10/14 * \text{the utilization rate of 25–44 year olds})$, which will be the weighted average of tobacco usage for persons 21–34 assuming a uniform distribution of ages; for all other age ranges used for the rate cells, we will use the age range in the CDC data in which the BHP payment rate cell age range is contained.

We will provide tobacco rating factors that may vary by age and by geographic area within each state. To the extent that the second lowest cost silver plans have a different ratio of tobacco user rates to non-tobacco user rates in different geographic areas, the tobacco rating adjustment factor may differ across geographic areas within a state. In addition, to the extent that the second lowest cost silver plan has a different ratio of tobacco user rates to non-tobacco user rates by age, or that there is a different prevalence of tobacco use by age, the tobacco rating adjustment factor may differ by age.

7. Factor for Removing Administrative Costs (FRAC)

The Factor for Removing Administrative Costs represents the average proportion of the total premium that covers allowed health benefits, and we will include this factor in our calculation of estimated CSRs in Equation 2. The product of the RP and the Factor for Removing Administrative Costs will approximate the estimated amount of Essential Health Benefit (EHB) claims that would be expected to be paid by the plan. This step is needed because the premium also covers such costs as taxes, fees, and QHP administrative expenses. We will set this factor equal to 0.80, which is the same percentage for the factor to remove administrative costs for calculating the CSR component of advance payments for established in the 2016 HHS Notice of Benefit and Payment Parameters. This

⁹Centers for Disease Control and Prevention, *Tobacco Control State Highlights 2012*: http://www.cdc.gov/tobacco/data_statistics/state_data/state_highlights/2012/index.htm.

is consistent with the current methodology.

8. Actuarial Value (AV)

The actuarial value is defined as the percentage paid by a health plan of the total allowed costs of benefits, as defined under § 156.20. (For example, if the average health care costs for enrollees in a health insurance plan were \$1,000 and that plan has an actuarial value of 70 percent, the plan would be expected to pay on average \$700 ($\$1,000 \times 0.70$) for health care costs per enrollee.) By dividing such estimated costs by the actuarial value in the methodology, we will calculate the estimated amount of total EHB-allowed claims, including both the portion of such claims paid by the plan and the portion paid by the consumer for in-network care. (To continue with that same example, we would divide the plan's expected \$700 payment of the person's EHB-allowed claims by the plan's 70 percent actuarial value to ascertain that the total amount of EHB-allowed claims, including amounts paid by the consumer, is \$1,000.)

For the purposes of calculating the CSR rate in Equation 2, we will use the standard actuarial value of the silver level plans in the individual market, which is equal to 70 percent. This is consistent with the current methodology.

9. Induced Utilization Factor (IUF)

The induced utilization factor will be used in calculating estimated CSRs in Equation 2 to account for the increase in health care service utilization associated with a reduction in the level of cost sharing a QHP enrollee would have to pay, based on the cost-sharing reduction subsidies provided to enrollees. This is consistent with the current methodology.

The 2016 HHS Notice of Benefit and Payment Parameters provided induced utilization factors for the purposes of calculating the cost-sharing reduction component of advance payments for 2016. In that Notice, the induced utilization factors for silver plan variations ranged from 1.00 to 1.12, depending on income. Using those utilization factors, the induced utilization factor for all persons who would qualify for BHP based on their household income as a percentage of FPL is 1.12; this would include persons with household income between 100 percent and 200 percent of FPL, lawfully present non-citizens below 100 percent of FPL who are ineligible for Medicaid because of immigration status, and American Indians and Alaska Natives with household income

between 100 and 300 percent of FPL, not subject to any cost-sharing. Thus, consistent with last year, we will set the induced utilization factor equal to 1.12 for the BHP payment methodology.

We note that for CSRs for QHPs, there will be a final reconciliation at the end of the year and the actual level of induced utilization could differ from the factor used in the rule. This methodology for BHP funding does not include any reconciliation for utilization.

10. Change in Actuarial Value (ΔAV)

The increase in actuarial value will account for the impact of the CSR subsidies on the relative amount of EHB claims that would be covered for or paid by eligible persons, and it is included as a factor in calculating estimated CSRs in Equation 2. This is consistent with the current methodology.

The actuarial values of QHPs for persons eligible for CSR subsidies are defined in § 156.420(a), and eligibility for such subsidies is defined in § 155.305(g)(2)(i) through (iii). For QHP enrollees with household incomes between 100 percent and 150 percent of FPL, and those below 100 percent of FPL who are ineligible for Medicaid because of their immigration status, CSRs increase the actuarial value of a QHP silver plan from 70 percent to 94 percent. For QHP enrollees with household incomes between 150 percent and 200 percent of FPL, CSRs increase the actuarial value of a QHP silver plan from 70 percent to 87 percent.

We will apply this factor by subtracting the standard AV from the higher AV allowed by the applicable cost-sharing reduction. For BHP enrollees with household incomes at or below 150 percent of FPL, this factor will be 0.24 (94 percent minus 70 percent); for BHP enrollees with household incomes more than 150 percent but not more than 200 percent of FPL, this factor will be 0.17 (87 percent minus 70 percent).

E. Adjustments for American Indians and Alaska Natives

There are several exceptions made for American Indians and Alaska Natives enrolled in QHPs through an Exchange to calculate the PTC and CSRs. Thus, we will make adjustments to the payment methodology previously described to be consistent with the Exchange rules. These adjustments are consistent with the current methodology.

We will make the following adjustments:

- The ARP for use in the CSR portion of the rate will use the lowest cost

bronze plan instead of the second lowest cost silver plan, with the same adjustment for the population health factor (and in the case of a state that elects to use the 2016 or 2017 premiums as the basis of the Federal BHP payment, the same adjustment for the premium trend factor). American Indians and Alaska Natives are eligible for CSRs with any metal level plan, and thus we believe that eligible persons would be more likely to select a bronze level plan instead of a silver level plan. (It is important to note that this would not change the PTC, as that is the maximum possible PTC payment, which is always based on the applicable second lowest cost silver plan.)

- The actuarial value for use in the CSR portion of the rate will be 0.60 instead of 0.70, which is consistent with the actuarial value of a bronze level plan.

- The induced utilization factor for use in the CSR portion of the rate would be 1.15 for 2017 and 2018, which is consistent with the 2016 HHS Notice of Benefit and Payment Parameters induced utilization factor for calculating the CSR component of advance payments for persons enrolled in bronze level plans and eligible for CSRs up to 100 percent of actuarial value.

- The change in the actuarial value for use in the CSR portion of the rate will be 0.40. This reflects the increase from 60 percent actuarial value of the bronze plan to 100 percent actuarial value, as American Indians and Alaska Natives with household incomes between 100 and 300 percent FPL are eligible to receive CSRs up to 100 percent of actuarial value.

F. State Option To Use 2016 or 2017 QHP Premiums for BHP Payments

In the interest of allowing states greater certainty in the total BHP Federal payments for 2017 or 2018, we will provide states the option to have their final 2017 and 2018 Federal BHP payment rates, respectively, calculated using the projected 2017 and 2018 ARP (that is, using 2016 or 2017 premium data multiplied by the premium trend factor defined below in this methodology), as described in Equation (3b). This approach and the determination of the premium trend factor is consistent with the current methodology.

For a state that would elect to use the 2016 or 2017 premiums as the basis for the 2017 and 2018 BHP Federal payments, respectively, we will require that the state inform us no later than May 15, 2016 for the 2017 program year and May 15, 2017 for the 2018 program year. (Our experience to date has been

that states have elected to use the premium data that correlates to the year of payment. If this trend continues, we will consider in future payment notices whether to eliminate the choice of the premium from the prior year moving forward.)

For Equation (3b), we define the premium trend factor, with minor changes in calculation sources and methods, as follows:

Premium Trend Factor (PTF): In Equation (3b), we calculate an ARP based on the application of certain relevant variables to the ARP, including a premium trend factor (PTF). In the case of a state that would elect to use the 2016 or 2017 premiums as the basis for determining the BHP payment, it is appropriate to apply a factor that would account for the change in health care costs between the year of the premium data and the BHP plan year. We define this as the premium trend factor in the BHP payment methodology. This factor will approximate the change in health care costs per enrollee, which would include, but not be limited to, changes in the price of health care services and changes in the utilization of health care services. This will provide an estimate of the adjusted monthly premium for the applicable second lowest cost silver plan that will be more accurate and reflective of health care costs in the BHP program year, which would be the year following issuance of the final Federal payment notice. In addition, we believe that it would be appropriate to adjust the trend factor for the estimated impact of changes to the transitional reinsurance program on the average QHP premium.

For the trend factor we will use the annual growth rate in private health insurance expenditures per enrollee from the National Health Expenditure projections, developed by the Office of the Actuary in CMS (<https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsProjected.html>, Table 17). For 2017, the projected increase in private health insurance premiums per enrollee is 4.4 percent.

The adjustment for changes in the transitional reinsurance program is developed from analysis by CMS' Center for Consumer Information and Insurance Oversight (CCIIO). In unpublished analysis, CCIIO estimated that the end of the transitional reinsurance program in 2016 would contribute 4.0 percent to QHP premium increases between 2016 and 2017.

Combining these 2 factors together, we calculate that the premium trend

factor for 2017 would be 8.6 percent $(1 + 0.044) \times (1 + 0.040) - 1 = 8.6$ percent.

States may want to consider that the increase in premiums for QHPs from 2016 to 2017 or from 2017 to 2018 may differ from the premium trend factor developed for the BHP funding methodology for several reasons. In particular, states may want to consider that the second lowest cost silver plan for 2016 or 2017 may not be the same as the second lowest cost silver plan in 2017 or 2018, respectively. This may lead to the premium trend factor being greater than or less than the actual change in the premium of the second lowest cost silver plan in 2016 compared to the premium of the second lowest cost silver plan in 2017 (or from 2017 to 2018).

G. State Option To Include Retrospective State-Specific Health Risk Adjustment in Certified Methodology

To determine whether the potential difference in health status between BHP enrollees and consumers in the Exchange would affect the PTC, CSRs, risk adjustment and reinsurance payments that would have otherwise been made had BHP enrollees been enrolled in coverage on the Exchange, we will continue to provide states implementing the BHP the option to propose and to implement, as part of the certified methodology, a retrospective adjustment to the Federal BHP payments to reflect the actual value that would be assigned to the population health factor (or risk adjustment) based on data accumulated during program years 2017 and 2018 for each rate cell. This is consistent with the approach in the current methodology.

We acknowledge that there is uncertainty for this factor due to the lack of experience of QHPs on the Exchange and other payments related to the Exchange, which is why, absent a state election, we will use a value for the population health factor to determine a prospective payment rate which assumes no difference in the health status of BHP enrollees and QHP enrollees. There is considerable uncertainty regarding whether the BHP enrollees will pose a greater risk or a lesser risk compared to the QHP enrollees, how to best measure such risk, and the potential effect such risk would have had on PTC, CSRs, risk adjustment and reinsurance payments that would have otherwise been made had BHP enrollees been enrolled in coverage on the Exchange. To the extent, however, that a state would develop an approved protocol to collect data and effectively measure the relative risk and the effect on Federal payments,

we will permit a retrospective adjustment that would measure the actual difference in risk between the 2 populations to be incorporated into the certified BHP payment methodology and used to adjust payments in the previous year.

For a state electing the option to implement a retrospective population health status adjustment, we will require the state to submit a proposed protocol to CMS, which would be subject to approval by us and would be required to be certified by the Chief Actuary of CMS, in consultation with the Office of Tax Analysis, as part of the BHP payment methodology. We describe the protocol for the population health status adjustment in guidance in *Considerations for Health Risk Adjustment in the Basic Health Program in Program Year 2015* (<http://www.medicaid.gov/Basic-Health-Program/Downloads/Risk-Adjustment-and-BHP-White-Paper.pdf>). We will require a state to submit its proposed protocol by August 1, 2016 for our approval for the 2017 program year, and by August 1, 2017 for the 2018 program year. This submission would also include descriptions of how the state would collect the necessary data to determine the adjustment, including any contracting contingences that may be in place with participating standard health plan issuers. We will provide technical assistance to states as they develop their protocols. To implement the population health status, we must approve the state's protocol no later than December 31, 2016 for the 2017 program year, and by December 31, 2017 for the 2018 program year. Finally, we will require that the state complete the population health status adjustment at the end of 2017 (or 2018) based on the approved protocol. After the end of the 2017 and 2018 program years, and once data is made available, we will review the state's findings, consistent with the approved protocol, and make any necessary adjustments to the state's Federal BHP payment amounts. If we determine that the Federal BHP payments were less than they would have been using the final adjustment factor, we would apply the difference to the state's next quarterly BHP trust fund deposit. If we determine that the Federal BHP payments were more than they would have been using the final reconciled factor, we would subtract the difference from the next quarterly BHP payment to the state.

IV. Collection of Information Requirements

This 2017 and 2018 methodology is mostly unchanged from the 2016 final

notice published on February 24, 2015 (80 FR 9636). For states that have BHP enrollees who do not file Federal tax returns ("non-filers"), this methodology notice clarifies that the state must develop a methodology to determine the enrollee's household income and household size consistent with Exchange requirements. Since the requirement applies to fewer than 10 states, and states would not reasonably be expected to transmit the methodology to any independent entities (5 CFR 1320.3(c)(4)) the 2017 and 2018 methodology does not require additional OMB review under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Otherwise, the methodology's information collection requirements and burden estimates are not affected by this action and are approved by OMB under control number 0938-1218 (CMS-10510). With regard to state elections, protocols, certifications, and status adjustments, this action would not revise or impose any additional reporting, recordkeeping, or third-party disclosure requirements or burden on qualified health plans or on states operating State Based Exchanges.

V. Regulatory Impact Statement

A. Overall Impact

We have examined the impacts of this methodology as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96-354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995) (UMRA), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of \$100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal

governments or communities (also referred to as “economically significant”); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). As noted in the BHP final rule, BHP provides states the flexibility to establish an alternative coverage program for low-income individuals who would otherwise be eligible to purchase coverage through the Exchange. Because we make no changes in methodology that would have a consequential effect on state participation incentives, or on the size of either the BHP program or offsetting PTC and CSR expenditures, the effects of the changes made in this methodology notice would not approach the \$100 million threshold, and hence it is neither an economically significant rule under E.O. 12866 nor a major rule under the Congressional Review Act. The size of the BHP program depends on several factors, including the number of and which particular states choose to implement or continue BHP in 2017 or 2018, the level of QHP premiums in 2016 and 2017, the number of enrollees in BHP, and the other coverage options for persons who would be eligible for BHP. In particular, while we generally expect that many enrollees would have otherwise been enrolled in a QHP through the Exchange, some persons may have been eligible for Medicaid under a waiver or a state health coverage program. For those who would have enrolled in a QHP and thus would have received PTCs or CSRs, the Federal expenditures for BHP would be expected to be more than offset by a reduction in Federal expenditures for PTCs and CSRs. For those who would have been enrolled in Medicaid, there would likely be a smaller offset in Federal expenditures (to account for the Federal share of Medicaid expenditures), and for those who would have been covered in non-Federal programs or would have been uninsured, there likely would be an increase in Federal expenditures. None of these factors or incentives would be materially affected by the updates we have made here.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

1. Need for the Final Methodology Notice

Section 1331 of the Affordable Care Act (codified at 42 U.S.C. 18051) requires the Secretary to establish a BHP, and paragraph (d)(1) specifically provides that if the Secretary finds that a state meets the requirements of the program established under section (a) [of section 1331 of the Affordable Care Act], the Secretary shall transfer to the State Federal BHP payments described in paragraph (d)(3). This methodology provides for the funding methodology to determine the Federal BHP payment amounts required to implement these provisions in program years 2017 and 2018.

2. Alternative Approaches

Many of the factors used in this notice are specified in statute; therefore, we are limited in the alternative approaches we could consider. One area in which we had a choice was in selecting the data sources used to determine the factors included in the methodology. Except for state-specific RPs and enrollment data, we are using national rather than state-specific data. This is due to the lack of currently available state-specific data needed to develop the majority of the factors included in the methodology. We believe the national data will produce sufficiently accurate determinations of payment rates. In addition, we believe that this approach will be less burdensome on states. In many cases, using state-specific data would necessitate additional requirements on the states to collect, validate, and report data to CMS. By using national data, we are able to collect data from other sources and limit the burden placed on the states. To RPs and enrollment data, we are using state-specific data rather than national data as we believe state-specific data will produce more accurate determinations than national averages.

In addition, we considered whether or not to provide states the option to develop a protocol for a retrospective adjustment to the population health factor in 2017 and 2018 as we did in the 2015 and 2016 payment methodologies. We believe that providing this option again in 2017 and 2018 is appropriate and likely to improve the accuracy of the final payments.

We also considered whether or not to require the use of 2017 and 2018 QHP premiums to develop the 2017 and 2018 Federal BHP payment rates. We believe

that the payment rates can still be developed accurately using either the 2016 and 2017 QHP premiums (for the 2017 and 2018 program years, respectively) or the 2017 and 2018 program year premiums and that it is appropriate to provide the states the option, given the interests and specific considerations each state may have in operating the BHP.

3. Transfers

The provisions of this notice are designed to determine the amount of funds that will be transferred to states offering coverage through a BHP rather than to individuals eligible for Federal financial assistance for coverage purchased on the Exchange. We are uncertain what the total Federal BHP payment amounts to states will be as these amounts will vary from state to state due to the varying nature of state composition. For example, total Federal BHP payment amounts may be greater in more populous states simply by virtue of the fact that they have a larger BHP-eligible population and total payment amounts are based on actual enrollment. Alternatively, total Federal BHP payment amounts may be lower in states with a younger BHP-eligible population as the RP used to calculate the Federal BHP payment will be lower relative to older BHP enrollees. While state composition will cause total Federal BHP payment amounts to vary from state to state, we believe that the methodology, like the methodology used in 2015 and 2016, accounts for these variations to ensure accurate BHP payment transfers are made to each state.

B. Unfunded Mandates Reform Act

Section 202 of the UMRA requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation, by state, local, or tribal governments, in the aggregate, or by the private sector. In 2015, that threshold is approximately \$144 million. States have the option, but are not required, to establish a BHP. Further, the methodology would establish Federal payment rates without requiring states to provide the Secretary with any data not already required by other provisions of the Affordable Care Act or its implementing regulations. Thus, neither this payment methodology nor the methodologies used in 2015 and 2016 mandate expenditures by state governments, local governments, or tribal governments.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires agencies to prepare a final regulatory flexibility analysis to describe the impact of the final rule on small entities, unless the head of the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. The Act generally defines a “small entity” as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a not-for-profit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. Individuals and states are not included in the definition of a small entity. Few of the entities that meet the definition of a small entity as that term is used in the RFA would be impacted directly by this methodology.

Because this methodology is focused solely on Federal BHP payment rates to states, it does not contain provisions that would have a direct impact on hospitals, physicians, and other health care providers that are designated as small entities under the RFA. Accordingly, we have determined that the methodology, like the previous methodology and the final rule that established the BHP program, will not have a significant economic impact on a substantial number of small entities.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a methodology may have a significant economic impact on the operations of a substantial number of small rural hospitals. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. For the preceding reasons, we have determined that the methodology will not have a significant impact on a substantial number of small rural hospitals.

D. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct effects on states, preempts state law, or otherwise has federalism implications. The BHP is entirely optional for states, and if implemented in a state, provides access to a pool of funding that would not otherwise be available to the state. Accordingly, the requirements of the Executive Order do not apply to this final methodology notice.

Dated: January 6, 2016.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: February 10, 2016.

Sylvia Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2016-03902 Filed 2-25-16; 4:15 pm]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 25, 73, and 76

[MB Docket No. 14-127; FCC 16-4]

Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission expand the list of entities that will be required to post their public inspection files to the FCC’s online database. In 2012, the Commission adopted online public file rules that required broadcast television stations to post public file documents to a central, FCC-hosted online database rather than maintaining paper files locally at their main studios. Our goals were to modernize the procedures television broadcasters use to inform the public about how they are serving their communities, to make information concerning broadcast service more accessible to the public, and, over time, to reduce the cost of broadcasters’ compliance. This final rule document continues our modernization effort by expanding the online file to other media entities to extend the benefits of improved public access to public inspection files and, ultimately, reduce the burden of maintaining these files.

DATES: Effective February 29, 2016, except for the amendments to 47 CFR 25.701, 25.702, 73.1943, 73.3526, 73.3527, 73.3580, 76.630, 76.1700, 76.1702, and 76.1709 which contain information collection requirements that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Media Bureau, Policy Division, 202-418-2154, or email at kim.matthews@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Report

and Order, FCC 16-4, adopted on January 28, 2016 and released on January 29, 2016. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., Room CY-A257, Washington, DC 20554. This document will also be available via ECFS at <http://fjallfoss.fcc.gov/ecfs/>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to fcc504@fcc.gov or calling the Commission’s Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Paperwork Reduction Act of 1995 Analysis

This *Report and Order* contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).¹ The requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Summary of Report and Order

I. Introduction

1. In this *Report and Order*, we expand the list of entities that will be required to post their public inspection files to the FCC’s online database. In 2012, the Commission adopted online public file rules that required broadcast television stations to post public file documents to a central, FCC-hosted online database rather than maintaining paper files locally at their main studios. *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Second Report and Order*, 77 FR 27631, May 11, 2012 (“*Second Report and Order*”). Our goals were to modernize the procedures television broadcasters

¹ The Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, 109 Stat. 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

use to inform the public about how they are serving their communities, to make information concerning broadcast service more accessible to the public, and, over time, to reduce the cost of broadcasters' compliance. This *Report and Order* continues our modernization effort by requiring cable operators, satellite TV (also referred to as "Direct Broadcast Satellite" or "DBS") providers, broadcast radio licensees, and satellite radio (also referred to as "Satellite Digital Audio Radio Services" or "SDARS") licensees to post their public file documents to the FCC-hosted online database as well. By including these services in our transition to an online public file, we continue our effort to harness the efficiencies made possible by digital technology to make public file information more readily available to the public, while at the same time minimizing the burden on covered entities of maintaining the file.

2. As the Commission has stated, this modernization of the public inspection file is "plain common sense." The evolution of the Internet and the spread of broadband infrastructure have transformed the way society accesses information today. It is no longer reasonable to require the public to travel to a station or headquarters' office to review the public file and make paper copies when a centralized, online file will permit review with a quick, easy, and almost costless Internet search. Moreover, an online file will permit searches by the public without requiring assistance from station or headquarters' staff, further reducing the burden of maintaining the public file.

3. As we proposed in the *Notice of Proposed Rulemaking* in this proceeding, *Expansion of Online Public File Obligations To Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees, Notice of Proposed Rulemaking*, 80 FR 8031, Feb. 13, 2015 ("NPRM"), we take the same general approach to transitioning cable, DBS, broadcast radio, and SDARS to the online file that the Commission took with respect to television broadcasters, phasing-in and otherwise tailoring the requirements as appropriate for the different services. We also take similar measures to minimize the effort and costs entities must undertake to move their public files online. Specifically, we require entities to upload to the online file only those public file documents that are not already on file with the Commission or that the Commission does not currently maintain in its own database. In order to reduce the cost of transitioning to the online file, we follow the approach we took with respect to television stations

and exempt existing political file material from the online file requirement and require only that political file documents be uploaded on a going-forward basis. In order to ease the transition to the online file for broadcast radio stations, particularly those with small staffs and limited financial resources, we commence the transition to the online file with commercial stations in top 50 markets with 5 or more full-time employees. We delay for two years, until March 1, 2018, all online file requirements for all other radio stations. With respect to smaller cable systems, we exempt systems with fewer than 1,000 subscribers from all online public file requirements given that they are exempt from most public file requirements. In addition, we delay for two years, until March 1, 2018, the requirement that cable systems with between 1,000 and 5,000 subscribers commence uploading new political file material to the online file.

4. With minor exceptions, we do not adopt new or modified public inspection file requirements in this proceeding. Our focus is simply to adapt our existing public file requirements to an online format in a manner that appropriately reflects the differences among the services and that minimizes the burden for all affected entities.

II. Background

5. One of a broadcaster's fundamental public interest obligations is to air programming responsive to the needs and interests of its community of license. To ensure that stations meet this obligation, the Commission relies on viewers and listeners as an important source of information about the nature of a station's programming, operations, and compliance with Commission rules. To provide the public with access to information about station operations, the Commission's rules have long required television and radio broadcast stations to maintain a physical public inspection file, including a political file, at their respective stations or headquarters and to place in the file records that provide information about station operations. The purpose of the public inspection file requirement is to "make information to which the public already has a right more readily available, so that the public will be encouraged to play a more active part in dialogue with broadcast licensees."

6. The requirement that broadcasters maintain documents for public inspection dates back to 1938, when the Commission promulgated its first political file rule. In 1965, following action by Congress to allow greater public participation in the broadcast

licensing process, the Commission adopted a broader public inspection file rule to enable local inspection of broadcast applications, reports, and related documents. The Commission noted that Congress' actions "zealously guarded the rights of the general public to be informed" and that the Commission's goal was to make "practically accessible to the public information to which it is entitled."

7. Cable, DBS, and SDARS entities also have public and political file requirements modeled, in large part, on the longstanding broadcast requirements. In 1974, the Commission adopted a public inspection file requirement for cable, including a requirement to retain political file material, noting that, "[i]f the public is to play an informed role in the regulation of cable television, it must have at least basic information about a local system's operations and proposals." The Commission also noted that "[r]equiring cable systems to maintain a public file merely follows our policy for broadcast licensees and is necessary for similar reasons" and that "[t]hrough greater disclosure we hope to encourage a greater interaction between the Commission, the public, and the cable industry." With respect to DBS providers, the Commission adopted public and political inspection file requirements in 1998 in conjunction with the imposition of certain public interest obligations, including political broadcasting and children's television requirements, on those entities. DBS providers were required to "abide by political file obligations similar to those requirements placed on terrestrial broadcasters and cable systems" and were also required to maintain a public file with records relating to other DBS public interest obligations. Finally, the Commission imposed equal employment opportunity and political broadcast requirements on SDARS licensees in 1997, noting that the rationale behind imposing these requirements on broadcasters applies also to satellite radio.

8. In 2002, Congress adopted the Bipartisan Campaign Reform Act ("BCRA") which amended the political file requirements in section 315 of the Communications Act of 1934. The amendments apply to broadcast television and radio, cable, DBS, and SDARS. BCRA essentially codified the Commission's existing political file obligations by requiring that information regarding any request to purchase advertising time made on behalf of a legally qualified candidate for public office be placed in the political file. In addition, BCRA

expanded political file obligations by requiring that television, radio, cable, DBS, and SDARS entities also place in the political file information related to any advertisements that discuss a “political matter of national importance,” including the name of the person or entity purchasing the time and a list of the chief executive officers or members of the executive committee or of the board of directors of any such entity.

A. Online Public File

9. In 2012, the Commission replaced the decades-old requirement that commercial and noncommercial television stations maintain public files at their main studios with a requirement to post most of the documents in those files to a central, online public file hosted by the Commission. The television online public file rules were the culmination of a more than decade-long effort to make information regarding how a television broadcast station serves the public interest “easier to understand and more accessible,” “promote discussion between the licensee and its community,” and “lessen the need for government involvement in ensuring that a station is meeting its public interest obligation.”

10. Based on commenter suggestions, in the *Second Report and Order* the Commission determined that each television station’s entire public file would be hosted online by the Commission. The Commission took a number of steps to minimize the burden of the online file on stations.

Broadcasters were required to upload only those items required to be in the public file but not otherwise filed with the Commission or available on the Commission’s Web site. Any document or information required to be kept in the public file and that is required to be filed with the Commission electronically in the Consolidated Data Base System (“CDBS”) is imported to the online public file and updated by the Commission. In addition, television stations were not required to upload their existing political files to the online file; rather, stations were required only to upload new political file content on a going-forward basis. Because of privacy concerns, television stations also were not required to upload letters and emails from the public to the online file; rather, they must continue to retain them in a correspondence file at the main studio.

11. In addition, to smooth the transition for both television stations and the Commission and to allow smaller broadcasters additional time to begin posting their political files online,

the Commission phased-in the new political file posting requirement. Stations affiliated with the top four national networks (ABC, NBC, CBS, and Fox) and licensed to serve communities in the top 50 Designated Market Areas (“DMAs”) were required to begin posting their political file documents online starting August 2, 2012, but other stations were exempted from posting their political file documents online until July 1, 2014. In the *Second Report and Order*, the Commission also rejected several proposals in the *FNPRM* to increase public file requirements in conjunction with implementation of the online file. Rather, the Commission determined that stations would be required to place in their online files only material that is already required to be placed in their local files.

12. The Commission stated in the *Second Report and Order* that it was deferring consideration of whether to adopt online posting requirements for radio licensees and multichannel video programming distributors (“MVPDs”) until it had gained experience with online posting of public files of television broadcasters. The Commission noted that starting the online public file process with the much smaller number of television licensees, rather than with all broadcasters and MVPDs, would “ease the initial implementation of the online public file.”

B. Petition for Rulemaking and Notice of Proposed Rulemaking

13. In July 2014, the Campaign Legal Center, Common Cause, and the Sunlight Foundation (collectively, “Petitioners” or “CLC *et al.*”) filed a joint Petition for Rulemaking requesting that the Commission initiate a rulemaking to expand to cable and satellite systems the requirement that public and political file documents be posted to the FCC’s online database. The Petitioners argued that cable and satellite services have increasingly become outlets for political advertising and that the ability of satellite television providers to sell household-specific “addressable advertising” would likely accelerate that trend. Petitioners asserted that moving the television public file online has resulted in “unquestionably substantial” public benefits, which would also occur if cable and satellite systems were required to upload their public and political files online. In addition, Petitioners argued that television broadcasters experienced few problems moving to the online file, and cable and satellite systems would also likely not

be burdened by the online filing requirement.

14. On August 7, 2014, the Media Bureau issued a Public Notice seeking comment on the Petition for Rulemaking and, in addition, on whether it should initiate a rulemaking to expand online public file obligations to broadcast radio stations. See Public Notice, *Commission Seeks Comment on Petition for Rulemaking Filed by the Campaign Legal Center, Common Cause, and the Sunlight Foundation Seeking Expansion of Online Public File Obligations to Cable and Satellite TV Operators, Bureau Also Seeks Comment on Expanding Online Public File Obligations to Radio Licensees*, 79 FR 51136, August 27, 2014 (“Public Notice”). After reviewing the comments filed in response to the Public Notice, the Commission issued the *NPRM* in this proceeding proposing to expand the online file to cable operators, DBS providers, and broadcast and satellite radio licensees.

III. Discussion

15. The rules we adopt today will modernize the outdated procedures for providing public access to cable, DBS, broadcast radio, and SDARS public files in a manner that avoids imposing unnecessary burdens on these entities. By taking advantage of the efficiencies made possible by digital technology, we will make information that cable, DBS, and broadcast and satellite radio licensees are already required to make publicly available more accessible while also reducing costs both for the government and the private sector. The Internet is an effective, low-cost means of maintaining contact with, and distributing information to, viewers and listeners. Placing the public file online will permit 24-hour access from any location, thereby improving access to information about how cable, satellite, broadcast radio, and SDARS entities are serving their communities and meeting their public interest obligations. Maintaining this information online will also either eliminate or substantially reduce the number of public visits to stations or headquarters offices to view public file material, reducing the burden on staff who would otherwise have to assist during these visits and enabling entities to improve security and minimize risks to employees. As the Commission has stated previously, the public benefits of posting public file information online, while difficult to quantify with exactitude, are unquestionably substantial.

16. Expansion of the online public file to cover more services is particularly important with respect to improving

access to political files. While broadcast television remains the dominant medium for political advertising, the quantity of such advertising on cable and satellite television continues to increase, and the advent of technological advances such as addressable advertising is likely to further this trend. Political advertising on radio is also on the rise. Adding cable, satellite TV, and broadcast and satellite radio political file material to the existing online file database will facilitate public access to disclosure records for all these services and allow the public to view and analyze political advertising expenditures more easily in each market as well as nationwide.

17. Similar to the approach we took to transitioning television stations to the online file, we take steps here to minimize the effort and cost that all entities must undertake to move their public files online. Entities will be required to upload to the online file only documents that are not already on file with the Commission or that the Commission maintains in its own database. Any document or information required both to be kept in the public file and to be filed with the Commission electronically in Commission databases such as CDBS or the Cable Operations and Licensing System (“COALS”) database will be imported to the online public file and updated by the Commission. In addition, entities being added to the online file will not be required to upload their existing political files to the online file; rather, they will be required only to upload new political file content on a going-forward basis. We note that the size of the political file likely correlates with an entity’s political advertising revenues. Accordingly, entities with little or no political advertising revenues will likely have few obligations under our rules, while entities with more documents in their political files will likely also have greater political advertising revenues.

18. Some commenters responding to the *NPRM* argue that the goal of the public inspection file requirements is to make documents available to members of the public in the station’s community of license and that requiring these documents to be placed online will encourage the filing of complaints by individuals unconnected to the local community. While we agree that the public file is first and foremost a tool for community members, it is also a tool for the larger media policy community. Easy access to public file information will also assist the Commission, Congress, and researchers as they fashion public policy recommendations

relating to media issues. For this reason, we also reject the suggestion of NAB that the Commission focus its enforcement efforts on complaints submitted by actual viewers and listeners about the public files of their local stations and decline to consider public file complaints from entities unrelated to the licensee’s local community. The Commission will consider and fairly evaluate any complaint related to our public inspection file rules. Our primary goal, however, is to improve access to public information file material.

A. Online File Capacity and Technical Issues

19. The Commission has taken a number of steps to ensure that the online file will be capable of accommodating the significant increase in network traffic as well as the volume of public file material that will result from the expansion of online filing requirements. We recognize that adding cable, DBS, broadcast radio, and SDARS to the online file will greatly increase the number of users of the file and the volume of material that must be uploaded. We also recognize that there is likely to be a heavy demand on the online file during certain filing windows and in peak political seasons, when many broadcast stations take new advertising orders and modify existing orders on a daily basis. The improvements we have made to the operation of the online file will facilitate use of the database by members of the public as well as by the entities required to maintain an online file, including existing TV station users.

20. *Technical improvements to the online file.* The Commission has made several technical improvements to the online file database. First, the Commission has finished the transition to cloud-based computing solutions for purposes of managing the online public file database. Cloud computing technology will not only ensure that we maintain sufficient capacity to store the increased number of public file materials in the database, it will also permit us to increase network capacity during times of high demand to relieve network congestion and avoid delays or backups in uploading documents to the database. As the Commission stated in the *Second Report and Order*, cloud-based computing will permit the Commission to implement an online public file that is highly available, scalable, and eliminates user wait times associated with processing documents after upload. Second, as requested by NCTA, the Commission has added to the database the ability to place a

document in multiple files using a single upload. This functionality should greatly facilitate maintenance of the online file, especially for cable operators or station group owners that place similar documents in the public file for multiple cable systems or broadcast stations. Third, when entities move a document from one folder to another in the online file, the database will now display both the date the document was first uploaded to the online file as well as the date it was moved to a different online file location. This will permit entities to move files within the online file if, for example, the file was initially placed in the wrong folder or the entity is creating new or different subfolders for purposes of improving the organization of the file, while maintaining a record of the date the document was first uploaded to the online file. Fourth, the database now will permit entities easily to delete files and empty folders when documents in the file are past their retention period or the entity wishes to delete them for another reason. Entities will be able to select one or more files and/or folders for deletion at one time, permitting them to efficiently remove documents from the online file.

21. Finally, as advocated by a number of commenters, the Commission has completed the development and implementation of an application programming interface (“API”) that can connect the online file database to third-party web hosting services and that will permit such services to efficiently load documents into the online file on behalf of client broadcast stations and other entities. We recognize that third-party web hosting services may offer valuable assistance to entities in uploading documents to the online file and otherwise maintaining the file, particularly smaller entities that may choose to outsource this effort because of cost savings and other resource constraints. The Media Bureau and the Office of the Managing Director will provide further information about the API in the near future and will conduct one or more demonstrations. The API library will also be made available for testing by covered entities and their third-party service providers prior to the effective date of the online filing requirements adopted in this proceeding. While we recognize the benefits that web hosting services may provide in assisting entities in uploading materials to the online file, we emphasize that each entity remains responsible for ensuring that its own online public file is complete. While entities are free to enter into contractual

arrangements with third parties to upload information into the online file, and to require as part of those arrangements that the third party ensure compliance with the FCC's rules, we decline to relieve entities of their responsibility to ensure that their own online public file is complete and otherwise complies with our rules. While we decline to provide a safe harbor for entities that choose to engage a third party to assist with the online file, we note that our primary goal in this proceeding is to improve access to public file information. Our enforcement efforts initially will be focused on ensuring that entities understand and comply with the online file requirements adopted herein, rather than on imposing fines for minor failures to comply with the rules, particularly during the period when entities being added to the online file are becoming familiar with online filing.

22. *Links to other Web sites.* With the exception of the channel lineup information that cable systems must retain in the online file, we will not permit entities to provide a link in the online file to an alternative online location where political file or other public file material may be maintained in lieu of uploading documents to the Commission's database. The Commission's online file database is intended to serve as a single source of public file material for entities required to use the file, and not as a collection of links to other Web sites. The online database is organized with folders and subfolders that provide a consistent display of public file material for entities in each service. Members of the public who access the online file will be able to locate documents more easily if they are organized in a similar manner for each service. We agree with CLC *et al.* that allowing entities to substitute a link to another Web site, which may follow a different organizational structure, instead of uploading documents to the online file, would likely make the file more confusing, harder to navigate, and less useful to the public. With respect to channel lineups, however, we believe it is appropriate to permit cable operators that maintain a lineup on their own Web site to provide a link to that existing online lineup in lieu of also maintaining a lineup in the Commission's online file database. Operators may elect to provide channel lineup information both in the Commission's online file as well as on their own Web sites, but will not be required to do so.

23. We will permit those entities that maintain their own electronic public and/or political files to include in the

Commission's online database a link to that private file database, in addition to uploading to the Commission's database the materials required to be retained in the online public file. Such links would provide a further source of public file information that could prove to be a useful supplement to the information available on the Commission's online database.

24. *Filing windows.* We decline at this time to extend or otherwise alter our current filing windows, as advocated by several commenters. We are confident that the online file will be capable of handling the increased number of filers and the volume of material required to be uploaded as a result of the expansion of the Commission's online database. We may reconsider expanding or otherwise altering filing windows at a later time if we believe that such efforts will either assist filers in maintaining a complete, up-to-date online file or help avoid congestion in the online database.

25. *Orderly online files.* Consistent with our requirement for television stations, we will require that cable, DBS, broadcast radio, and SDARS entities maintain orderly public files and remove expired contracts when and if replacement agreements are uploaded. While we otherwise do not require that files that are past their retention period or otherwise out-of-date be deleted, we urge all entities to actively manage their online files to ensure that they do not become so overgrown with out-of-date documents that it is difficult to access relevant materials. The Commission will take no action under the public file rules based on any public file document that is outside the mandatory retention period.

B. Political File

26. As proposed in the *NPRM*, cable operators, broadcast radio licensees, DBS operators, and SDARS entities will not be required to upload their existing political files to the online file. Instead, as we require with television licensees, these entities will be permitted to maintain locally those documents already in place in their political file at the time the new rules become effective, and upload documents to the online political file only on a going-forward basis. Existing political file material must be retained in the local political file at the station, cable system, or DBS or SDARS headquarters' office for the remainder of the two-year retention period, unless entities voluntarily elect to upload these materials to the online file. Given this limited two-year retention period, exempting the existing political file from the online database will require entities to continue to

maintain this file locally for only a relatively short period of time after the effective date of the online political file requirements established in this order. Thus, exempting the existing political file from online posting will reduce the initial burden of moving public files online. In addition, as discussed below, with respect to smaller cable systems (those with between 1,000 and 5,000 subscribers) we are delaying for two years, until March 1, 2018, the requirement that they commence uploading new political file material to the online file. We also delay all online file requirements until March 1, 2018 for radio stations with fewer resources, which we define as all NCE stations, commercial stations in markets below the top 50 or outside all radio markets, and commercial stations in the top 50 markets with fewer than five full-time employees. We believe that providing these entities with additional time to complete their transition to the online file will ease implementation for these smaller entities and also give the Commission time to address any concerns that may arise as larger entities commence using the online file.

27. Consistent with our current political file rules, and as proposed in the *NPRM*, we will require that new political file materials be uploaded to the online file "immediately absent unusual circumstances." The contents of the political file are time-sensitive. Therefore, it is essential that there be no delay in posting political file materials to the online file. In addition, consistent with our approach to the television online file, we will create and propagate subfolders for federal and state candidate ad purchases, as appropriate, as well as issue ads that relate to a political matter of national importance. We will also provide entities with the ability to create additional subfolders and subcategories in compliance with their own practices.

C. Voluntary Use of the Online Public File

28. As we proposed in the *NPRM*, we will permit entities that are temporarily exempt from part or all online public file requirements to upload material to the online public file voluntarily before the delayed effective date of their online file requirement. For example, an NCE broadcast radio station that is not required to commence using the online file until March 1, 2018, as discussed below, could elect voluntarily to commence using the online file prior to this date. We will also permit entities to elect voluntarily to upload to the online file existing political file material that would otherwise be required to be

retained in the entity's local public file until the end of the two-year retention period. To avoid any confusion regarding the location and completeness of the public and political file, any entity that voluntarily elects to commence using the online file early must ensure that the online file contains all new public file material on a going-forward basis, including all new political file material. That is, all new public and political file material must be uploaded to the online file on a going-forward basis commencing on the date the entity elects to transition to the online file. The online file database will require users to indicate that they have transitioned to the online file.

D. Back-Up Files

29. As proposed in the *NPRM*, cable, DBS, broadcast radio, and SDARS entities will not be required to maintain back-up copies of all public file materials. Instead, as we do for the existing television online file, an entity may request that the Commission create a mirror copy of its public file to ensure that, if the data in the online file are compromised, the file can be reconstituted using the back-up copy. If the Commission's online file becomes temporarily inaccessible for the uploading of new documents, we will require entities to maintain those documents and upload them to the file once it is available again for upload.

30. As proposed in the *NPRM* and consistent with the approach we take with respect to television broadcasters, however, we will require cable, DBS, broadcast radio, and SDARS entities to make back-up files for the political file available to the public to ensure that they can comply with their statutory obligation to make that information available to candidates, the public, and others immediately. Entities will be required to make these backups available only if and during such rare times as the Commission's online public file is unavailable. To minimize any burden caused by this requirement, entities may choose to meet the political file back-up requirement by periodically downloading a mirror copy of the public file, including the political file, housed on the FCC's database. To ensure that the political file is complete, entities that choose this option must retain any political file records that have not yet been uploaded to the FCC's online file database or that were uploaded after their last download of a mirror copy of the online public file.

31. These back-up files may be retained either in paper or electronic form at the entity's local public file location. Alternatively, entities may

elect to make these back-up political files accessible to the public online via the entity's own Web site. Cable operators or other entities with their own electronic political files may elect to use these files as a back-up in the event the Commission's online database is unavailable.

32. In the event the Commission's online file becomes temporarily inaccessible, we will require DBS and SDARS entities to make their back-up political files available to the public through the entity's choice of either an online method, via the entity's own Web site, or by answering questions and accommodating requests for copies of political file materials made by telephone. Copies requested by telephone may be sent by fax, email, or mail, at the caller's request. If a requester prefers access by mail, the DBS or SDARS entity may require the individual requesting documents to pay for photocopying. We believe it is necessary to require DBS and SDARS entities to provide alternative means to access back-up political file documents, either online or by telephone, as these entities provide service nationwide and are required to maintain only one public and political file for the entire U.S. at their headquarters office, making in-person access very difficult. This requirement for online or telephone access will apply only to DBS and SDARS back-up political file materials during times when the Commission's online database is unavailable. Accordingly, we do not believe this requirement will be unduly burdensome.

E. Format

33. As proposed in the *NPRM*, cable, DBS, and broadcast and satellite radio entities will be required to upload any electronic documents to the online file in their existing format to the extent feasible. The Commission will display the documents in both the uploaded format and in a pdf version. If a required document already exists in a searchable format, documents must be uploaded in that format to the extent technically feasible.

34. We decline at this time to implement a standard format for the online file, including for political advertising data, as requested by *CLC et al.* As discussed above, the Commission has made a number of upgrades to its online file database to accommodate additional users and make the file easier to use. We will continue to prioritize these and other efforts to ensure that the database is reliable and user-friendly before considering further improvements.

F. Announcements and Links

35. We will require cable operators, DBS providers, and broadcast and satellite radio licensees that have Web sites to place a link to the online public file on their home pages, consistent with our proposal in the *NPRM* and our requirement for television stations. This link must connect to the first page of the entity's online public file. We will also require entities that have Web sites to include on their home page contact information for a representative who can assist any person with disabilities with issues related to the content of the public file.

36. As proposed in the *NPRM*, we will not require cable, DBS, broadcast radio, or SDARS entities to make on-air announcements regarding the change in location of their public file. Consistent with the approach taken with respect to television stations in the *Second Report and Order*, we will require broadcast radio stations, however, to revise their on-air pre- and post-filing renewal announcements to reflect the availability of a station's renewal application on the Commission's Web site.

G. EEO Materials

37. As we proposed in the *NPRM*, we will continue to require that cable, DBS, and broadcast and satellite radio entities make their EEO materials available on their Web sites, if they have one. Similar to our requirements for television stations, entities may fulfill this Web site posting requirement by providing, on their own Web site, a link to the EEO materials on their online public file page on the Commission's Web site. The link to EEO materials must be a direct link to such materials on the FCC's Web site, and not simply a link to the first page of the entity's online public file. As discussed above, all entities that have Web sites must also place a link to the first page of their online public file on the home page of their Web site.

H. Local Public Inspection File

38. Entities that have fully transitioned to the online public file—that is, entities that have uploaded all public file material to the FCC's online file database including all political file material required to be retained in the public file—and that also provide online access to back-up political file material via the entity's own Web site when the FCC's online database is temporarily unavailable, will not be required to maintain a local public file. This option is not available to commercial broadcast licensees who must continue to retain a

correspondence file that cannot be made available online for privacy reasons.

39. NTCA, Verizon, and DIRECTV request that we clarify that entities do not need to maintain a local public inspection file once they have fully transitioned to the online file. We note that, unlike commercial broadcast stations who must retain a correspondence file at the station, cable, DBS, and SDARS entities will have fully transitioned to the online file once the retention period for existing political files expires. As discussed above, however, all entities must maintain a back-up file for the political file in the event the online file becomes unavailable and make this back-up file available to the public. As discussed above, we will permit entities to retain back-up political file materials either in paper or electronic form at their local file location or make such materials available to the public online via the entity's own Web site. Entities with their own Web sites must indicate clearly on that Web site either the Web site or physical address of their back-up political files. Entities that have fully transitioned to the online file and that make their back-up political file materials available online will not be required to maintain a local public file.

40. We will require all cable and DBS operators and broadcast and satellite radio licensees to provide information in the online public file about the individual who may be contacted for questions about the file. This information must be provided when the operator or licensee first establishes its online public file and should be updated if and when staffing or location changes occur. In addition, entities that have not fully transitioned to the FCC's online public file—that is, entities that do not post online all public and political file material required to be maintained in the public inspection file—and that do not also provide online access via their own Web sites to back-up political file materials must also provide information in the FCC's online public file about the location of the entity's local public file. This information is necessary to inform the public of the location of the existing political file (until its retention period expires) and/or the location where the public can access back-up political file materials in the event the Commission's database is unavailable. All commercial broadcast licensees must include information in the FCC's online file about the location of their local public file so the public is aware of the location of the correspondence file retained by these broadcasters.

I. Compliance Dates

41. *New Public File Materials.* In order to facilitate a smooth transition to the online public file, we will provide entities a period of time after the effective date of the online file requirements adopted in this order to begin uploading files. Cable systems with 1,000 or more subscribers, DBS providers, SDARS licensees, and commercial radio broadcast stations in the top 50 markets with five or more full-time employees will be required to begin using the online public file 30 days after the Commission announces in the **Federal Register** that OMB has completed its review of this Order under the Paperwork Reduction Act ("PRA") and approved the collection. Commencing on this effective date, these entities must begin uploading new public file materials to the Commission's online public file database and, with the exception of cable systems with between 1,000 and 5,000 subscribers, these entities must also upload new political file material to the Commission's online file. Entities will not be permitted to commence uploading material to the online file prior to this effective date. We decline NAB's request that we give radio stations 60 days from the effective date to commence uploading new public file material. Only commercial radio broadcast stations in the top 50 radio markets with 5 or more full-time employees are required to commence uploading documents to the online file beginning 30 days after the effective date of this Order. We believe these larger radio stations have the necessary resources to be able to commence using the online file within this time frame without imposing an undue burden.

42. In recognition of their more limited resources, we provide more time for smaller entities to transition to the online file. Thus, as discussed further below, commercial broadcast radio stations in the top 50 markets with fewer than five full-time employees, all commercial broadcast radio stations in markets below the top 50 and outside all radio markets, and all NCE broadcast radio stations will not be required to begin uploading new public and political file material to the online file until March 1, 2018. In addition, cable systems with 1,000 or more but fewer than 5,000 subscribers will not be required to commence uploading new political file material to the online file until March 1, 2018. Cable systems with fewer than 1,000 subscribers are exempt from all online filing requirements.

43. *Existing Public File Materials.* We will give cable systems with 1,000 or

more subscribers, DBS providers, SDARS licensees, and commercial radio broadcast stations in the top 50 markets with five or more full-time employees six months from the effective date of the rules (*i.e.*, six months after the Commission publishes a notice in the **Federal Register** announcing OMB approval under the PRA as discussed above) to complete the process of uploading to the online file their existing public file materials, with the exception of existing political files. This approach is similar to that taken by the Commission in the *Second Report and Order* to transition television stations to the online public file. Entities will be permitted to begin uploading existing public file materials immediately on the effective date, at the same time that they must begin posting new materials to the online public file on a going-forward basis. These entities must complete the process of uploading the existing public file—but not the existing political file, which is not required to be transitioned to the online file—within six months of the effective date. We believe that giving these entities six months to upload existing files will provide adequate time and flexibility to complete this process.

J. Waiver

44. While we do not believe online posting of the public file, including prospective posting of the political file, will impose an unreasonable burden on the vast majority of entities subject to the rules adopted in this Order, we recognize that there may be a few entities for which the transition to an online public inspection file may prove especially difficult. In this regard, we note that some small radio stations in remote locations may not have access to reliable Internet service or may be without Internet access altogether. In addition, there may be rare instances in which a small radio station or cable operator faces undue economic or other resource limitations that make the transition to the online public file especially challenging. If an entity believes that the transition to the online file will impose an undue hardship, it may seek a waiver of the requirements adopted in this order. An entity seeking a waiver should provide the Commission with information documenting the economic hardship the station would incur in complying with online file requirements, its technical inability to do so, or such other reasons as would warrant waiver under our general waiver standards.²

² As discussed below, we are phasing-in the online file requirements for radio beginning with

K. Requirements and Issues Unique to Each Service

45. Because each service for which we are implementing online public file requirements is unique, we address each service separately below. We address any service-specific issues raised in the *NPRM* and by commenters, and also address the manner in which we will phase-in online file requirements for each service.

1. Cable Public Inspection File

a. Current Rules

46. The FCC's rules regarding records to be maintained by cable systems distinguish between records that must be retained for inspection by the public and those that must be made available to Commission representatives or local franchisors only. The rules also impose different recordkeeping requirements based on the number of subscribers to the cable system. Operators of cable systems with fewer than 1,000 subscribers are exempt from many public inspection file requirements, including the political file, sponsorship identification, EEO records, and records regarding children's commercial programming. Operators of systems with between 1,000 and 5,000 subscribers must provide certain information "upon request" but must also "maintain for public inspection" a political file, while operators of systems having 5,000 or more subscribers must "maintain for public inspection" a political file and records regarding, among other things, sponsorship identification, EEO, and advertisements in children's programming. The rules state that the public inspection file must be maintained "at the office which the system operator maintains for the ordinary collection of subscriber charges, resolution of subscriber complaints, and other business or at any accessible place in the community served by the system unit(s)."

47. Cable system political file requirements are similar to those for broadcast stations. The political file

commercial stations in the top 50 Nielsen Audio markets with 5 or more full-time employees. See, *infra*, para. 83. We delay online filing for all other radio stations for approximately two years, until March 1, 2018. *Id.* In the event a commercial radio station with between 5 and 10 full-time employees, otherwise required to transition to online filing in the first group, finds the transition especially difficult, the Commission will give careful consideration to requests by these stations for additional time to commence online filing. The Commission also will be favorably inclined to grant requests for additional time to commence online filing from very small radio stations with fewer than five full-time employees, as these stations may have limited resources and, therefore, find the transition to the online file particularly challenging.

must contain a "complete and orderly record . . . of all requests for cablecast time made by or on behalf of a candidate for public office" including the disposition of such requests. The file must also show the "schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased." With respect to certain issue advertisements, the file must disclose the name of the purchasing organization and a list of the board of directors. These records must be filed "immediately absent unusual circumstances," and must be retained for at least two years.

b. Online Public File Requirements

(i) Content Required To Be Maintained in the Online File

48. As discussed above, consistent with the rules we adopted for television broadcasters and that we adopt for other entities, we will require that cable operators upload to the online public file all documents and information that are required to be in the public file but which are not also filed in COALS or maintained by the Commission on its own Web site. The Commission will import these latter documents or information into the online public file itself. As noted in the *NPRM*, the only document that cable operators file with the Commission that must also be retained in their public inspection file is the EEO program annual report, which the Commission will upload to the online file. We will require cable systems with 1,000 or more subscribers to upload to the online file other material currently required to be maintained for public inspection.

49. While cable systems with 1,000 or more subscribers but fewer than 5,000 subscribers are currently required to provide certain materials to the public only "upon request," as proposed in the *NPRM* we will also require these systems to place these materials in the online public file to facilitate public access to these materials, except as clarified in paragraph (ii) below. The documents these systems are currently required to make available "upon request" are those required by 47 CFR 76.1701 (sponsorship identification), 76.1702 (EEO records available for public inspection), 76.1703 (commercial records for children's programming), 76.1704 (proof-of-performance test data), and 76.1706 (signal leakage logs and repair records). We disagree with NCTA that moving from an "upon request" regime to an affirmative requirement to upload documents to the online file for these systems represents a burdensome change in regulation.

While our current rules do not require that these records be maintained at a particular local site, cable operators must make this information "promptly available once a request is received." Our decision to require instead that these records be maintained in the online file does not materially alter the burden of maintaining these records and making them available upon request and is consistent with our transition to an online public file regime.

50. *Exemption from all online file requirements for small cable systems.* As we proposed in the *NPRM*, we will exempt cable systems with fewer than 1,000 subscribers from all online public file requirements. As noted above, these systems have far fewer public file requirements than larger systems and are not required to maintain a political file. NCTA and ACA support this exemption from online public file requirements. We decline, however, to adopt ACA's proposal that we extend to cable systems with fewer than 2,500 subscribers the same public file exemptions currently applicable to cable systems with fewer than 1,000 subscribers and, in addition, exempt systems with fewer than 2,500 subscribers from all online public file requirements. It is beyond the scope of this proceeding to consider expanding the number of cable systems that are exempt from current public inspection file requirements. Our goal is simply to adapt our existing public file requirements to an online format, while clarifying and streamlining certain requirements as necessary. We also decline to adopt ACA's proposal that we exempt systems with fewer than 15,000 subscribers and not affiliated with a multichannel video programming distributor ("MVPD") serving more than ten percent of all MVPD subscribers from the requirement to maintain their public inspection files in the online database and instead permit these systems to make information in these files available upon request. These entities must retain records in order to be able to make them available upon request, and we believe any additional burden resulting from a requirement that they instead be posted online is minimal and is outweighed by the benefit of making information more readily accessible without requiring members of the public to make a specific request for records from each system. We also believe ACA's proposal would confuse the public about the location of public file materials.

51. We believe that the cumulative impact of the online file requirements will not prove overly burdensome to cable systems, particularly in light of

the clarification we make below that proof-of-performance and signal leakage information is exempt from the public file. As discussed above, any system for which the transition to online filing would impose an undue hardship may request a waiver.

52. *Political file.* Consistent with the approach we adopted for television broadcasters, cable operators will not be required to upload their existing political files to the online file; rather, they will be permitted to maintain existing material in their physical political file and upload documents to the online political file only on a going-forward basis. This approach will minimize the burden of transitioning to the online file for cable operators while providing convenient access to the information most likely to be of interest to the public.

53. *Delay in political file requirements for small cable systems.* To smooth the transition for cable operators and the Commission and to allow smaller cable systems additional time to begin posting their political files online, as proposed in the *NPRM* we will phase in the political file posting requirements for small cable systems. For the next two years, we will require only systems with 5,000 or more subscribers to post their new political file documents online. We temporarily exempt other cable systems from posting their political documents to their online public file until March 1, 2018. NCTA supports delaying for two years the requirement to post new political file material online for smaller cable systems, and this delay is also consistent with the additional time we gave smaller television stations to begin posting political files online in the *Second Report and Order*.

54. We believe that it is appropriate to commence online political file requirements with larger cable systems with more subscribers as these systems are more likely to have the resources needed to address any implementation issues, should they arise. Allowing other systems additional time to begin uploading the political file will ease implementation for these smaller systems and also give the Commission time to address any concerns that may arise as larger cable systems transition to the online file. Applying this delay in online political file requirements to cable systems with fewer than 5,000 subscribers establishes a threshold that is clear and easy to implement. As discussed above, this 5,000 subscriber threshold is currently used in the public file rules to provide regulatory relief from certain recordkeeping requirements. Cable systems are therefore familiar with the use of this

threshold in the context of public file requirements, which should help avoid confusion regarding which systems are eligible for the temporary exemption.

55. As an alternative to the 5,000 subscriber cutoff, we sought comment in the *NPRM* on whether we should instead define “small cable system” for purposes of the temporary exemption from the online political file requirement as a system with fewer than 15,000 subscribers that is not affiliated with a larger operator serving more than 10 percent of all MVPD subscribers. While NCTA supports this latter definition, we believe the 5,000 subscriber cutoff is both less complicated, as it does not require calculation of the total number of MVPD subscribers as well as the percentage served by any multi-system operator, and easier to administer and implement as systems are already familiar with this cutoff in connection with public inspection file requirements. We believe that uploading new political file material to the online file will not prove significantly more burdensome than maintaining paper files, and will prove less burdensome over time as operators become more familiar with the online file.

56. *Geographic information.* We will require cable operators, when first establishing their online public file, to provide a list of the five-digit ZIP codes served by the cable system. Cable operators with more than one physical system identifier (“PSID”) will be required to identify the ZIP code(s) served by each PSID. As discussed in the *NPRM*, the Commission currently lacks precise information about the geographic areas served by cable systems, and we believe that providing information about ZIP codes served will make the information in the online file, and especially the political file, more useful to subscribers, advertisers, candidates, and others. While we proposed in the *NPRM* to require operators to provide information regarding both the ZIP codes and Designated Market Areas (“DMAs”) served by each system, we will require only ZIP code information at this time. ZIP codes correlate to geographic areas that are easily identified by the Commission and the general public. In addition, zip code areas are smaller than DMAs, providing more granular data to users of the online file. Information about ZIP codes served should also be relatively easy for operators to obtain from their billing records. We note that operators will be required to identify the ZIP codes served by each cable system only when they first establish their public files on the Commission’s

database, and to update this information only to reflect changes. Therefore, we do not believe this requirement will be unduly burdensome.

57. We reject the suggestion of NCTA and ACA that, instead of requiring cable operators to upload information about the geographic area served by the system, the FCC instead import that information from FCC Form 322 (Cable Community Registration). The communities identified on Form 322 often do not correspond to locations with defined political and/or geographic boundaries. In addition, while Form 322 does contain information about counties served by each system, this information is not as granular as ZIP code data, which is not available on Form 322. We also decline Verizon’s suggestion that we refer to franchise areas in the online file, as we believe this information is less likely to be recognizable by the public than ZIP codes.

58. We sought comment in the *NPRM* on whether, in lieu of ZIP code or DMA data, we should instead require cable operators to provide information about the census block(s) or census tract(s) served by each system. We do not require cable operators to provide this information

59. *Cable employment units.* We will also require cable operators, when first establishing the online public file for each cable system, to identify the employment unit number or numbers associated with each system. This information is required to permit the Commission to associate EEO reports filed with the Commission, which are identified by employment unit number, with the system or systems covered by each report and employment unit. As cable operators will be required to provide this information only when they first establish the online public file and when any updates are required, we do not believe this requirement will be unduly burdensome.

60. *Channel lineups.* We will require cable operators either to upload information regarding their current channel lineup to the online file, and keep this information current, or provide a link in their online file to the channel lineup maintained by the operator. While we recognize that cable systems may currently provide channel lineup information to subscribers in various ways in addition to putting it in the public file, we decline to eliminate the requirement that such information also be made available in the online public file, as advocated by NCTA and ACA. We agree with NCTA and ACA, however, that we should allow operators the option of including a link in the online public file to their own

online channel lineups in lieu of uploading channel lineups to the online file. This option will ease the burden on cable operators who maintain their channel lineups on their own Web sites and will help ensure that the channel lineup information accessible through the online public file is up to date. We emphasize that cable systems may take advantage of the option of including a link to the cable system's channel lineup in the online file in lieu of uploading the lineup only if the link is made available to all members of the public.

61. *Headend location information.* Our rules currently require the operator of every cable television system to maintain in the public inspection file the "designation and location of its principal headend." As we proposed in the *NPRM*, we will not require cable operators to include principal headend location information in the online public file. Instead, operators will have the option to instead continue to retain this information in their local public file. In comments filed in response to the *Public Notice*, NCTA asked that we consider whether we should exclude headend location information from the online public file as it is of little interest to the general public and revealing this information in a centralized database available to Internet users "raises potentially serious security risks." While we reserve judgment as to whether there are valid security concerns associated with posting the location of the principal headend online, we agree that the general public is unlikely to be interested in this information and, therefore, will permit operators who prefer to retain this information locally rather than posting it online to do so. We remind operators who choose not to post principal headend location information to the Commission's online public file that the local file where this information is retained must be made available for public inspection at any time during regular business hours.

62. *Commercial limits in children's programming.* We decline to adopt NCTA's request that we revise our public file rules to permit cable operators to provide documentation regarding compliance with the commercial limits in children's programs only in the event of a complaint. NCTA's proposal is beyond the scope of this proceeding, which is intended to adapt our current public file rules to an online format rather than changing underlying requirements. While we recognize that our current rules require cable operators operating multiple systems carrying the same

children's programs to retain in their files similar commercial limits information for these systems, we believe the transition to the online public file will significantly reduce the burden of complying with this aspect of the current children's television rules. As discussed above, the Commission has upgraded the online file database to permit entities to populate multiple files using a single upload. This feature will permit cable operators to use a single upload to post required commercial limits documentation to the online file for multiple cable systems, making compliance with the commercial limits rules easier in the online database than in the current local public file regime. In addition, as discussed above, entities are free to negotiate with third-party vendors for assistance in uploading documents to their online public inspection file using the API interface.

63. *FCC Form 325.* We invited comment in the *NPRM* on whether the Commission should make FCC Form 325 (Annual Cable Operator Report) available in the online public file. That form is filed annually by cable systems with 20,000 or more subscribers. We decline to include FCC Form 325 in the online file at this time as these forms are not currently required to be included in the public inspection file.

64. *State and local public file requirements.* We decline to adopt Verizon's request that we preempt public file requirements imposed pursuant to agreements between a cable operator and state and local franchising authorities. While such agreements may require cable operators to maintain a local file with content that may duplicate or differ from that required by the FCC's public file requirements, we do not believe it is appropriate in this proceeding to preempt such local or state requirements. We will, however, enable entities to add a separate folder to their FCC online file for content that is required to be retained by the operator for public inspection pursuant to a franchising agreement. Cable operators may choose to take advantage of this option in order to maintain in a single location all materials required to be made available to the public, pursuant to either the FCC's rules or franchising requirements. Any material uploaded to the online file solely for purposes of compliance with state or local franchise requirements must be placed in a separate folder that is clearly labeled by the operator to distinguish it from FCC public and political file materials. Entities may not place materials solely intended to comply with franchise requirements in the same folder(s) used for FCC online public and

political file materials, as this could be confusing to users of the online file. However, by creating this option, we are not changing any obligations that local franchising authorities may have imposed with respect to local inspection files. If the franchising authority has a requirement to maintain a local file that would not be satisfied by posting those documents to the FCC's online file, the cable operator must continue to maintain such a local file in compliance with the franchising agreement unless the franchising authority allows it to move those files online.

(ii) Clarification and Reorganization of the Cable Public Inspection File Rules

65. *Proof-of-performance and signal leakage information.* We clarify that proof-of-performance and signal leakage information does not need to be retained in the public inspection file or uploaded to the online file. This material must be maintained and made available to the Commission and franchisor, however, upon request. We noted in the *NPRM* that the current recordkeeping rules regarding this information are unclear. We agree with NCTA and ACA that proof-of-performance and signal leakage information is highly technical and unlikely to be of interest to the general public and does not need to be retained in the public inspection file or be made available online. We will, however, continue to require that systems retain this information and make it available to the Commission and franchisor upon request.

66. *Reorganization of 47 CFR 76.1700.* As proposed in the *NPRM*, we are reorganizing section 76.1700 of the rules both to reflect the online public file requirements adopted in this Order and to clarify cable public inspection file requirements. The cable recordkeeping requirements are currently spread over several rule sections in Part 76, Subpart U (Documents to be Maintained for Inspection), with some requirements contained in a separate rule subpart. While section 76.1700 currently cross references many of these recordkeeping requirements, it does not cite them all. The revised rule section 76.1700 in Appendix B cross references all cable public recordkeeping requirements and more clearly addresses which records must be maintained in the public inspection file, and therefore uploaded to the Commission's online file, versus those that must be made available only to the Commission or franchising authority.

2. DBS Public Inspection File

a. Current Rules

67. DBS providers are required to maintain a public inspection file containing four categories of information: Information regarding compliance with the carriage obligation for noncommercial programming (the “noncommercial set-aside”); Information regarding compliance with the commercial limits in children’s programming; certain EEO materials; and a political file. With respect to the noncommercial set-aside, the rules require that DBS providers “keep and permit public inspection of a complete and orderly record of,” among other things, measurements of channel capacity, a record of entities to whom noncommercial capacity is being provided, the rates paid by the entity to whom capacity is provided, and a record of entities requesting capacity and the disposition of those requests. With respect to compliance with the children’s programming commercial limits, DBS providers airing children’s programming must maintain records sufficient to verify compliance with the rules and “make such records available to the public.” With respect to EEO materials, DBS operators are required to maintain in their public file EEO reports and certain EEO program information.

68. DBS providers are also required to “keep and permit public inspection of a complete and orderly political file” and to “prominently disclose the physical location of the file and the telephonic and electronic means to access” it. The file must include, among other things, records of “all requests for DBS origination time” and the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased for each request. These records must be placed in the file “as soon as possible” and must be retained for at least two years. Unlike broadcasters and cable systems, DBS providers must “make available via fax, email, or by mail upon telephone request, photocopies of documents in their political files and shall assist callers by answering questions about the contents of their political files.”

b. Online Public File Requirements

69. Similar to our existing online public file requirements for television stations and the requirements we adopt for cable, broadcast radio, and satellite radio entities, we will require DBS providers to upload to the online file only material that is not already on file at the Commission. Similar to cable operators, the only document that DBS providers file with the Commission that

must also be retained in their public inspection files is the EEO program annual report, which the Commission will upload to the online file. DBS operators will be required to post to the online file channel capacity measurements and other records related to the use of and requests for noncommercial capacity, records related to compliance with children’s commercial limits, certain EEO materials, and new political file material.

70. We do not believe that requiring DBS providers to upload this material to the online file will be onerous. As compared to television and radio broadcasters and cable operators, DBS providers have the fewest number of public file requirements. We believe that the transition to an online file is particularly important for DBS because of that service’s nationwide reach. Each DBS provider is required to maintain only one public and political file for the entire U.S. at its headquarters, making in-person access very difficult. Moving this material to the online database will facilitate access to the public file by viewers nationwide.

71. Consistent with our approach for television stations and the rules we adopt for cable, broadcast radio, and satellite radio entities, we will not require DBS providers to upload their existing political files to the FCC’s online file but will permit them to maintain existing material in their physical political file and upload documents to the online political file only on a going-forward basis. DBS providers must begin uploading new public and political file material to the online public file 30 days after the Commission announces in the **Federal Register** that OMB has completed its review of this Order under the Paperwork Reduction Act (“PRA”) and approved the collection. These entities will have six months from the effective date of the rules (*i.e.*, six months after the Commission publishes a notice in the **Federal Register** announcing OMB approval under the PRA) to complete the process of uploading existing public file materials to the online file, with the exception of existing political files which entities are permitted, but not required, to upload to the Commission’s online public file.

72. We will eliminate the requirement that DBS providers honor requests by telephone for copies of political file materials if those materials are made available online. Thus, with respect to existing political file materials not required to be posted to the FCC’s online database, DBS providers must continue to answer telephone inquiries

regarding those materials, as well as requests for copies, unless they elect to post those existing political files to the FCC’s online database. In addition, as discussed above, if the FCC’s online public file database is temporarily unavailable, we will require DBS providers to make their back-up political files available to the public by, at their own choice, either an online method, via the entity’s own Web site, or by answering questions and accommodating requests for copies of political file materials made by telephone. Copies requested by telephone may be sent by fax, email, or mail, at the caller’s request. If a requester prefers access by mail, the DBS or SDARS entity may require the individual requesting documents to pay for photocopying.

73. We sought comment in the *NPRM* on how DBS political files should be organized, particularly with respect to advertisements shown on a local or hyper-local basis. We agree with DIRECTV that DBS providers should have the flexibility to organize their political files in any manner that reasonably allows users to view their contents. DBS providers offer advertisers the option to purchase advertising both nationwide and locally, and we will permit these entities to create folders for the political file that reflect the manner in which ads were purchased and shown.

74. DIRECTV notes that the political file rules require DBS providers to include in the political file a significant amount of information about certain political ad buyers and, in some cases, the nature of the issue being advertised. According to DIRECTV, some political advertising buyers have refused to provide this information. DIRECTV requests that the Commission clarify that political advertisers must present DBS providers with sufficient information to comply with the political file requirements. We remind DBS providers, as well as other entities subject to our political broadcasting rules, that they are responsible for ensuring that their political files are complete and accurate as required by the Communications Act and the Commission’s rules.

3. Broadcast Radio Public Inspection File

a. Current Rules

75. The public inspection file rules for radio broadcasters are generally similar to those for television broadcasters. Every permittee or licensee of an AM or FM station in the commercial or noncommercial educational broadcast

service must maintain a public inspection file containing, among other things, FCC authorizations, applications, contour maps, ownership reports, EEO materials, issues/programs lists, and time brokerage (also known as "local marketing") and joint sales agreements. The file must be maintained at the station's main studio.

76. Radio stations are required to maintain a political file as part of their public inspection file. The political file must contain a "complete and orderly record" of requests for broadcast time made by or on behalf of a candidate for public office. The file must also show the "schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased." With respect to issue advertisements, stations must disclose the name of the purchasing organization and a list of the board of directors. These records must be filed "as soon as possible, meaning immediately, absent unusual circumstances," and must be retained for at least two years.

b. Online Public File Requirements

(i) Content Required To Be Maintained in the Online File

77. We will require radio broadcast licensees to upload to the online public file all documents and information that are required to be in the public file but that are not also filed in CDBS (or LMS) or otherwise maintained by the Commission on its own Web site. Thus, radio stations must upload citizen agreements, certain EEO materials, issues/programs lists, local public notice announcements, time brokerage agreements, joint sales agreements, materials related to FCC investigations or complaints (other than investigative information requests from the Commission), and any new political file material. The Commission will import to the online file documents and information required to be in the public file that are electronically filed in CDBS (or LMS), including authorizations, applications and related materials, ownership reports and related materials, EEO Reports, The Public and Broadcasting manual, and Letters of Inquiry and other investigative requests from the Commission, unless otherwise directed by the inquiry itself.

78. *FCC Form 302-AM*. FCC Form 302-AM (Application for AM Broadcast Station License) is available for paper filing only, unlike the application for FM station licenses (FCC Form 302-FM) which must be filed electronically. We will permit AM stations that must retain Form 302-AM in their public inspection file to choose either to retain the form

locally for public inspection or upload the form themselves to the Commission's online database. NAB urges the Commission to upgrade its database to reduce the unequal burden on AM stations that are unable to file forms electronically. We are working on upgrading our broadcast licensing database, including FCC Form 302-AM, but we will not make changes to the filing requirements in this item. Our focus is on moving the public inspection file to the Commission's online database; other broadcast licensing database improvements are beyond the scope of this proceeding.

79. *Political file*. As proposed in the *NPRM*, and consistent with the approach we adopted for television broadcasters and that we adopt here for other entities, broadcast radio licensees will not be required to upload their existing political files to the online file, but instead will be permitted to maintain existing material in their local political file and upload documents to the online political file only on a going-forward basis. This approach will minimize the burden of transitioning to the online file.

80. *Delay in implementation for stations with fewer resources*. In light of the unique economic circumstances faced by radio broadcasters, we believe it is appropriate to implement the online public file by imposing requirements, at first, only on stations with more resources. Some radio commenters expressed opposition to the Commission's proposal to include radio broadcasters in the online file. Some argue that the radio industry already faces significant economic challenges as the result of competition from other services that would be exacerbated by the imposition of further regulatory requirements. Others question the need to expand the online file to radio, noting the limited number of requests radio stations receive to view the public file, or noting that the Petition for Rulemaking did not address broadcast radio and advocated only that cable operators and DBS providers be added to the online file.

81. Most radio commenters focus in particular on the impact on small stations, including small NCE stations, of including broadcast radio stations in the online file. In general, these commenters argue that many radio stations are very small with limited financial and other resources, face constant economic pressure, and would find the transition to the online file very burdensome.

82. With respect to NCE radio stations, many commenters advocate that all such stations be permanently

exempt from online filing. Many NCE radio commenters argue that these stations are prohibited from accepting paid political and issue advertising, making access to their political file records less necessary than for commercial stations. Others contend that NCE stations often have more limited financial resources and smaller staffs than commercial stations and rely on donations for the majority of their funding, making the burden of transitioning to the online file particularly challenging. If NCE stations are not exempt from online filing, the Educational Media Foundation argues they should be in the last group of stations required to transition to the online file so that any issues with the online filing process can be resolved before NCEs are required to utilize scarce resources in uploading online files.

83. As we proposed in the *NPRM*, we will commence online public file requirements for radio with commercial stations in markets 1 through 50, as defined by Nielsen Audio (formerly Arbitron), that have five or more full-time employees. We will delay all mandatory online filing for other radio stations for approximately two years, until March 1, 2018. Commencing on this date, all NCE radio stations, all commercial stations in markets below the top 50 as well as those outside all markets, and all commercial top 50 market stations with fewer than five full-time employees must begin placing all new public and political file material in the online file. In addition, as of this date, these stations must have placed all their existing public file material in the online file, with the exception of their existing political file material. Stations transitioning to the online file in the second wave will have approximately two years in which to upload their existing public file material to the online file. Accordingly, we do not believe these stations need an additional six months beyond the March 1, 2018 transition date in which to upload existing public file material.

84. We decline to permanently exempt any category of radio stations from online filing. All broadcasters have public and political inspection file requirements, and we believe that all these files should ultimately be moved to the Commission's online database to improve accessibility and, over time, reduce the covered entities' administrative costs of maintaining these files. We note that, unlike small cable systems which are exempt from the political file as well as other public file requirements, small radio stations are not exempt from the political file

requirement. We also decline to categorically exempt part of the public inspection file from online filing, as proposed by some commenters, with the exception of the existing political file and the correspondence file. Our experience to date with television stations suggests that most entities will not encounter undue difficulties in completing the transition to online filing. While we recognize that some radio broadcasters face significant economic and other resource constraints, we believe that most radio stations will be capable of completing the transition to the online file and are more likely to reap benefits over time in terms of reduced administrative costs if they post their entire public and political files online. Stations that face unique economic or other impediments that make transitioning to the Commission's online file especially difficult may request a waiver.

85. We believe that commencing online file requirements with commercial stations in the top 50 markets with 5 or more full-time employees will ensure that the first group of radio stations to transition to the online file will have sufficient financial and staff resources to address any implementation issues that may arise. Commenters who addressed this issue generally agreed that it is reasonable to phase in online filing for radio stations starting with larger, commercial stations in the top 50 markets. We believe that it is appropriate to delay online filing for other radio stations as they are likely to have fewer financial and other resources and may need additional time to prepare for their transition to the online file. As we discussed in the *NPRM*, radio stations with fewer than 5 full-time employees are exempt from many EEO requirements, including the requirement to file FCC Form 396 (Broadcast Equal Employment Opportunity Program Report). We believe that defining the class of small radio stations based on this EEO exemption makes sense as it is a standard with which stations are already familiar and it provides a clear, bright line test for determining which stations are temporarily exempt from online filing. In addition, information regarding the stations that are exempt from certain EEO requirements is readily available to the Commission and the public, as this information is filed with the FCC and is available on the FCC's Web site.

86. The 5 full-time employee threshold in our EEO rules applies to station employment units. A station employment unit is defined as "a

station or a group of commonly owned stations in the same market that share at least one employee." We will apply the 5 full-time employee threshold for purposes of the temporary exemption from radio online file requirements to station employment units. Thus, where a radio station is commonly owned with one or more other radio or television stations in the same market that share at least one employee, and the station employment unit has five or more full-time employees, each radio station in the group will be considered to exceed the threshold for the temporary exemption from the online public file.

87. We reject the suggestion that we instead use a ten or fifteen-employee threshold for purposes of the temporary exemption from online public file requirements. The commenters that advocate a standard based on a larger number of employees argue generally that this approach better reflects the economic reality of radio versus television broadcasting and will better protect against adverse impacts to smaller radio stations. We believe, however, that a top-50 market commercial station with a staff of five or more full-time employees will have sufficient resources to be able to manage the transition to the online public file in the first wave of radio stations. Stations that face undue economic or other impediments to the transition may request a waiver.

88. We will permit radio stations that are not required to transition to the online file until March 1, 2018 voluntarily to transition to the online file before that date. As discussed above, entities that choose to transition to the online file early must upload all new public and political file documents to the online file on a going-forward basis. All commenters who addressed this issue agree that radio stations that are exempt from online filing should be permitted to use the online file voluntarily.

89. *Contour map and main studio information.* The Commission will create contour maps for the online file for both AM and FM stations based on existing data. Radio stations are currently required to include in their public inspection files "any service contour maps submitted with any application" together with "any other information in the application showing service contours and/or main studio and transmitter location." While we sought comment in the *NPRM* on whether we should require AM stations to upload contour maps to the online file given the complexities of AM contour mapping, we conclude that it is not necessary to require AM stations to upload contour

maps. Instead, the Media Bureau will create contour maps for purposes of the online file for both AM and FM stations.

90. As we proposed in the *NPRM*, we will require stations to provide information to the online file regarding the location of the station's main studio. The Commission's rules do not currently require the reporting of this information, and it is not included on contour maps. We believe that information regarding the location of the main studio will help members of the public to engage in an active dialogue with radio licensees regarding their service, which is one of the goals of this proceeding. This information is also necessary to inform the public of the location of the correspondence file and existing political file (until its retention period expires in two years), both of which will be publicly available at the station. In addition, back-up political files will be available at the main studio (unless placed on a station Web site) if the online file database becomes unavailable. Therefore, consistent with the approach we took with respect to television stations, we will require broadcast radio stations to include in the online public file the station's main studio address and telephone number, and the email address of the station's designated contact for questions about the public file. In addition, stations with a main studio located outside of their community of license must list the location of the correspondence file and existing political file, as well as the required local or toll free number.

91. *Donor Lists.* NCE stations are required to retain in the public inspection file lists of donors supporting specific programs. As we proposed in the *NPRM* and as we required for television broadcasters in the *Second Report and Order*, we will require noncommercial radio broadcasters to include donor lists in their online public files. A number of NCE radio commenters argued that donor lists should not be included in the online file in order to protect the privacy of supporters of noncommercial radio broadcasting. National Religious Broadcasters and other commenters argue generally that donors will be less likely to contribute if their names are made public online rather than only in the local public file. National Religious Broadcasters also argues that donors to these stations could become targets of unwanted attention or even crime if donor information is available online.

92. We are not persuaded that making donor information available online will affect contributions to noncommercial radio programming or create significant problems for donors. NCE television

stations have been posting donor lists in their online public files and have not reported any problems. The benefits of placing the public file online, thereby facilitating public access to this information, are substantial, and we decline to exclude donor lists from this requirement on the basis of unsubstantiated claims of commercial harm. We are not requiring broadcasters to make any information publicly available that stations are not already required to make public. Moreover, unlike letters from the public, donor lists do not contain personal information other than the name of the donor. They are not required to include information about the amounts contributed, the donor's address or email, or other potentially sensitive information. Thus, we do not believe that requiring that the list of donor names be posted online, rather than maintained at the station, raises fundamental privacy concerns. Nonetheless, we recognize the concerns expressed by the National Religious Broadcasters. To the extent a licensee fears that online disclosure of donor information with respect to particular programs could discourage a donor from making contributions to the station or subject donors to unwanted attention or crime, the licensee may seek a waiver of the online posting requirement.³

93. National Religious Broadcasters also argues that mandatory Internet posting of the identity of donors to NCE radio stations raises First Amendment concerns. They argue that many NCE stations rely on a talk format and carry programming addressing political or social issues that are unpopular or controversial. According to National Religious Broadcasters, the First Amendment has been held to require, in

³ As with any of our rules, stations may request a waiver of the requirement to post donor information to the online public file under our general waiver standards. See 47 CFR 1.3. Waivers of the requirement to post donor lists to the online public file will be provided, on a program by program basis to stations that submit a showing that meets the general waiver standards. Any such waiver granted by the Commission will be limited to two years. A party may seek a renewal of the waiver after the two-year period. Stations who seek a waiver of the requirement to include information regarding the donors to particular programs in the online file are not required to post this donor information to the online file but may instead retain this information in the station's local public file until Commission review of the waiver request (and any further judicial review) is complete. Information regarding donors supporting particular programs must at all times be retained either in the online file or, if a waiver request has been filed or has been granted or is still under review, in the local public file. If donor information is not included in the online public file the station must include a notation in the online file that this information is available in the station's local public file.

some instances, protection of the privacy of persons who support certain social or political causes, particularly from Internet disclosure. We disagree that the First Amendment requires that information regarding donors to specific NCE programs be excluded from the online file. Making such already-public records available via the Internet does not change the existing requirement that donors be disclosed in the public file; it only changes how they are disclosed. The donor list provides the only complete information regarding program sponsorship on noncommercial stations, public disclosure of which is premised on the basic concept that the public is entitled to know by whom they are being persuaded.

(ii) Content Exempt From the Online File

94. *Letters from the public.* We will exempt letters and emails from the public from the online file and instead require broadcast radio stations to retain such material at the station in a correspondence file. This is the approach we took with respect to television stations in the *Second Report and Order* and the approach we proposed to take with respect to radio broadcasters in the *NPRM*. In the *Second Report and Order*, the Commission determined that including letters and emails from the public in the online file could risk exposing personally identifiable information and that requiring stations to redact such information prior to uploading these documents would be overly burdensome. The Commission determined that letters and emails from the public should be maintained at the station's main studio either in a paper file or electronically on a computer. Further, the Commission clarified that, as required under the current public inspection file rules, this file should include all letters and emails from the public regarding operation of the station unless the letter writer has requested that the letter not be made public or the licensee feels that it should be excluded due to the nature of its content. Finally, the Commission determined that it would not require stations to retain social media messages in their correspondence file. We will apply these same determinations to radio broadcasters.

95. *Named State Broadcasters Associations* urges us to consider eliminating the requirement that broadcasters retain letters from the public in the public inspection file, noting that this requirement does not apply to cable operators. This commenter argues that if a station could

move its entire public file online and eliminate the need to host a local public file and ensure public access to it, the overall burden of maintaining the public inspection file would be reduced.

Consistent with our decision regarding the television correspondence file,⁴ we decline to eliminate in this proceeding the requirement that commercial radio stations retain correspondence from the public, as our focus is on moving the public file to an online regime and not on changing its underlying requirements. While we recognize that our decision to require a correspondence file to be retained locally will prevent stations from realizing the full cost savings of moving their public files online, as a practical matter stations appear to receive few requests to view letters from the public, relieving to some extent the impact of the requirement to retain a local correspondence file.

4. Satellite Radio Public Inspection File
a. Current Rules

96. Licensees in the satellite radio service are required to maintain a public file with two categories of material. First, SDARS licensees are required to comply with EEO requirements similar to those imposed on broadcasters, including the requirement to file EEO reports and to maintain those reports in their public file together with other EEO program information. Second, satellite radio licensees are required to maintain a political file. In addition, SiriusXM, the current, sole U.S. SDARS licensee, is required to retain a third category of material in the public file. SiriusXM made a voluntary commitment to make capacity available for noncommercial educational and informational programming, similar to the requirement imposed on DBS providers, in connection with its merger application. As part of its approval of the merger, the Commission required that the merged entity reserve channels for educational and informational programming, offer those channels to qualified programmers, and comply with the public file requirements of section 25.701(f)(6) of the Commission's rules, which sets forth public file requirements for the noncommercial set-aside for DBS providers.

b. Online Public File Requirements

97. As we proposed in the *NPRM*, we will treat satellite radio licensees in the same manner as television, cable, DBS,

⁴ As noted above, however, the Commission will initiate a separate proceeding to consider whether to eliminate the correspondence file requirement for commercial broadcasters.

and broadcast radio entities by requiring them to upload to the online file only material that is not already on file at the Commission. The only documents that DBS providers file with the Commission that must also be retained in their public inspection files are EEO forms 396 and 397. The Commission will upload these documents to the online file. We do not believe that requiring SDARS licensees to upload other public file materials to the online file will be unduly burdensome as the number of public file requirements for this service is fewer than for other services discussed in this item and because the current, sole U.S. SDARS licensee has ample financial resources to comply with this online file requirement. We also believe that, as with DBS, the transition to an online file is particularly important for satellite radio because of that service's nationwide reach and the fact that the current licensee maintains only one public and political file for the entire U.S., making in-person access very difficult.

98. With respect to the political file, we will treat satellite radio similar to DBS, as they are both nationwide services with few licensed service providers. Similar to the requirement we adopt for the DBS political file and consistent with our approach for television stations, cable systems, and radio broadcasters, SDARS licensees will not be required to upload their existing political files to the online file but will instead be permitted to maintain existing material in their physical political file, and upload documents to the online political file only on a going-forward basis. SDARS licensees must begin uploading new public and political file material to the online public file 30 days after the Commission announces in the **Federal Register** that OMB has completed its review of this Order under the Paperwork Reduction Act ("PRA") and approved the collection. These licensees will have six months from the effective date of the rules (*i.e.*, six months after the Commission publishes a notice in the **Federal Register** announcing OMB approval under the PRA) to complete the process of uploading existing public file materials to the online file, with the exception of existing political files which entities are permitted, but not required, to upload to the Commission's online public file.

99. As discussed above, if the FCC's online public file database is temporarily unavailable, we will require SDARS licensees to make their back-up political files available to the public by, at their own choice, either an online method, via the entity's own Web site,

or by answering questions and accommodating requests for copies of political file materials made by telephone. We believe it is appropriate to require SDARS licensees to provide access to political file documents either online or by telephone as these entities provide service nationwide making in-person access to these files difficult for most subscribers. In addition, SDARS licensees have the option to provide online access to back-up political file materials in lieu of responding to telephone inquiries regarding these materials. Finally, similar to our decision regarding the organization of DBS political files, we will permit SDARS licensees the flexibility to organize their political files in any manner that reasonably allows users to review their contents and reflects how ads were purchased and shown.

5. Open Video System Operators

100. We decline at this time to require Open Video System ("OVS") operators to use the Commission's online public inspection file. We noted in the *NPRM* that OVS operators have several public file obligations and sought comment on whether these entities should be required to make this information available in the online public file. No commenters addressed this issue. We may revisit the issue of OVS use of the online file at a later time.

IV. Procedural Matters

A. Final Regulatory Flexibility Act Analysis

101. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA") an Initial Regulatory Flexibility Act Analysis ("IRFA") was incorporated in the *Notice of Proposed Rulemaking* in this proceeding. The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. The Commission received no comments on the IRFA. This Final Regulatory Flexibility Act Analysis ("FRFA") conforms to the RFA.

1. Need for, and Objectives of, the Second Report and Order

102. One of a television broadcaster's fundamental public interest obligations is to air programming responsive to the needs and interests of its community of license. To ensure that stations meet this obligation, the Commission relies on viewers and listeners as an important source of information about the nature of a station's programming, operations, and compliance with Commission rules. To provide the public with access to information about station operations,

the Commission's rules have long required television and radio broadcast stations to maintain a physical public inspection file, including a political file, at their respective stations or headquarters and to place in the file records that provide information about station operations. Cable operators, satellite TV (also referred to as "Direct Broadcast Satellite" or "DBS") providers, broadcast radio licensees, and satellite radio (also referred to as "Satellite Digital Audio Radio Services" or "SDARS") licensees also have public and political file requirements modeled, in large part, on the longstanding broadcast requirements.

103. In 2012, the Commission adopted online public file rules for broadcast television stations that required them to post public file documents to a central, FCC-hosted online database rather than maintaining the files locally at their main studios. Our goal was to modernize the procedures television broadcasters use to inform the public about how they are serving their communities, to make information concerning broadcast service more accessible to the public and, over time, to reduce the cost of broadcasters' compliance. This *Report and Order* extends our modernization effort to include the public file documents that cable operators, satellite TV (also referred to as "Direct Broadcast Satellite" or "DBS") providers, broadcast radio licensees, and satellite radio (also referred to as "Satellite Digital Audio Radio Services" or "SDARS") licensees are required to maintain. By including these services in our transition to an online public inspection file regime, our goal is to continue our effort to harness the efficiencies made possible by digital technology to make public file information more readily available while at the same time minimizing the burden of maintaining the file.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

104. No comments were filed in response to the IRFA.

3. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

105. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental

jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

106. Cable Companies and Systems. The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide. Industry data shows that there were are currently 660 cable operators. Of this total, all but ten cable operators nationwide are small under this size standard. In addition, under the Commission’s rate regulation rules, a “small system” is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,629 cable systems nationwide. Of this total, 4,057 cable systems have less than 20,000 subscribers, and 572 systems have 20,000 or more subscribers, based on the same records. Thus, under this standard, we estimate that most cable systems are small entities.

107. Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.” There are approximately 54 million cable video subscribers in the United States today. Accordingly, an operator serving fewer than 540,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that all but ten incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the

number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

108. Direct Broadcast Satellite (DBS) Service. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS, by exception, is now included in the SBA’s broad economic census category, Wired Telecommunications Carriers, which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 3,188 firms that operated for that entire year. Of this total, 2,940 firms had fewer than 100 employees, and 248 firms had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small entities. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled “Cable and Other Program Distribution.” As of 2002, the SBA defined a small Cable and Other Program Distribution provider as one with \$12.5 million or less in annual receipts. Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network. Each currently offers subscription services. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined under the superseded SBA size standard would have the financial wherewithal to become a DBS service provider.

109. Radio Broadcasting. The SBA defines a radio broadcast station as a small business if such station has no more than \$38.5 million in annual receipts. Business concerns included in this industry are those “primarily engaged in broadcasting aural programs by radio to the public.” According to review of the BIA Publications, Inc. Master Access Radio Analyzer Database as of November 26, 2013, about 11,331 (or about 99.9 percent) of the then number of commercial radio stations (11,341) have revenues of \$35.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial radio stations to be 4,090. The Commission does not compile and otherwise does

not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. These stations rely primarily on grants and contributions for their operations, so we will assume that all of these entities qualify as small businesses. We note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. This estimate, therefore, likely overstates the number of small entities that might be affected, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

110. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also, as noted, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

111. Satellite Radio. The rules proposed in this *NPRM* would affect the sole, current U.S. provider of satellite radio (“SDARS”) services, XM-Sirius, which offers subscription services. XM-Sirius reported revenue of \$3.8 billion in 2013 and a net income of \$377 million. In light of these figures, we believe it is unlikely that this entity would be considered small.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

112. The rule changes adopted in the *Report and Order* affect reporting, recordkeeping, or other compliance requirements. Cable, DBS, broadcast radio, and SDARS entities are currently required to maintain a “local” copy of their public inspection files. The *Report and Order* requires these entities to submit documents, including political file materials, for inclusion in an online public file hosted on the Commission’s Web site. Items in the public file that are required to be filed with the Commission will be automatically

imported into the entity's online public file. Entities will only be responsible for uploading to the online file items that are not required to be filed with the Commission under any other rule. The *Report and Order* also excludes some items from the online public file requirement, such as the existing political file, which must continue to be maintained locally until the end of the retention period unless voluntarily uploaded to the online file. Office staff will be able to upload documents to the online file in most cases; no professional skills will generally be necessary to perform that task.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

113. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

114. The *Report and Order* includes a number of measures designed to minimize the effort and cost entities must undertake to move their public files online. Specifically, we require entities to upload to the online file only public file documents that are not already on file with the Commission or that the Commission maintains in its own database. We also exempt existing political file material from the online file requirement and require only that political file documents be uploaded on a going-forward basis. In addition, with only minor exceptions—requiring cable operators to provide information about the geographic areas they serve and the employment units associated with each cable system, clarifying the documents required to be included in the cable public file, and requiring cable, DBS, broadcast radio, and SDARS entities to provide certain location and contact information for their local file—we do not adopt new or modified public inspection file requirements in this proceeding. Our goal is to adapt our existing public file requirements to an online format. While we recognize that entities may incur a modest, one-time transitional cost to upload some portions of their existing public file to

the online database, we believe this initial expense will be offset by the public benefits of online disclosure. We also believe that, over time, entities will benefit from the lower costs of sending documents electronically to the Commission as opposed to creating and maintaining a paper file at the local or headquarters' office or main studio and assisting the public in accessing it.

115. In addition, with respect to radio licensees the *Report and Order* commences the transition to an online file with commercial stations in larger markets with five or more full-time employees, while postponing for two years all online file requirements for other radio stations. This delay will give these stations additional time to familiarize themselves with the online filing requirements and will permit them to spread out their transition to the online file over a period of two years. The *Report and Order* also exempts small cable systems temporarily from the requirement to commence uploading new political file material to the online public file and exempts very small cable systems from all requirements to upload documents to the Commission's online database.

116. Overall, we believe that the *Report and Order* appropriately balances the interests of the public against the interests of the entities who will be subject to the rules, including those that are smaller entities.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

None.

B. Report to Congress

117. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

C. Paperwork Reduction Act Analysis

118. This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). The requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, we previously sought specific comment on how the Commission might further reduce the information collection

burden for small business concerns with fewer than 25 employees.

V. Ordering Clauses

119. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 303(r), 315, and 335 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), 315, and 335 this Report and Order *is adopted*.

120. *It is further ordered* that the requirement that cable systems with 1,000 or more subscribers, DBS providers, SDARS licensees, and large market commercial radio stations with five or more full-time employees place their new public inspection file documents on the Commission-hosted online public file *shall be effective* 30 days after the Commission publishes a notice in the **Federal Register** announcing OMB approval. These entities will be responsible for placing existing public file documents into the Commission-hosted online public file within six months after the Commission published a notice in the **Federal Register** announcing OMB approval. Entities will not be required to place in the online public file existing political file material. Cable systems with 1,000 or more subscribers but fewer than 5,000 subscribers will not be required to place new political file material in the Commission's online file until March 1, 2018. In addition, until March 1, 2018, all NCE radio broadcast stations, commercial radio broadcast stations in the top 50 markets with fewer than five full-time employees, and all commercial radio broadcast stations in markets below the top 50 or outside all markets are exempt from all requirements to place public file materials in the online public file. As of March 1, 2018 these entities must place all existing public file material in the online public file, with the exception of existing political file material, and must begin placing all new public and political file material in the online file. Commercial broadcast radio licensees must continue to retain letters and emails from the public in the local public file and will not be permitted to upload those materials to the online public file.

121. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

122. *It is further ordered* that the Commission *shall send* a copy of this Report and Order in a report to Congress and the Government Accountability

Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 25

Direct Broadcast Satellite, Satellite radio, Reporting and recordkeeping requirements

47 CFR Part 73

Radio, Recording and recordkeeping requirements

47 CFR Part 76

Cable television, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 25, 73, and 76 as follows:

PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: Interprets or applies sections 4, 301, 302, 303, 307, 309, 319, 332, 705, and 721 of the Communications Act, as amended, 47 U.S.C. 154, 301, 302, 303, 307, 309, 319, 332, 705, and 721, unless otherwise noted.

■ 2. Section 25.601 is amended by revising the last sentence to read as follows:

§ 25.601 Equal employment opportunities.

* * * Notwithstanding other EEO provisions within these rules, a licensee or permittee of a direct broadcast satellite station operating as a broadcaster, and a licensee or permittee in the satellite DARS service, must comply with the equal employment opportunity requirements set forth in 47 CFR part 73.

■ 3. Section 25.701 is amended by revising the section heading, paragraph (d) introductory text, and paragraph (d)(2), removing paragraph (d)(3), and revising paragraphs (e)(3) and (f)(6) to read as follows:

§ 25.701 Other DBS Public interest obligations.

* * * * *

(d) Political file. Each DBS provider shall maintain a complete and orderly political file.

* * * * *

(2) All records required to be retained by this section must be placed in the political file as soon as possible and must be retained for a period of two years. After the effective date of this

section, DBS providers shall place all new political file material required to be retained by this section in the online file hosted by the Commission.

(e) * * *

(3) DBS providers airing children's programming must maintain in the online file hosted by the Commission records sufficient to verify compliance with this rule. Such records must be maintained for a period sufficient to cover the limitations period specified in 47 U.S.C. 503(b)(6)(B).

* * * * *

(f) * * *

(6) Public file. (i) In addition to the political file requirements in § 25.701, each DBS provider shall maintain in the online file hosted by the Commission a complete and orderly record of:

(A) Quarterly measurements of channel capacity and yearly average calculations on which it bases its four percent reservation, as well as its response to any capacity changes;

(B) A record of entities to whom noncommercial capacity is being provided, the amount of capacity being provided to each entity, the conditions under which it is being provided and the rates, if any, being paid by the entity;

(C) A record of entities that have requested capacity, disposition of those requests and reasons for the disposition.

(ii) All records required by paragraph (i) of this paragraph shall be placed in the online file hosted by the Commission as soon as possible and shall be retained for a period of two years.

(iii) Each DBS provider must also place in the online file hosted by the Commission the records required to be placed in the public inspection file by § 25.701(e) (commercial limits in children's programs) and by § 25.601 and 47 CFR part 76, subpart E (equal employment opportunity requirements) and retain those records for the period required by those rules.

(iv) Each DBS provider must provide a link to the online public inspection file hosted on the Commission's Web site from the home page of its own Web site, if the provider has a Web site, and provide on its Web site contact information for a representative who can assist any person with disabilities with issues related to the content of the public files. Each DBS provider also must include in the online public file hosted by the Commission the address of the provider's local public file, if the provider retains documents in the local public file that are not available in the Commission's online file, and the name, phone number, and email address of the

provider's designated contact for questions about the public file.

* * * * *

■ 4. Section 25.702 is added to read as follows:

§ 25.702 Other SDARS Public interest obligations.

(a) Political broadcasting requirements. The following political broadcasting rules shall apply to all SDARS licensees: 47 CFR 73.1940 (Legally qualified candidates for public office), 73.1941 (Equal opportunities), 73.1942 (Candidate rates), and 73.1944 (Reasonable access).

(b) Political file. Each SDARS licensee shall maintain a complete and orderly political file.

(1) The political file shall contain, at a minimum:

(i) A record of all requests for SDARS origination time, the disposition of those requests, and the charges made, if any, if the request is granted. The "disposition" includes the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased; and

(ii) A record of the free time provided if free time is provided for use by or on behalf of candidates.

(2) SDARS licensees shall place all records required by this section in the political file as soon as possible and shall retain the records for a period of two years. After the effective date of this section, SDARS licensees shall place all new political file material required to be retained by this section in the online public file hosted by the Commission.

(c) Public inspection file. (1) Each SDARS applicant or licensee must also place in the online public file hosted by the Commission the records required to be placed in the public inspection file by 47 CFR 25.601 and 73.2080 (equal employment opportunities (EEO)) and retain those records for the period required by those rules.

(2) Each SDARS licensee must provide a link to the public inspection file hosted on the Commission's Web site from the home page of its own Web site, if the licensee has a Web site, and provide on its Web site contact information for a representative who can assist any person with disabilities with issues related to the content of the public files. Each SDARS licensee also must include in the online public file the address of the licensee's local public file, if the licensee retains documents in the local public file that are not available in the Commission's online file, and the name, phone number, and email address of the licensee's

designated contact for questions about the public file.

* * * * *

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

■ 6. Section 73.1943 is amended by revising paragraph (d) to read as follows:

§ 73.1943 Political file.

* * * * *

(d) *Location of the file.* A licensee or applicant must post all of the contents added to its political file after the effective date of this paragraph in the political file component of its online public file hosted by the Commission. A station must retain in its political file maintained at the station, at the location specified in § 73.3526(b) or § 73.3527(b), all material required to be included in the political file and added to the file prior to the effective date of this paragraph, unless the station elects voluntarily to place these materials in the Commission's online public file. The online political file must be updated in the same manner as paragraph (c) of this section.

■ 7. Section 73.3526 is amended by revising paragraph (b)(1) through (3) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(b) * * *

(1) For radio licensees temporarily exempt from the online public file hosted by the Commission, as discussed in paragraph (b)(2) of this section, a hard copy of the public inspection file shall be maintained at the main studio of the station, unless the licensee elects voluntarily to place the file online as discussed in paragraph (b)(2) of this section. For all licensees, letters and emails from the public, as required by paragraph (e)(9) of this section, shall be maintained at the main studio of the station. An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license or at its proposed main studio.

(2)(i) A television station licensee or applicant, and any radio station licensee or applicant not temporarily exempt as described in this paragraph, shall place the contents required by paragraph (e) of this section of its public inspection file in the online public file hosted by the Commission, with the exception of

letters and emails from the public as required by paragraph (e)(9) of this section, which shall be retained at the station in the manner discussed in paragraph (b)(1) of this section; and the political file as required by paragraph (e)(6) of this section, as discussed in paragraph (b)(3) of this section. Any radio station not in the top 50 Nielsen Audio markets, and any radio station with fewer than five full-time employees, shall continue to retain the public inspection file at the station in the manner discussed in paragraph (b)(1) of this section until March 1, 2018. However, any radio station that is not required to place its public inspection file in the online public file hosted by the Commission before March 1, 2018 may choose to do so, instead of retaining the public inspection file at the station in the manner discussed in paragraph (b)(1) of this section.

(ii) A station must provide a link to the public inspection file hosted on the Commission's Web site from the home page of its own Web site, if the station has a Web site, and provide contact information on its Web site for a station representative that can assist any person with disabilities with issues related to the content of the public files. A station also is required to include in the online public file the station's main studio address and telephone number, and the email address of the station's designated contact for questions about the public file. To the extent this section refers to the local public inspection file, it refers to the public file of an individual station, which is either maintained at the station or on the Commission's Web site, depending upon where the documents are required to be maintained under the Commission's rules.

(3)(i) A licensee or applicant shall place the contents required by paragraph (e)(6) of this section of its political inspection file in the online public file hosted by the Commission. Political inspection file material already in existence 30 days after the effective date of this provision, if not placed in the online public file hosted by the Commission, shall continue to be retained at the station in the manner discussed in paragraph (b)(1) of this section until the end of its retention period.

(ii) Any television station not in the top 50 DMAs, and any station not affiliated with one of the top four broadcast networks, regardless of the size of the market it serves, shall continue to retain the political file at the station in the manner discussed in paragraph (b)(1) of this section until July 1, 2014. For these stations, effective July

1, 2014, any new political file material shall be placed in the online file hosted by the Commission, while the material in the political file as of July 1, 2014, if not placed in the Commission's Web site, shall continue to be retained at the station in the manner discussed in paragraph (b)(1) of this section until the end of its retention period. However, any station that is not required to place its political file in the online file hosted by the Commission before July 1, 2014 may choose to do so, instead of retaining the political file at the station in the manner discussed in paragraph (b)(1) of this section.

(iii) Any radio station not in the top 50 Nielsen Audio markets, and any radio station with fewer than five full-time employees, shall continue to retain the political file at the station in the manner discussed in paragraph (b)(1) of this section until March 1, 2018. For these stations, effective March 1, 2018, any new political file material shall be placed in the online public file hosted by the Commission, while the material already existing in the political file as of March 1, 2018, if not placed in the online public file hosted by the Commission, shall continue to be retained at the station in the manner discussed in paragraph (b)(1) of this section until the end of its retention period. However, any station that is not required to place its political file on the Commission's Web site before March 1, 2018, may choose to do so, instead of retaining the political file at the station in the manner discussed in paragraph (b)(1) of this section.

* * * * *

■ 8. Section 73.3527 is amended by revising paragraph (b)(1) and (2) to read as follows:

§ 73.3527 Local public inspection file of noncommercial educational stations.

* * * * *

(b) * * *

(1) For radio licensees, a hard copy of the public inspection file shall be maintained at the main studio of the station until March 1, 2018, except that, as discussed in paragraph (b)(2)(ii) of this section, any radio station may voluntarily place its public inspection file in the online public file hosted by the Commission before March 1, 2018, if it chooses to do so, instead of retaining the file at the station. An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license or at its proposed main studio.

(2)(i) A noncommercial educational television station licensee or applicant shall place the contents required by

paragraph (e) of this section of its public inspection file in the online public file hosted by the Commission, with the exception of the political file as required by paragraph (e)(5) of this section, which may be retained at the station in the manner discussed in paragraph (b)(1) of this section until July 1, 2014. Effective July 1, 2014, any new political file material shall be placed in the online public file hosted by the Commission, while the material in the political file as of July 1, 2014, if not placed in the Commission's online public file, shall continue to be retained at the station in the manner discussed in paragraph (b)(1) of this section until the end of its retention period. However, any noncommercial educational station that is not required to place its political file in the online public file hosted by the Commission before July 1, 2014 may choose to do so instead of retaining the political file at the station in the manner discussed in paragraph (b)(1) of this section.

(ii) Beginning March 1, 2018, noncommercial educational radio station licensees and applicants shall place the contents required by paragraph (e) in the online public inspection file hosted by the Commission. For these stations, effective March 1, 2018, any new political file material shall be placed in the Commission's online public file, while the material in the political file as of March 1, 2018, if not placed in the Commission's online public file, shall continue to be retained at the station in the manner discussed in paragraph (b)(1) of this section until the end of its retention period. However, any radio station that is not required to place its public inspection file in the online public file hosted by the Commission before March 1, 2018, may choose to do so, instead of retaining the public inspection file at the station in the manner discussed in paragraph (b)(1).

(iii) A station must provide a link to the online public inspection file hosted by the Commission from the home page of its own Web site, if the station has a Web site, and provide contact information for a station representative on its Web site that can assist any person with disabilities with issues related to the content of the public files. A station also is required to include in the online public file hosted by the Commission the station's main studio address and telephone number, and the email address of the station's designated contact for questions about the public file. To the extent this section refers to the local public inspection file, it refers to the public file of an individual station, which is either maintained at

the station or on the Commission's Web site, depending upon where the documents are required to be maintained under the Commission's rules.

* * * * *

■ 9. Section 73.3580 is amended by revising paragraph (d)(4)(i) introductory text and paragraph (d)(4)(ii) introductory text to read as follows:

§ 73.3580 Local public notice of filing of broadcast applications.

* * * * *

(d) * * *

(4) * * *

(i) *Pre-filing announcements.* During the period and beginning on the first day of the sixth calendar month prior to the expiration of the license, and continuing to the date on which the application is filed, the following announcement shall be broadcast on the 1st and 16th day of each calendar month. Stations broadcasting primarily in a foreign language should broadcast the announcements in that language.

Radio announcement: On (date of last renewal grant) (Station's call letters) was granted a license by the Federal Communication Commission to serve the public interest as a public trustee until (expiration date).

Our license will expire on (date). We must file an application for renewal with the FCC (date four calendar months prior to expiration date). When filed, a copy of this application will be available for public inspection at www.fcc.gov. It contains information concerning this station's performance during the last (period of time covered by the application). Individuals who wish to advise the FCC of facts relating to our renewal application and to whether this station has operated in the public interest should file comments and petitions with the FCC by (date first day of last full calendar month prior to the month of expiration).

Further information concerning the FCC's broadcast license renewal process is available at (address of location of the station) or may be obtained from the FCC, Washington, DC 20554.

Television announcement: On (date of last renewal grant) (Station's call letters) was granted a license by the Federal Communication Commission to serve the public interest as a public trustee until (expiration date).

Our license will expire on (date). We must file an application for renewal with the FCC (date four calendar months prior to expiration date). When filed, a copy of this application will be available for public inspection at www.fcc.gov. It contains information concerning this station's performance

during the last (period of time covered by the application).

Individuals who wish to advise the FCC of facts relating to our renewal application and to whether this station has operated in the public interest should file comments and petitions with the FCC by (date first day of last full calendar month prior to the month of expiration).

Further information concerning the FCC's broadcast license renewal process is available at (address of location of the station) or may be obtained from the FCC, Washington, DC 20554.

(ii) *Post-filing announcements.* During the period beginning on the date on which the renewal application is filed to the sixteenth day of the next to last full calendar month prior to the expiration of the license, all applications for renewal of broadcast station licenses shall broadcast the following announcement on the 1st and 16th day of each calendar month. Stations broadcasting primarily in a foreign language should broadcast the announcements in that language.

Television announcement: On (date of last renewal grant) (Station's call letters) was granted a license by the Federal Communications Commission to serve the public interest as a public trustee until (expiration date).

Our license will expire on (date). We have filed an application for renewal with the FCC.

A copy of this application is available for public inspection at www.fcc.gov. It contains information concerning this station's performance during the last (period of time covered by application).

Individuals who wish to advise the FCC of facts relating to our renewal application and to whether this station has operated in the public interest should file comments and petitions with the FCC by (date first day of last full calendar month prior to the month of expiration).

Further information concerning the FCC's broadcast license renewal process is available at (address of location of the station) or may be obtained from the FCC, Washington, DC 20554.

Radio announcement: On (date of last renewal grant) (Station's call letters) was granted a license by the Federal Communications Commission to serve the public interest as a public trustee until (expiration date).

Our license will expire on (date). We have filed an application for renewal with the FCC.

A copy of this application is available for public inspection at www.fcc.gov. It contains information concerning this

station's performance during the last (period of time covered by application).

Individuals who wish to advise the FCC of facts relating to our renewal application and to whether this station has operated in the public interest should file comments and petitions with the FCC by (date first day of last full calendar month prior to the month of expiration).

Further information concerning the FCC's broadcast license renewal process is available at (address of location of the station) or may be obtained from the FCC, Washington, DC 20554.

* * * * *

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 10. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 11. Section 76.630 is amended by revising the first undesignated paragraph below paragraph (a)(2) introductory text to read as follows:

§ 76.630 Compatibility with consumer electronics equipment.

- (a) * * *
(2) * * *

On (date of waiver request was filed with the Commission), (cable operator's name) filed with the Federal Communications Commission a request for waiver of the rule prohibiting scrambling of channels on the basic tier of service. 47 CFR 76.630(a). The request for waiver states (a brief summary of the waiver request). A copy of the request for waiver shall be available for public inspection at www.fcc.gov.

* * * * *

■ 12. Section 76.1700 is revised to read as follows:

§ 76.1700 Records to be maintained by cable system operators.

(a) *Public inspection file.* The following records must be placed in the online public file hosted by the Commission, except as indicated in paragraphs (a)(6) and (d) of this section and except that the records listed in paragraph (a)(1) of this section (political file) that are in existence 30 days after the effective date of this provision, if not placed in the online file, shall continue to be retained at the system and made available to the public in the manner discussed in paragraph (e) of this section until the end of the retention

period. In addition, any cable system with fewer than 5,000 subscribers shall continue to retain the political file at the system in the manner discussed in paragraph (e) of this section until March 1, 2018. For these systems, effective March 1, 2018, any new political file material shall be placed in the online file hosted by the Commission, while the material in the political file as of March 1, 2018, if not placed on the Commission's Web site, shall continue to be retained at the system in the manner discussed in paragraph (e) of this section until the end of its retention period. However, any system that is not required to place its political file on the Commission's Web site before March 1, 2018 may choose to do so, instead of retaining the political file at the system in the manner discussed in paragraph (e) of this section.

(1) *Political file.* All requests for cablecast time made by or on behalf of a candidate for public office and all other information required to be maintained pursuant to § 76.1701;

(2) *Equal employment opportunity.* All EEO materials described in § 76.1702 except for any EEO program annual reports, which the Commission will link to the electronic version of all systems' public inspection files;

(3) *Commercial records on children's programs.* Sufficient records to verify compliance with § 76.225 in accordance with § 76.1703;

(4) *Performance tests (channels delivered).* The operator of each cable television system shall maintain a current listing of the cable television channels which that system delivers to its subscribers in accordance with § 76.1705;

(5) *Leased access.* If a cable operator adopts and enforces written policy regarding indecent leased access programming, such a policy shall be published in accordance with § 76.1707;

(6) *Principal headend.* The operator of every cable system shall maintain in its public inspection file the designation and location of its principal headend in accordance with § 76.1708. Cable systems may elect not to post this information to the Commission's online file but instead retain this information in their local public file maintained in the manner discussed in paragraph (e) of this section;

(7) *Availability of signals.* The operator of every cable television system shall maintain a list of all broadcast television stations carried by its system in fulfillment of the must-carry requirements in accordance with § 76.1709;

(8) *Operator interests in video programming.* Cable operators shall

maintain records regarding the nature and extent of their attributable interests in all video programming services as well as information regarding their carriage of such vertically integrated video programming services on cable systems in which they have an attributable interests in accordance with § 76.1710;

(9) *Sponsorship identification.* Whenever sponsorship announcements are omitted pursuant to § 76.1615(f) of Subpart T, the cable television system operator shall maintain a list in accordance with § 76.1715;

(10) *Compatibility with consumer electronics equipment.* Cable system operators generally may not scramble or otherwise encrypt signals carried on the basic service tier. Copies of requests for waivers of this prohibition must be available in the public inspection file in accordance with § 76.630.

(b) *Information available to the franchisor.* These records must be made available by cable system operators to local franchising authorities on reasonable notice and during regular business hours, except as indicated in paragraph (d) of this section.

(1) *Proof-of-performance test data.* The proof of performance tests shall be made available upon request in accordance with § 76.1704;

(2) *Complaint resolution.* Cable system operators shall establish a process for resolving complaints from subscribers about the quality of the television signal delivered. Aggregate data based upon these complaints shall be made available for inspection in accordance with § 76.1713.

(c) *Information available to the Commission.* These records must be made available by cable system operators to the Commission on reasonable notice and during regular business hours, except as indicated in paragraph (d) of this section.

(1) *Proof-of-performance test data.* The proof of performance tests shall be made available upon request in accordance with § 76.1704;

(2) *Signal leakage logs and repair records.* Cable operators shall maintain a log showing the date and location of each leakage source in accordance with § 76.1706;

(3) *Emergency alert system and activations.* Every cable system shall keep a record of each test and activation of the Emergency Alert System (EAS). The test is performed pursuant to the procedures and requirements of part 11 of this chapter and the EAS Operating Handbook. The records are kept in accordance with part 11 of this chapter and § 76.1711;

(4) *Complaint resolution.* Cable system operators shall establish a process for resolving complaints from subscribers about the quality of the television signal delivered. Aggregate data based upon these complaints shall be made available for inspection in accordance with § 76.1713;

(5) *Subscriber records and public inspection file.* The operator of a cable television system shall make the system, its public inspection file, and its records of subscribers available for inspection upon request in accordance with § 76.1716.

(d) *Exceptions to the public inspection file requirements.* The operator of every cable television system having fewer than 1,000 subscribers is exempt from the online public file and from the public record requirements contained in § 76.1701 (political file); § 76.1702 (EEO records available for public inspection); § 76.1703 (commercial records for children's programming); § 76.1704 (proof-of-performance test data); § 76.1706 (signal leakage logs and repair records); § 76.1714 (FCC rules and regulations); and § 76.1715 (sponsorship identification).

(e) *Location of records.* Public file material that continues to be retained at the system shall be retained in a public inspection file maintained at the office in the community served by the system that the system operator maintains for the ordinary collection of subscriber charges, resolution of subscriber complaints, and other business and, if the system operator does not maintain such an office in the community, at any accessible place in the communities served by the system (such as a public registry for documents or an attorney's office). Public file locations will be open at least during normal business hours and will be conveniently located. The public inspection file shall be available for public inspection at any time during regular business hours for the facility where they are kept. All or part of the public inspection file may be maintained in a computer database, as long as a computer terminal capable of accessing the database is made available, at the location of the file, to members of the public who wish to review the file.

(f) *Links and contact and geographic information.* A system must provide a link to the public inspection file hosted on the Commission's Web site from the home page of its own Web site, if the system has a Web site, and provide contact information on its Web site for a system representative who can assist any person with disabilities with issues related to the content of the public files.

A system also is required to include in the online public file the address of the system's local public file, if the system retains documents in the local file that are not available in the Commission's online file, and the name, phone number, and email address of the system's designated contact for questions about the public file. In addition, a system must provide on the online public file a list of the five digit ZIP codes served by the system. To the extent this section refers to the local public inspection file, it refers to the public file of a physical system, which is either maintained at the location described in paragraph (e) or on the Commission's Web site, depending upon where the documents are required to be maintained under the Commission's rules.

(g) *Reproduction of records.* Copies of any material in the public inspection file that is not also available in the Commission's online file shall be available for machine reproduction upon request made in person, provided the requesting party shall pay the reasonable cost of reproduction. Requests for machine copies shall be fulfilled at a location specified by the system operator, within a reasonable period of time, which in no event shall be longer than seven days. The system operator is not required to honor requests made by mail but may do so if it chooses.

■ 13. Section 76.1702 is amended by revising paragraph (a) to read as follows:

§ 76.1702 Equal employment opportunity.

(a) Every employment unit with six or more full-time employees shall maintain for public inspection a file containing copies of all EEO program annual reports filed with the Commission pursuant to § 76.77 and the equal employment opportunity program information described in paragraph (b) of this section. These materials shall be placed in the Commission's online public inspection file(s), maintained on the Commission's database, for each cable system associated with the employment unit. These materials shall be placed in the Commission's online public inspection file annually by the date that the unit's EEO program annual report is due to be filed and shall be retained for a period of five years. A headquarters employment unit file and a file containing a consolidated set of all documents pertaining to the other employment units of a multichannel video programming distributor that operates multiple units shall be maintained in the online public inspection file(s), maintained on the Commission's database, for every cable

system associated with the headquarters employment unit.

* * * * *

■ 14. Section 76.1709 is amended by revising paragraphs (a) and (b) to read as follows:

§ 76.1709 Availability of signals.

(a) The operator of every cable television system shall maintain for public inspection a file containing a list of all broadcast television stations carried by its system in fulfillment of the must-carry requirements pursuant to § 76.56. Such list shall include the call sign, community of license, broadcast channel number, cable channel number, and in the case of a noncommercial educational broadcast station, whether that station was carried by the cable system on March 29, 1990.

(b) Such records must be maintained in accordance with the provisions of § 76.1700.

* * * * *

[FR Doc. 2016-04117 Filed 2-26-16; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 236

[Docket No. FRA-2016-0012, Notice No. 1]

RIN 2130-AC56

Positive Train Control Systems

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is amending its regulations to address changes in deadlines for positive train control (PTC) system implementation required by the Positive Train Control Enforcement and Implementation Act of 2015. FRA is also making conforming amendments and removing portions of its PTC regulations that are no longer applicable.

DATES: This final rule is effective April 29, 2016. Petitions for reconsideration must be received on or before April 19, 2016. Petitions for reconsideration will be posted in the docket for this proceeding. Comments on any submitted petition for reconsideration must be received on or before June 3, 2016.

ADDRESSES: *Petitions for reconsideration and comments on petitions for reconsideration:* Any petitions for reconsideration or comments on

petitions for reconsideration related to Docket No. FRA–2016–0012, may be submitted by any of the following methods:

- *Web site*: The Federal eRulemaking Portal, www.regulations.gov. Follow the Web site's online instructions for submitting comments.
- *Fax*: 202–493–2251.
- *Mail*: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery*: Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all petitions received will be posted without change to www.regulations.gov including any personal information. Please see the Privacy Act heading in the “Supplementary Information” section of this document for Privacy Act information related to any submitted petitions, comments, or materials.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov or to Room W12–140 on the Ground level of the West Building, 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: David Blackmore, Office of Technical Oversight, Railroad Safety Program Manager for Advanced Technology, Federal Railroad Administration, Mail Stop 25, West Building 3rd Floor, Room W35–332, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202–493–1332); or Jason Schlosberg, Trial Attorney, Office of Chief Counsel, RCC–10, Mail Stop 10, West Building 3rd Floor, Room W31–207, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202–493–6032).

SUPPLEMENTARY INFORMATION: FRA is issuing this final rule to amend certain PTC system implementation deadlines in 49 CFR part 236, subpart I, to conform with statutory changes made by the Positive Train Control Enforcement and Implementation Act of 2015, Public Law 114–73, 129 Stat. 576, 582 (Oct. 29, 2015). FRA is also making conforming amendments and removing portions of its PTC regulations that are no longer applicable.

I. Background

Under the Railroad Safety Improvement Act of 2008 (RSIA), Public Law 110–432, 122 Stat. 4854 (Oct. 16, 2008) (codified at 49 U.S.C. 20157), much of the railroad industry had been implementing PTC to meet a statutory deadline of December 31, 2015. Under defined circumstances, certain small railroads could also delay PTC system implementation on locomotives until after December 31, 2015. *See* 49 U.S.C. 20157(i)(4) (2008); 49 CFR 236.1006(b)(4).

On October 29, 2015, the Positive Train Control Enforcement and Implementation Act of 2015 (PTCEI Act), amended RSIA to extend the PTC implementation deadline to December 31, 2018, or, alternatively December 31, 2020, and provide qualifying small railroads with an additional three years to comply from the dates in FRA's regulation at 49 CFR 236.1006(b)(4)(iii)(B). *See* Public Law 114–73, 129 Stat. 568, 576–82 (Oct. 29, 2015); 49 U.S.C. 20157(a)(1), (a)(2)(B), (k). Congress made further amendments in the Fixing America's Surface Transportation (FAST) Act, which clarified FRA's authority under the PTCEI Act. *See* Public Law 114–94, sec. 11315(d), 129 Stat. 1312, 1675 (Dec. 4, 2015) (codified at 49 U.S.C. 20157(g)).

By statute, and delegation from the Secretary of Transportation, FRA is required to remove or revise the date-specific deadlines in the regulations or orders implementing 49 U.S.C. 20157 necessary to conform with the amendments the PTCEI and FAST Acts made. *See* 49 U.S.C. 20157(g)(2); 49 CFR 1.89. FRA is not required to make any changes to its regulations other than changing the dates. 49 U.S.C. 20157(g)(3) (“Nothing in the Positive Train Control Enforcement and Implementation Act of 2015, or the amendments made by such Act, shall be construed to require the Secretary to issue regulations to implement such Act or amendments”). Accordingly, the only amendments made in this final rule are the date changes and any necessary conforming amendments.

II. Justification for Final Rule

FRA is issuing this final rule without providing an opportunity for prior public notice and comment as the Administrative Procedure Act (APA) normally requires. *See* 5 U.S.C. 553. The APA authorizes agencies to dispense with certain notice and comment procedures if the agency finds for good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. *See* 5

U.S.C. 553(b)(3)(B). For example, an “impracticable” good cause situation might be where the federal railroad safety rules should be amended without delay if FRA determines that the safety of the traveling public is at stake. Public notice is unnecessary when the public does not need or benefit from the notice and comment, such as with a minor or technical amendment.

In this case, FRA finds, for good cause, that notice and public comment is unnecessary, because the public would not benefit from such notice. The scope of this regulatory change is very limited; FRA is merely replacing old statutory deadlines with the new statutory deadlines and is otherwise making no substantive changes to the regulations; making conforming amendments; and removing portions of its PTC regulations that are no longer applicable.

III. Section-by-Section Analysis

Unless otherwise noted, all section references below refer to sections in title 49 of the Code of Federal Regulations (CFR).

Proposed Amendments to 49 CFR Part 236

Section 236.1005 Requirements for Positive Train Control Systems

Originally, Congress mandated PTC implementation by December 31, 2015. However, the PTCEI Act extended that deadline. In the PTCEI Act, rather than choosing a single future date, Congress elected to provide an implementation deadline of December 31, 2018, with an opportunity to extend the deadline up to December 31, 2020, for those railroads that qualify. To be eligible for such an extension, a railroad must fulfill certain statutory conditions and prerequisites and receive FRA approval.

Because each railroad's implementation deadline may be based on a variety of currently unfulfilled conditions or prerequisites, modification of the deadlines in this rule is not merely a simple replacement of dates in the applicable regulations. To address these variables, and place the statutory requirements in a regulatory context, some regulatory explanation and conforming amendments are required. This rule text includes some of the more explicit requirements necessary to receive FRA approval for an extension beyond 2018; some of the less definitive prerequisites (*i.e.*, training and revenue service demonstration requirements under 49 U.S.C. 20157(a)(3)(B)) remain applicable as stated in the legislative text. FRA intends that all linguistic changes to be

conforming, to merely incorporate the new statutory deadlines, and not to include any additional requirements. Therefore, FRA is issuing a final rule in this proceeding. Even if FRA had issued a proposed rule, and received comments, FRA could not make any changes without violating the statute.

To this end, FRA is striking the deadline referenced in § 236.1005(b)(1) and is adding a paragraph (b)(7) to address the new deadlines the recent legislation mandates.

Paragraph (b)(6) currently states that no new intercity or commuter rail passenger service shall commence after December 31, 2015, until a PTC system certified under this subpart has been installed and made operative. FRA continues to believe this is a clearly necessary requirement to satisfy the statute and to ensure PTC operations for railroads commencing new operations after the statutory implementation deadline. However, per the PTCEI Act, FRA recognizes the need to change the deadline. Accordingly, FRA is amending paragraph (b)(6) by striking “2015” and replacing it with “2020.” Since that paragraph only concerns new rail passenger service commencing after the full implementation deadline, it is consistent with the PTCEI Act to change the date to 2020. However, all rail passenger operations commencing before December 31, 2020, must comply with the implementation deadlines in the PTCEI Act.

Section 236.1006 Equipping Locomotives Operating in PTC Territory

For the same reasons stated in the analysis of § 236.1005 above, FRA is striking the deadline in § 236.1006(b)(1) and (b)(3). For purposes of clarity and context, we are replacing the latter change with a cross-reference to new paragraph § 236.1005(b)(7).

Paragraph (b)(2) references a number of reports that were due in prior years. Given that this regulation is now stale, it is being removed.

Paragraph (b)(3) refers to the original deadline that has passed. Accordingly, FRA is striking the introductory phrase. Since the remaining text applies at all times, and is no longer limited to the implementation deadline, FRA does not believe it is necessary to cross-reference to § 236.1005(b)(7) or otherwise reference a deadline.

In addition to changing the implementation deadline, the PTCEI Act also provides some flexibility for railroads that may achieve PTC System Certification earlier than others. The PTCEI Act, codified at 49 U.S.C. 20157(j)(1), provides that until 1 year after the last Class I railroad achieves

PTC System Certification and full PTC system implementation, each railroad shall comply with the operational restrictions in 49 U.S.C. 20157(j)(2)–(j)(4) in lieu of those required under 49 CFR 236.567 and 236.1029. While these statutory provisions are substantively outside the scope of this rulemaking, FRA recognizes that paragraph (b)(3) also references § 236.1029. To reduce confusion, and without making any interpretation or determination about the effect of the PTCEI Act, FRA is also referencing 49 U.S.C. 20157(j). The actual applicability at any given time of either 49 U.S.C. 20157(j) or 49 CFR 236.1029 would be determined at a later date in a different forum.

As previously noted, since the rule was first issued in 2010, FRA has provided Class II and Class III railroads a limited opportunity to delay or avoid PTC implementation on certain locomotives in prescribed circumstances. The PTCEI Act requires this rule to extend those permissible delays another 3 years from the dates in FRA’s regulation at 49 CFR 236.1006(b)(4)(iii)(B). Accordingly, FRA is merely adding three years to each date referenced in paragraph (b)(4)(iii)(B).

Section 236.1009 Procedural Requirements

Under the existing regulations, each railroad is required to submit an annual progress report on each anniversary of its initial PTCIP filing. Since the statute was amended to require annual submission of such progress reports by March 31 of each year (see 49 U.S.C. 20157(c)(1)), FRA is amending paragraph (a)(5) to reference that new progress report deadline and to avoid confusion and potential redundant submissions. FRA notes, however, that it retains under the existing and amended statutes and regulations the authority to require more frequent reporting.

Section 236.1011 PTC Implementation Plan Content Requirements

For the same reasons explained above regarding the amendments to § 236.1005, FRA is amending the deadline in § 236.1011. Given that a different deadline, albeit within the statutory limits, may apply to each railroad, FRA believes a single date in the regulation is no longer appropriate. Accordingly, the amendments to this section merely cross-reference to the applicable deadline determined under § 236.1005(b)(7).

Appendix A to Part 236—Civil Penalties

For the same reasons as previously explained regarding the amendments to § 236.1005, FRA is amending the deadline dates referenced in Appendix A. In addition, in the new legislation, Congress reaffirmed FRA’s authority to enforce the requirements of subpart I. Therefore, FRA has reviewed its related civil penalties guidance found in Appendix A. Although FRA is currently not suggesting any substantive changes to the regulations, the agency believes that some clarity is warranted. And, of course, FRA retains the authority to enforce any violations of the new legislation or regulations whether or not explicitly mentioned in Appendix A.

List of Subjects in 49 CFR Part 236

Penalties, Positive Train Control, Railroad safety, Reporting and recordkeeping requirements.

The Rule

In consideration of the foregoing, FRA hereby amends 49 CFR part 236 as follows:

PART 236—[AMENDED]

■ 1. The authority citation for part 236 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20157, 20301–20303, 20306, 20501–20505, 20701–20703, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

■ 2. In § 236.1005, revise paragraphs (b)(1) introductory text and (b)(6) and add paragraph (b)(7) to read as follows:

§ 236.1005 Requirements for Positive Train Control systems.

* * * * *

(b) *PTC system installation*—(1) *Lines required to be equipped.* Except as otherwise provided in this subpart, each Class I railroad and each railroad providing or hosting intercity or commuter passenger service shall progressively equip its lines as provided in its approved PTCIP such that a PTC system certified under § 236.1015 is installed and operated by the host railroad on each:

* * * * *

(6) *New rail passenger service.* No new intercity or commuter rail passenger service shall commence after December 31, 2020, until a PTC system certified under this subpart has been installed and made operative.

(7) *Implementation deadlines.* (i) Each railroad must complete full implementation of its PTC system by December 31, 2018.

(ii) A railroad is excepted from paragraph (b)(7)(i) of this section and

must complete full implementation of its PTC system by December 31, 2020, or the date specified in its approved alternative schedule and sequence, whichever is earlier, only if the railroad:

(A) Installs all PTC hardware and acquires all spectrum necessary to implement its PTC system by December 31, 2018;

(B) Submits an alternative schedule and sequence providing for implementation of positive train control system as soon as practicable, but not later than December 31, 2020;

(C) Notifies the Associate Administrator in writing that it is prepared for review of its alternative schedule and sequence under 49 U.S.C. 20157(a)(3)(B); and

(D) Receives FRA approval of its alternative schedule and sequence.

(iii) If a railroad meets the criteria in paragraph (b)(7)(ii) of this section, the railroad must adhere to its approved alternative schedule and sequence and any of its subsequently approved amendments or required modifications.

* * * * *

■ 3. In § 236.1006, revise paragraphs (b)(1) and (3) and (b)(4)(iii)(B) to read as follows:

§ 236.1006 Equipping locomotives operating in PTC territory.

* * * * *

(b) *Exceptions.* (1) Each railroad required to install PTC shall include in its PTCIP specific goals for progressive implementation of onboard systems and deployment of PTC-equipped locomotives such that the safety benefits of PTC are achieved through incremental growth in the percentage of controlling locomotives operating on PTC lines that are equipped with operative PTC onboard equipment. The PTCIP shall include a brief but sufficient explanation of how those

goals will be achieved, including assignment of responsibilities within the organization. The goals shall be expressed as the percentage of trains operating on PTC-equipped lines that are equipped with operative onboard PTC apparatus responsive to the wayside, expressed as an annualized (calendar year) percentage for the railroad as a whole.

* * * * *

(3) A train controlled by a locomotive with an onboard PTC apparatus that has failed en route is permitted to operate in accordance with 49 U.S.C. 20157(j) or § 236.1029, as applicable.

(4) * * *

(iii) * * *

(B) To the extent any movement exceeds 20 miles in length, such movement is not permitted without the controlling locomotive being equipped with an onboard PTC system after December 31, 2023, and each applicable Class II or III railroad shall report to FRA its progress in equipping each necessary locomotive with an onboard PTC apparatus to facilitate continuation of the movement. The progress reports shall be filed not later than December 31, 2020 and, if all necessary locomotives are not yet equipped, on December 31, 2022.

* * * * *

■ 4. In § 236.1009, revise paragraph (a)(5) to read as follows:

§ 236.1009 Procedural Requirements.

(a) * * *

(5) Each railroad filing a PTCIP shall report annually, by March 31 of each year, and until its PTC system implementation is complete, its progress towards fulfilling the goals outlined in its PTCIP under this part, including progress towards PTC system installation pursuant to § 236.1005 and onboard PTC apparatus installation and

use in PTC-equipped track segments pursuant to § 236.1006, as well as impediments to completion of each of the goals.

* * * * *

■ 5. In § 236.1011, revise paragraphs (a)(6)(ii), (a)(7), and (b)(3) to read as follows:

§ 236.1011 PTC Implementation Plan content requirements.

(a) * * *

(6) * * *

(ii) The schedule to equip that rolling stock by the applicable deadline under § 236.1005(b)(7);

* * * * *

(7) The number of wayside devices required for each track segment and the installation schedule to complete wayside equipment installation by the applicable deadline under § 236.1005(b)(7);

* * * * *

(b) * * *

(3) Nothing in this paragraph shall be construed to create an expectation or requirement that additional rail lines beyond those required to be equipped by this subpart must be equipped or that such lines will be equipped during the period of primary implementation ending on the applicable deadline under § 236.1005(b)(7).

* * * * *

■ 5. In Appendix A to part 236:

■ a. Revise footnote 1;

■ b. Add footnote 2; and

■ a. Under Subpart I—Positive Train Control Systems, revise the entries for §§ 236.1005, 236.1006, 236.1007, 236.1009, 236.1011, 236.1019, 236.1029, 236.1035, and 236.1039.

The revisions and addition read as follows:

Appendix A to Part 236—Civil Penalties^{1 2}

Section	Violation	Willful violation
* * * * *		
Subpart I—Positive Train Control Systems		
236.1005 Positive Train Control System Requirements:		
Failure to timely complete PTC system installation on track segment where PTC is required	16,000	25,000
Commencement of revenue service prior to obtaining PTC System Certification	16,000	25,000
Failure of the PTC system to perform a safety-critical function required by this section	5,000	7,500
Operating outside the limits of an approved <i>de minimis</i> exception	15,000	25,000
Failure to integrate a hazard detector	15,000	25,000
Non-compliant event recorder	2,500	5,000
Failure of event recorder	2,500	5,000
Failure to provide notice, obtain approval, or follow a condition for temporary rerouting when required	5,000	7,500
Exceeding the allowed percentage of controlling locomotives operating out of an initial terminal after receiving a failed initialization	5,000	7,500
236.1006 Equipping locomotives operating in PTC territory:		
Failure to adhere to a PTCIP.	(2)	(2)
Operating in PTC territory a controlling locomotive without a required and operative PTC onboard apparatus	15,000	25,000
Operating with a PTC onboard apparatus that is not functioning in accordance with the applicable PTCSP.	15,000	25,000
Failure to report as prescribed by this section	5,000	7,500
Non-compliant operation of unequipped trains in PTC territory	15,000	25,000
Failure to equip locomotives in accordance with the applicable PTCIP	15,000	25,000
Failure to comply with conditions of a yard movement exception	(2)	(2)
Improper arrangement of the PTC system onboard apparatus	2,500	5,000
Engineer performing prohibited duties	5,000	7,500
236.1007 Additional requirements for high-speed service:		
Installing or operating a PTC system without the required safety-critical functional attributes of a block signal system	15,000	25,000
Operation of passenger trains at speed equal to or greater than 60 mph on non-PTC-equipped territory where required	15,000	25,000
Operation of freight trains at speed equal to or greater than 50 mph on non-PTC-equipped territory where required	15,000	25,000
Failure to fully implement incursion protection where required	5,000	7,500
236.1009 Procedural requirements:		
Failure to file PTCIP when required	5,000	7,500
Failure to amend PTCIP when required	5,000	7,500
Failure to obtain Type Approval when required	5,000	7,500
Failure to update NPI	5,000	7,500
Operation of PTC system without system certification	16,000	25,000
Failure to comply with FRA condition or modification	(2)	(2)
Failure to report as required	5,000	7,500
Failure to provide FRA access	10,000	16,000
236.1011 PTCIP content requirements:		
Failure to install a PTC system as required	11,000	16,000
Failure to maintain a PTCIP as required	(2)	(2)
* * * * *		
236.1019 Main line track exceptions:		
Operations conducted in non-compliance with the passenger terminal exception	16,000	25,000
Operations conducted in non-compliance with the limited operations exception	16,000	25,000
Failure to request modification of the PTCIP or PTCSP when required	11,000	16,000
Operations conducted in violation of (c)(2)	16,000	25,000
Operations conducted in violation of (c)(3)	25,000	25,000

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a civil penalty of up to \$105,000 per day for any violation where circumstances warrant. See 49 CFR part 209, Appendix A.

² Each plan has numerous conditions and requirements with varying degrees of importance or impact. Thus, a single recommended civil penalty amount for a violation for failure to adhere to each plan or condition is not advisable or warranted. When a violation of a plan or condition is found, FRA may consider a variety of factors to determine the appropriate civil penalty to assess, including any underlying or related violation.

Section	Violation	Willful violation
236.1029 PTC system use and en route failures:		
Failure to determine cause of PTC system component failure without undue delay	5,000	7,500
Failure to adjust, repair, or replace faulty PTC system component without undue delay	5,000	7,500
Failure to take appropriate action pending adjustment, repair, or replacement of faulty PTC system component	15,000	25,000
PTC territory operation with an inoperative PTC onboard apparatus	5,000	7,500
Interference with the normal functioning of safety-critical PTC system	15,000	25,000
236.1035 Field testing requirements:		
Field testing without authorization or approval	10,000	20,000
Failure to comply with FRA condition	(2)	(2)
236.1039 Operations and Maintenance Manual:		
Failure to implement and maintain Operations and Maintenance Manual as required	3,000	6,000
Failure to make Operations and Maintenance Manual available to FRA when required	10,000	16,000
Failure to make Operations and Maintenance Manual available to persons required to performed the required tasks	15,000	25,000
Amends Operations and Maintenance Manual without FRA approval	5,000	10,000

Issued in Washington, DC, on February 23, 2016.

Sarah Feinberg,
Administrator.

[FR Doc. 2016-04293 Filed 2-26-16; 8:45 am]

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Proposed Rules

Federal Register

Vol. 81, No. 39

Monday, February 29, 2016

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 59

[Doc. AMS-LPS-15-0070]

RIN 0581-AD45

Livestock Mandatory Reporting: Reauthorization of Livestock Mandatory Reporting and Revision of Swine and Lamb Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: On April 2, 2001, the U.S. Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) implemented the Livestock Mandatory Reporting (LMR) program as required by the Livestock Mandatory Reporting Act of 1999 (1999 Act). The LMR program was reauthorized in October 2006 and September 2010. On September 30, 2015, the Agriculture Reauthorizations Act of 2015 (2015 Reauthorization Act) reauthorized the LMR program for an additional 5 years until September 30, 2020, and directed the Secretary of Agriculture (Secretary) to amend the LMR swine reporting requirements. In addition, the lamb industry requested revisions to the lamb reporting requirements as authorized through the 1999 Act. This proposed rule would incorporate the requested lamb reporting revisions, and would incorporate the swine reporting revisions contained within the 2015 Reauthorization Act under the Agricultural Marketing Act of 1946, USDA Livestock Mandatory Reporting regulations.

DATES: Comments must be received by April 29, 2016. Pursuant to the Paperwork Reduction Act (PRA), comments on the information collection burden that would result from this rule must be received by April 29, 2016.

ADDRESSES: Comments should be submitted electronically at <http://www.regulations.gov>.

www.regulations.gov. Comments may also be sent to Michael Lynch, Director; Livestock, Poultry, and Grain Market News Division; Livestock, Poultry, and Seed Program; AMS, USDA, Room 2619-S, STOP 0252; 1400 Independence Avenue SW., Washington, DC 20250-0251; telephone (202) 720-4868; fax (202) 690-3732; or email to Michael.Lynch@ams.usda.gov.

Comments should reference docket number AMS-LPS-15-0070 and the date and page number of this issue of the **Federal Register**. Submitted comments will be available for public inspection at <http://www.regulations.gov>, or during regular business hours at the above address. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

Comments that specifically pertain to the information collection and recordkeeping requirements of this action should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW., Room 725, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Michael Lynch, Director; Livestock, Poultry, and Grain Market News Division; Livestock, Poultry, and Seed Program; AMS, USDA, Room 2619-S, STOP 0252; 1400 Independence Avenue SW., Washington, DC 20250-0251; Telephone (202) 720-4868; Fax (202) 690-3732; or email to Michael.Lynch@ams.usda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The 1999 Act was enacted into law on October 22, 1999, [Pub. L. 106-78; 113 Stat. 1188; 7 U.S.C. 1635-1636(i)] as an amendment to the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*). On April 2, 2001, the AMS Livestock, Poultry, and Seed Program's (LPS) Livestock, Poultry, and Grain Market News Division (LPGMN) implemented the LMR program as required by the 1999 Act. The purpose was to establish a program of easily understood information regarding the marketing of cattle, swine, lambs, and livestock products; improve the price and supply reporting services of the USDA; and encourage competition in

the marketplace for livestock and livestock products. The LMR regulations (7 CFR part 59) set the requirements for packers or importers to submit purchase and sales information of livestock and livestock products to meet this purpose.

The statutory authority for the program lapsed on September 30, 2005. In October 2006, Congress passed the Livestock Mandatory Reporting Reauthorization Act (2006 Reauthorization Act) [Pub. L. 109-296]. The 2006 Reauthorization Act re-established the regulatory authority for the continued operation of LMR through September 30, 2010. On July 15, 2008, the LMR final rule became effective (73 FR 28606, May 16, 2008).

On September 28, 2010, Congress passed the Mandatory Price Reporting Act of 2010 (2010 Reauthorization Act) [Pub. L. 111-239]. The 2010 Reauthorization Act reauthorized LMR for an additional 5 years through September 30, 2015. On January 7, 2013, the LMR final rule became effective (77 FR 50561, August 22, 2012).

On September 30, 2015, the Agriculture Reauthorizations Act of 2015 (2015 Reauthorization Act) [Pub. L. 114-54] was enacted which reauthorized the LMR program for an additional 5 years through September 30, 2020, and amended the reporting requirements for reporting of swine purchase types and late afternoon swine purchases. In addition, at the request of the lamb industry, this proposed rule includes amended definitions for packer owned lambs and lambs committed for delivery, and a provision for adding lamb pelts as a reporting requirement.

This proposed rule would incorporate the swine reporting revisions contained within the 2015 Reauthorization Act and the lamb reporting revisions as proposed by the lamb industry, under the USDA LMR regulations.

II. Proposed Revisions

Under the LMR regulations, certain cattle, swine and lamb packers and processors, and lamb importers are required to report purchases of livestock for slaughter and sales of meat products to AMS. This proposed rule would amend the LMR regulations for swine reporting and lamb reporting requirements as described below.

Swine

The swine reporting requirement revisions within this proposed rule are

authorized through the 2015 Reauthorization Act. This proposed rule would minimally increase the reporting burden for swine packers.

Currently, swine packers are required to report purchase data by four types of purchase: Negotiated purchase, other market formula purchase, swine or pork market formula purchase, or other purchase arrangement. A negotiated purchase is a cash or spot market purchase by a packer under which the base price for the swine is determined by seller-buyer interaction and agreement on a delivery day; and the swine are scheduled for delivery to the packer not more than 14 days after the date on which the swine are committed to the packer. Other market formula purchase is a purchase of swine by a packer in which the pricing mechanism is a formula price based on any market other than the market for swine, pork, or a pork product; and includes a formula purchase in a case where the price formula is based on one or more futures or options contracts. A swine or pork market formula purchase is a purchase of swine by a packer in which the pricing mechanism is a formula price based on a market for swine, pork, or a pork product, other than a future or option for swine, pork, or pork product. Other purchase arrangement is a purchase of swine by a packer that is not a negotiated purchase, swine or pork market formula purchase, or other market formula purchase; and does not involve packer-owned swine.

The 2015 Reauthorization Act amended the swine reporting requirements, subpart C of part 59, by adding an additional purchase type definition for negotiated formula purchases of swine, which requires swine packers to report swine purchased on a negotiated formula basis as a separate purchase type. As defined in § 59.200, the term “negotiated formula” is a swine or pork market formula purchase under which the formula is determined by negotiation on a lot-by-lot basis, and swine are scheduled for delivery to the packer not later than 14 days after the date on which the formula is negotiated and swine are committed to the packer. Packers would be required to report any swine purchased in this manner as a negotiated formula purchase.

Adding a negotiated formula purchase type would provide market participants with more specific information about the various purchase methods used in the daily marketing of swine and a better understanding of the marketplace concerning formulated prices and spot negotiated prices.

Currently, packers are required to report purchase data for barrows and gilts for a morning report not later than 10 a.m. central time, and an afternoon report not later than 2 p.m. central time. The information to be reported is the same for the morning and afternoon reports and includes an estimate of the total number of barrows and gilts purchased by each type of purchase, the total number of barrows and gilts purchased, and the base price paid for all negotiated purchases of barrows and gilts and the base price paid for each type of purchase of barrows and gilts other than through a negotiated purchase. This information must be submitted for all covered transactions made up to within one half hour of each specified reporting time. Packers completing transactions during the half hour prior to the previous reporting time report those transactions at the next prescribed reporting time.

The 2015 Reauthorization Act directed the Secretary to include in the morning and afternoon daily reports for the following day, the purchase information for any barrows and gilts purchased or priced after the afternoon reporting time of the current reporting day. Under this proposed rule, the required information to be reported would remain the same for the morning and afternoon reports; however, the LMR regulations for the morning report requirements under § 59.202 would be amended to require packers to report purchase data for barrows and gilts purchased after 1:30 p.m. central time of the previous reporting day and up to that time of the reporting day for the total number of barrows and gilts purchased, and the base price paid for all negotiated purchases of barrows and gilts and the base price paid for each type of purchase of barrows and gilts other than through a negotiated purchase. Under this proposed rule, the LMR regulations for the afternoon reporting requirements would remain unchanged. The inclusion of the late in the day swine purchase information in the following day's reports would increase the volume of barrows and gilts shown in the daily morning and afternoon purchase reports and better represent the daily market conditions.

Lamb

Since the implementation of LMR in 2001 and its subsequent revisions, the U.S. lamb industry has become more concentrated at all levels of the production system through consolidation, impacting AMS' ability to publish certain market information in accordance with the confidentiality provisions of the 1999 Act. To help

address this issue, the Livestock Marketing Information Center, an independent provider of economic analyses concerning the livestock industry, conducted an analysis of the current LMR program for lamb reporting in 2013 at the request of the American Sheep Industry Association, an industry organization representing sheep producers throughout the U.S.¹ Based on this study, recommendations were proposed to amend the current LMR regulations to improve the price and supply reporting services of AMS and better align LMR lamb reporting requirements with current industry marketing practices. These recommendations are the basis for the lamb reporting changes as proposed by the lamb industry for this proposed rule.

Proposed revisions to the lamb reporting requirements, subpart D of part 59, include an amended definition under § 59.300 for the term “packer-owned lambs.” Currently, the term “packer-owned lambs” includes lambs owned by a packer for at least 14 days immediately before slaughter. The amended definition would cover those lambs that are owned by a packer for at least 28 days immediately before slaughter. Proposed revisions to the lamb reporting requirements also include a new definition under § 59.300 for the term “lambs committed” and require packers under § 59.302 to report quantity and delivery period for all lambs committed to be delivered to the packer. The term “lambs committed” means lambs intended to be delivered to a packer beginning on the date of an agreement to sell the lambs. In 2008 (73 FR 28606, May 16, 2008), a different definition for the term “lambs committed” was deleted in the LMR regulations at the request of the lamb industry because it was not applicable at the time. However, since that time, lamb industry supply and demand related issues underscored the need for market participants to be more informed of specific types of lamb market data not available through other USDA agencies. Therefore, packers would report “lambs committed” and “packer-owned lambs” under the updated definitions in this proposed rule to meet this industry request and improve transparency in the marketplace. These revisions would minimally increase the reporting burden for lamb packers.

¹ Hearing to Review Reauthorization of the Livestock Mandatory Reporting Act: Hearing before the Subcommittee on Livestock and Foreign Agriculture of the Committee on Agriculture, House of Representatives, 114th Cong., 1st sess. (Serial No. 114-12). (2015). Retrieved from GPO's Federal Digital System: <https://www.gpo.gov/fdsys/pkg/CHRG-114hhrg94372/pdf/CHRG-114hhrg94372.pdf>.

Under this proposed rule, lamb reporting requirements would also be amended to require packers under § 59.302 to report price, volume, and classification descriptors for all lamb pelts from lambs purchased on a negotiated purchase, formula marketing arrangement, or forward contract basis. As would be defined under this proposed rule in § 59.300, the term “pelt” means the skin and attached wool from a sheep or lamb carcass. In recent years, consolidation within the lamb packing and pelt processing industries has presented increased challenges for AMS in reporting consistent weekly market information on a voluntary basis for pelts marketed from the lamb packers to the pelt processors. Under this proposed rule, packers would be required to report weekly prices and volumes paid to the producer for each specific classification category of pelts in a given lot. This requirement would provide lamb producers more accurate information on the total value of lambs marketed for slaughter while minimally increasing the reporting burden for lamb packers.

Appendices

The final section of this document contains four appendices. These appendices will not appear in the Code of Federal Regulations. Appendices A and B list the forms that would be used by swine and lamb packers required to report information under the LMR program. Appendix C provides a description of the forms, while appendix D contains the actual reporting forms. Amendments to two swine reporting forms, LS–118 Swine Prior Day Report and LS–119 Swine Daily Report, were made to include the new purchase type proposed under this rule, “negotiated formula purchase.” Only one form for swine reporting, LS–119 Swine Daily Report, requires an amendment to the description of the form to include the reporting of the late afternoon purchased barrows and gilts from the previous reporting day in the following reporting day’s daily reports, as contained in appendix C. Amendments to one lamb reporting form, LS–123 Lamb Weekly Report, were made to include the volume and delivery period information needed for reporting lambs committed for delivery. In addition, a new form, LS–133 Lamb Pelts Weekly Report, was created to facilitate the reporting of information on lamb pelts.

III. Classification

Executive Order 12866 and Executive Order 13563

This proposed rule is being issued by USDA with regard to the LMR program in conformance with Executive Orders 12866 and 13563.

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

This action has been designated as a “non-significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process for this action.

Regulatory Flexibility Act

In General. This proposed rule has been reviewed under the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612). The purpose of RFA is to consider the economic impact of a rule on small business entities. Alternatives, which would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the marketplace, have been evaluated. Regulatory action should be appropriate to the scale of the businesses subject to the action. The collection of information is necessary for the proper performance of the functions of AMS concerning the mandatory reporting of livestock information. Information is only available directly from those entities required to report under these regulations and exists nowhere else. Therefore, this proposed rule does not duplicate market information reasonably accessible to the USDA.

Objectives and Legal Basis. The objective of this proposed rule is to improve the price and supply reporting services of the USDA in order to encourage competition in the marketplace for swine and lambs as specifically directed by the 2015 Reauthorization Act and the lamb industry requested revisions as authorized through the 1999 Act and these regulations, as described in detail in the background section.

Estimated Number of Small Businesses. For this regulatory flexibility analysis, AMS utilized the North American Industry Classification System (NAICS), which is the standard used by federal statistical agencies to classify business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. This analysis compares the size of meat packing companies to the NAICS standards to determine the percentage of small businesses within the industry affected by this proposed rule. Under these size standards, meat packing companies with 500 or less employees are considered small business entities.²

This proposed rule would amend the reporting requirements for swine packers by adding a new purchase type for negotiated formula purchases of barrows and gilts, and including late afternoon purchases of barrows and gilts from the previous reporting day in the morning and afternoon daily reports of the current reporting day. For swine packers, this proposed rule would apply only to federally inspected swine processing facilities that slaughtered an average of at least 100,000 swine per year during the immediately preceding 5 calendar years and a person that slaughtered an average of at least 200,000 sows, boars, or combination thereof per year during the immediately preceding 5 calendar years. Additionally, in the case of a swine processing plant or person that did not slaughter swine during the immediately preceding 5 calendar years, it would be considered a packer if the Secretary determines the processing plant or person should be considered a packer under this subpart after considering its capacity.

Approximately 36 individual pork packing companies representing a total of 55 individual plants are required to report information to AMS. Based on the NAICS size standard for meat packing companies with 500 or less employees, AMS estimates that 24 of these 36 pork packing companies would be considered small businesses, representing 27 individual plants that are required to report. The figure of 55 plants required to report represents 8.9 percent of the federally inspected swine plants in the United States. The remaining 91.1 percent of swine plants, nearly all estimated to qualify as small business, are exempt from mandatory reporting.

To implement the swine reporting changes in this proposed rule, AMS

² North American Industry Classification System, code 311611 for abattoirs.

estimated the total annual burden on each swine packer to be \$108 which includes the annual share of initial startup costs of \$415. There is no annual cost increase associated with electronically submitting data or for the storage and maintenance of electronic files submitted to AMS due to the changes in this proposed rule.

For lamb reporting, this proposed rule would require packers to report quantity and delivery period for all lambs committed to be delivered to the packer beginning on the date of an agreement to sell the lambs. In addition, lamb packers would be required to report price, volume, and classification descriptors for all lamb pelts from lambs purchased from producers. Under the 2015 Reauthorization Act, a lamb packer includes any person with 50 percent or more ownership in a facility that slaughtered or processed an average of 35,000 lambs during the immediately preceding 5 calendar years, or that did not slaughter or process an average of 35,000 lambs during the immediately preceding 5 calendar years if the Secretary determines that the processing plant should be considered a packer after considering its capacity.

The LMR regulations require 10 lamb packers to report information, which is less than 2 percent of all federally inspected lamb plants. Therefore, approximately 98 percent of lamb packers are exempt from reporting information by this proposed rule. Based on the NAICS size standard for meat packing companies with 500 or less employees and its knowledge of the lamb industry, AMS estimates that all lamb packing companies currently required to report under LMR would be considered small businesses. To implement the lamb reporting changes in this proposed rule, AMS estimated the total annual burden on each lamb packer to be \$216 which includes the annual share of initial startup costs of \$830. There is no annual cost increase associated with electronically submitting data, or for the storage and maintenance of electronic files submitted to AMS due to the changes in this proposed rule.

Projected Reporting. The LMR regulations require the reporting of specific market information regarding the buying and selling of livestock and livestock products. This information is reported to AMS by electronic means and the adoption of this proposed rule will not affect this requirement. Electronic reporting involves the transfer of data from a packer's or importer's electronic recordkeeping system to a centrally located AMS electronic database. The packer or

importer is required to organize the information in an AMS-approved format before electronically transmitting the information to AMS. Once the required information has been entered into the AMS database, it is aggregated and processed into various market reports which are released according to the daily and weekly time schedule set forth in the LMR regulations. As an alternative, AMS also developed and made available web-based input forms for submitting data online as AMS found that some of the smaller entities covered under mandatory price reporting would benefit from such a web-based submission system.

Each packer and importer required to report information to USDA under LMR must maintain such records as are necessary to verify the accuracy of the information provided to AMS. This includes information regarding price, class, head count, weight, quality grade, yield grade, and other factors necessary to adequately describe each transaction. These records are already kept by the industry. Reporting packers and importers are required to maintain and make available the original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock, and to maintain these records for a minimum of 2 years. Packers and importers are not required to report any other new or additional information they do not generally have available or maintain. Further, they are not required to keep any information that would prove unduly burdensome to maintain.

In addition, AMS has not identified any relevant federal rules currently in effect that duplicate, overlap, or conflict with this rule. Professional skills required for recordkeeping under the LMR regulations are not different than those already employed by the reporting entities. Reporting is accomplished using computers or similar electronic means. This proposed rule does not affect the professional skills required for recordkeeping already employed by the reporting entities. Reporting will be accomplished using computers or similar electronic means. AMS believes the skills needed to maintain such systems are already in place in those small businesses affected by this rule.

Alternatives. This proposed rule would require swine and lamb packing plants of a certain size to report information to the Secretary at prescribed times throughout the day and week. The 1999 Act and these regulations exempt the vast majority of

small businesses by the establishment of slaughter, processing, and import capacity thresholds.

AMS recognizes that most of the economic impact of this proposed rule on those small entities required to report involves the manner in which information must be reported to the Secretary. However, in developing this proposed rule, AMS considered other means by which the objectives of this proposed rule could be accomplished, including reporting the required information by telephone, facsimile, and regular mail. AMS believes electronic submission to be the only method capable of allowing AMS to collect, review, process, aggregate, and publish reports while complying with the specific time-frames set forth in the Act and regulation.

To respond to concerns of smaller operations, AMS developed a web-based input form for submitting data online. Based on prior experience, AMS found that some of the smaller entities covered under mandatory price reporting would benefit from such a web-based submission system. Accordingly, AMS developed such a system for program implementation.

Additionally, to further assist small businesses, AMS may provide for an exception to electronic reporting in emergencies, such as power failures or loss of Internet accessibility, or in cases when an alternative is agreeable between AMS and the reporting entity.

Other than these alternatives, there are no other practical and feasible alternatives to the methods of data transmission that are less burdensome to small businesses. AMS will work actively with those small businesses required to report and minimize the burden on them to the maximum extent practicable.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), we have included the changes in reporting and recordkeeping requirements for 7 CFR part 59 associated with this action into the program's request for an extension of a currently approved information collection for OMB 0581-0186 (Commodities Covered by the Livestock Mandatory Reporting Act of 1999).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect. Section 259 of the 1999 Act prohibits States or political subdivisions of a State to impose any requirement that is in

addition to, or inconsistent with, any requirement of the 1999 Act with respect to the submission or reporting of information, or the publication of such information, on the prices and quantities of livestock or livestock products. In addition, the 1999 Act does not restrict or modify the authority of the Secretary to administer or enforce the Packers and Stockyards Act of 1921 (7 U.S.C. 181 et seq.); administer, enforce, or collect voluntary reports under the 1999 Act or any other law; or access documentary evidence as provided under Sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49, 50). There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

Civil Rights Review

AMS has considered the potential civil rights implications of this proposed rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. This review included persons who are employees of the entities that are subject to this regulation. This proposed rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this proposed rule will not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

Executive Order 13132

This proposed rule has been reviewed under Executive Order 13132, Federalism. This Order directs agencies to construe, in regulations and otherwise, a Federal Statute to preempt State law only when the statute contains an express preemption provision. This proposed rule is required by the 1999 Act. Section 259 of the 1999 Act, Federal Preemption states, "In order to achieve the goals, purposes, and objectives of this title on a nationwide basis and to avoid potentially conflicting State laws that could impede the goals, purposes, or objectives of this title, no State or political subdivision of a State may impose a requirement that is in addition to, or inconsistent with, any requirement of this subtitle with respect to the submission or reporting of information, or the publication of such information, on the prices and

quantities of livestock or livestock products."

Prior to the passage of the 1999 Act, several States enacted legislation mandating, to various degrees, the reporting of market information on transactions of cattle, swine, and lambs conducted within that particular State. However, since the federal LMR program was implemented on April 2, 2001, these State programs are no longer in effect. Therefore, there are no federalism implications associated with this rulemaking.

Executive Order 13175

This proposed rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. AMS has considered the potential implications of this proposed rule to ensure this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

List of Subjects in 7 CFR Part 59

Cattle, Hogs, Lamb, Livestock, Sheep, Swine.

For the reasons set forth in the preamble, it is proposed that title 7, part 59 be amended as follows:

PART 59—LIVESTOCK MANDATORY REPORTING

1. The authority citation for 7 CFR part 59 continues to read as follows:

Authority: 7 U.S.C. 1635–1636i.

- 2. Amend § 59.200 by:
a. Adding a definition for "Negotiated formula purchase;"
b. Revising the definition of "Other purchase arrangement;" and
c. Revising paragraphs (3) and (4) and adding paragraph (5) in the definition of "Type of purchase."

The additions and revisions read as follows:

§ 59.200 Definitions.

* * * * *

Negotiated formula purchase. The term "negotiated formula purchase" means a swine or pork market formula purchase under which:

- (1) The formula is determined by negotiation on a lot-by-lot basis; and
(2) The swine are scheduled for delivery to the packer not later than 14 days after the date on which the formula is negotiated and swine are committed to the packer.

* * * * *

Other purchase arrangement. The term "other purchase arrangement" means a purchase of swine by a packer

that is not a negotiated purchase, swine or pork market formula purchase, negotiated formula purchase, or other market formula purchase; and does not involve packer-owned swine.

* * * * *

Type of purchase. * * *

- (3) A swine or pork market formula purchase;
(4) Other purchase arrangement; and
(5) A negotiated formula purchase.

* * * * *

3. Amend § 59.202 by revising paragraphs (b)(2) through (4) to read as follows:

§ 59.202 Mandatory daily reporting for barrows and gilts.

* * * * *

(b) * * *

(2) The total number of barrows and gilts, and barrows and gilts that qualify as packer-owned swine, purchased since 1:30 p.m. central time of the previous reporting day and up to that time of the reporting day through each type of purchase;

(3) All purchase data for base market hogs purchased since 1:30 p.m. central time of the previous reporting day and up to that time of the reporting day through negotiated purchases;

(4) All purchase data for base market hogs purchased through each type of purchase other than negotiated purchase since 1:30 p.m. central time of the previous reporting day and up to that time of the reporting day, unless such information is unavailable due to pricing that is determined on a delayed basis. The packer shall report information on such purchases on the first reporting day or scheduled reporting time on a reporting day after the price has been determined.

* * * * *

4. Amend § 59.300 by adding in alphabetical order a definition for "Lambs committed," revising the definition for "Packer-owned lambs," and adding in alphabetical order a definition for "Pelt" to read as follows:

§ 59.300 Definitions.

* * * * *

Lambs committed. The term "lambs committed" means lambs that are intended to be delivered to a packer beginning on the date of an agreement to sell the lambs.

* * * * *

Packer-owned lambs. The term "packer-owned lambs" means lambs that a packer owns for at least 28 days immediately before slaughter.

Pelt. The term "pelt" means the skin and attached wool from a sheep or lamb carcass.

* * * * *

■ 5. Amend § 59.302 by redesignating paragraphs (a)(6) and (7) as paragraphs (a)(7) and (8), adding new paragraphs (a)(6) and (9), and revising paragraph (b) to read as follows:

§ 59.302 Mandatory weekly reporting for lambs.

(a) * * *

(6) The quantity (quoted in number of head) and delivery period for all committed lambs;

* * * * *

(9) The following pelt information for lambs purchased through a negotiated purchase, formula marketing arrangement, or forward contract:

(i) The quantity (quoted in number of head) of pelts;

(ii) The source of the pelts (packer owned or producer owned lambs);

(iii) The price paid to the producer;

(iv) The length of wool (shorn or unshorn);

(v) The pelt classification (Supreme, Premium, Standard, Fair, Mixed Class, Damaged, and Puller).

(b) *Publication.* The Secretary shall make available to the public the information obtained in paragraphs (a)(1) through (6) and (a)(8) of this section on the second reporting day of the current slaughter week and information obtained in paragraphs (a)(7) and (9) of this section on the first reporting day of the current slaughter week.

Dated: February 19, 2016.

Elanor Starmer,

Acting Administrator, Agricultural Marketing Service.

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

Appendix A to Subpart C—Swine Mandatory Reporting Forms

Swine

The following 2 forms would be used by entities required to report electronically transmitted mandatory market information on swine to AMS.

LS-118—Swine Prior Day Report

LS-119—Swine Daily Report

Appendix B to Subpart D—Lamb Mandatory Reporting Forms

Lamb

The following 2 forms would be used by entities required to report electronically transmitted mandatory market information on lambs and lamb pelts to AMS.

LS-123—Live Lamb Weekly Report

LS-133—Lamb Pelts Weekly Report

Appendix C—Mandatory Reporting Guideline

The following mandatory reporting form guidelines will be used by entities required

to report electronically transmitted mandatory market information to AMS.

The first 10 fields of each mandatory reporting form provide the following information: Identification number (plant establishment ID number), company name (name of parent company), plant street address (street address for plant), plant city (city where plant is located), plant state (state where plant is located), plant zip code (zip code where plant is located), contact name (the name of the corporate representative contact at the plant), phone number (full phone number for the plant including area code), reporting date (date the information was submitted (mm/dd/yyyy)), and reporting time (the submission time corresponding to the 10 a.m. and the 2 p.m. reporting requirements, if applicable).

(a) *Swine Mandatory Reporting Forms.* (See Appendix D for samples.)

(1) LS-118—Swine Prior Day Report.

(i) Slaughtered swine lot identification (11). Enter code used to identify the lot of slaughtered swine to the packer.

(ii) Slaughtered swine class code (12). Enter the code that best describes the type of slaughtered swine in the lot.

(iii) Slaughtered swine purchase type code (13). Enter the code that describes the type of purchase for the slaughtered swine in the lot.

(iv) Slaughtered swine head count (14). Enter the quantity of slaughtered swine in the lot in number of head.

(v) Slaughtered swine base price (15). Enter the base price established on that day for the lot of slaughtered swine in dollars per one hundred pounds.

(vi) Slaughtered swine average net price (16). Enter the average net price established on that day for the lot of slaughtered swine in dollars per one hundred pounds.

(vii) Slaughtered swine average live weight (17). Enter the average live weight of the lot of swine in pounds if slaughtered swine were purchased on a live basis, otherwise leave blank.

(viii) Slaughtered swine average carcass weight (18). Enter the average carcass weight of the lot of slaughtered swine in pounds.

(ix) Slaughtered swine average sort loss (19). Enter the average sort loss for the lot of slaughtered swine in dollars per one hundred pounds.

(x) Slaughtered swine average backfat (20). Enter the average backfat measurement for the lot of slaughtered swine in inches rounded to the nearest tenth of an inch.

(xi) Slaughtered swine average loin depth (21). Enter the average loin depth measurement for the lot of slaughtered swine in inches rounded to the nearest tenth of an inch.

(xii) Slaughtered swine average lean percentage (22). Enter the average lean percentage for the lot of slaughtered swine.

(xiii) Purchased swine lot identification (23). Enter code used to identify the lot of purchased swine to the packer.

(xiv) Purchased swine ownership code (24). Enter code which best describes the source of the purchased swine whether packer-owned, purchased from another packer, or all other swine.

(xv) Purchased swine class code (25). Enter the code that best describes the type of purchased swine.

(xvi) Purchased swine purchase type code (26). Enter the code that describes the type of purchase for the purchased swine.

(xvii) Purchased swine head count (27). Enter the quantity of purchased swine in the lot.

(xviii) Purchased swine average live weight (28). Enter the average live weight of the lot of swine in pounds if swine were purchased on a live basis, otherwise leave blank.

(xix) Purchased swine base price (29). Enter the base price established on that day for the lot of purchased swine in dollars per one hundred pounds.

(xx) Purchased swine origin (30). Enter the 2-letter postal abbreviation for the State in which the swine were fed to slaughter weight.

(xxi) Scheduled swine (31–44). Enter the number of head of purchase commitment swine that were scheduled for delivery for each of the next 14 days. Enter the total quantity currently scheduled for each day at the time of reporting for each submission.

(2) LS-119—Swine Daily Report.

(i) Purchased swine lot identification (11). Enter code used to identify the lot of purchased swine to the packer.

(ii) Purchased swine purchase type code (12). Enter the code that describes the type of purchase for the swine in the lot.

(iii) Purchased swine average live weight (13). Enter the average live weight of the lot of swine in pounds if swine were purchased on a live basis, otherwise leave blank.

(iv) Purchased swine class code (14). Enter the code that best describes the type of swine in the lot.

(v) Purchased swine head count (15). Enter the quantity of swine in the lot in number of head.

(vi) Purchased swine base price (16). Enter the base price established on that day for the lot of swine in dollars per one hundred pounds.

(vii) Purchased swine origin (17). Enter the 2-letter postal abbreviation for the State in which the swine were fed to slaughter weight.

(viii) Packer-sold swine purchases (18–25, 34–35). Enter the best estimate of the total number of packer-sold swine expected to be purchased throughout the reporting day for each purchase type and the total number of packer-sold swine purchased since 1:30 p.m. central of the previous reporting day up to that time of the reporting day for each purchase type.

(ix) All other swine purchases (26–33, 36–37). Enter the best estimate of the total number of all other swine expected to be purchased throughout the reporting day for each purchase type and the total number of all other swine purchased since 1:30 p.m. central of the previous reporting day up to that time of the reporting day for each purchase type.

(b) *Lamb Mandatory Reporting Forms.* (See Appendix D for samples.)

(1) LS-123—Live Lamb Weekly Report.

(i) Packer-Owned lot identification (11). Enter code used to identify the lot of packer-owned lambs to the packer.

(ii) Packer-Owned source (12). Enter “1”, domestic, if packer-owned lambs are from within the 50 States or “2”, imported, if lambs are from outside of the 50 States.

(iii) Packer-Owned head count (13). Enter the quantity of packer-owned lambs in the lot in number of head.

(iv) Packer-Owned actual carcass weight range (14a-14b). Enter the lowest (14a) and highest (14b) actual carcass weights for lambs in the lot in pounds.

(v) Packer-Owned actual average carcass weight (15). Enter the actual average carcass weight of the lot of packer-owned lambs in pounds.

(vi) Packer-Owned average dressing percentage (16). Enter the average dressing percentage of the lot of packer-owned lambs.

(vii) Percentage yield grade 3 or better (17). Enter the percentage of packer-owned lambs in the lot of a yield grade of 3 or better.

(viii) Quality grade percentage (18). Enter the percentage of packer-owned lambs in the lot of a quality grade of Choice or better.

(ix) Prior week slaughtered lambs head counts (19–24). Enter the total number of head of lambs slaughtered for the prior week that were purchased through forward contracts, the total number of head for lambs purchased through formula arrangements, and the total number of head of lambs purchased through negotiated cash, categorized by domestic or imported sources. Enter this information once per each week’s submission.

(x) Forward contract purchases lot identification (25). Enter code used to identify forward contracted lambs to the packer.

(xi) Forward contract purchases head count (26). Enter quantity of forward contracted lambs in the lot in number of head.

(xii) Forward contract purchases basis level (27). Enter the agreed upon adjustment to a future price to establish the final price of the forward contracted lambs in dollars per one hundred pounds.

(xiii) Forward contract purchases delivery month (28). Enter the delivery month of the lambs purchased through forward contracts as a 3-letter abbreviation.

(xiv) Committed lambs (29). Enter quantity of lambs committed to be delivered to the packer in number of head.

(xv) Committed delivery month (30). Enter the delivery month of the lambs committed for delivery to the packer as a 3-letter abbreviation.

(xvi) Committed delivery year (31). Enter the delivery year of the lambs committed for delivery to the packer as a 4-digit number.

(2) LS–133—Lamb Pelts Weekly Report.
(i) Lot identification (11). Enter code used to identify the lot of pelts.

(ii) Source (12). Enter “1”, packer owned, if the pelts were from packer owned lambs or “2”, producer owned, if the pelts are from producer owned lambs.

(iii) Length of Wool (13). Enter “1”, unshorn. Enter “2”, shorn.

(iv) Price (14). Enter the price per piece paid by the packer for each classification category of pelts in the lot.

(v) Volume (15). Enter the quantity in number of pieces or pelts in each classification category of the lot.

(vi) Classification (16). Enter the classification code that describes the classification category for the pelts in the lot.

Appendix D—Mandatory Reporting Forms

The swine and lamb mandatory forms follow the docket.

[FR Doc. 2016–03956 Filed 2–26–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 986

[Docket No. AO–FV–15–0139; AMS–FV–15–0023; FV15–986–1]

Pecans Grown in the States of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas; Secretary’s Decision and Referendum Order on Proposed Marketing Agreement and Order No. 986

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This Secretary’s Decision proposes the issuance of a marketing agreement and order (order) under the Agricultural Marketing Agreement Act of 1937 to cover pecans grown in the states of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas, and provides growers with the opportunity to vote in a referendum to determine if they favor its establishment. The proposed order would provide authority to collect industry data and to conduct research and promotion activities. In addition, the order would provide authority for the industry to recommend grade, quality and size regulation, as well as pack and container regulation, subject to approval by the Department of Agriculture (USDA). The program would be financed by assessments on pecan handlers and would be locally administered, under USDA oversight, by a Council of seventeen growers and shellers (handlers) nominated by the industry and appointed by USDA.

DATES: The referendum will be conducted from March 9 through March 30, 2016. Ballot materials will be sent to all known pecan growers in the proposed fifteen-state production area. To be eligible to vote, a grower must

have produced a minimum average, annual amount of 50,000 pounds of inshell pecans between August 1, 2011 and July 31, 2015, or must own a minimum of 30 pecan acres.

ADDRESSES: Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Senior Marketing Specialist; Telephone: (202) 557–4783, Fax: (435) 259–1502, or Michelle Sharrow, Rulemaking Branch Chief; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email:

Melissa.Schmaedick@ams.usda.gov or *Michelle.Sharrow@ams.usda.gov*.

Small businesses may request information on this proceeding by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Antoinette.Carter@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on June 26, 2015, and published in the July 2, 2015, issue of the **Federal Register** (80 FR 38021); Recommended Decision and Opportunity to File Written Exceptions issued on October 20, 2015, and published in the October 28, 2015, issue of the **Federal Register** (80 FR 66372).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866, 13563, and 13175. Notice of this rulemaking action was provided to tribal governments through USDA’s Office of Tribal Relations; no comments have been received.

Preliminary Statement

This Secretary’s Decision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act,” and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900). The proposed marketing order is authorized under section 8(c) of the Act.

The proposed marketing agreement and order are based on the record of a public hearing held July 20 through July 21, 2015, in Las Cruces, New Mexico; July 23 through July 24, 2015, in Dallas, Texas; and, July 27 through July 29,

2015, in Tifton, Georgia. The hearing was held to receive evidence on the proposed marketing order from growers, handlers, and other interested parties located throughout the proposed production area. Notice of this hearing was published in the **Federal Register** on July 2, 2015.

A request for public hearing on the proposed program was submitted to USDA on May 22, 2015, by the American Pecan Board (Board), a proponent group established in 2013 to represent the interests of growers and handlers throughout the proposed fifteen-state production area. A subsequent, modified draft of the proposed regulatory text was submitted on June 10, 2015.

Witnesses at the hearing explained that the provisions of this proposal aim to assist the industry in addressing a number of challenges, namely: A lack of organized representation of industry-wide interests in a single organization; a lack of accurate data to assist the industry in its analysis of production, demand and prices; a lack of coordinated domestic promotion or research; and a forecasted increase in production as a result of new plantings. Witnesses believed that these factors combined have resulted in the under-performance of the pecan industry compared to other nut industries.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on October 20, 2015, filed with the Hearing Clerk, USDA, a Recommended Decision and Opportunity to File Written Exceptions thereto by November 27, 2015. No exceptions were filed. That document also announced AMS's intent to request approval of new information collection requirements to implement the program. Written comments on the proposed information collection requirements were due by December 28, 2015. None were filed.

USDA is providing two additional conforming changes to the proposed order language as published in the Recommended Decision. These conforming changes replace the word "redefining" in § 986.55 (c)(6) with "reestablishment," and the word "redefining" in § 986.33(b) with "reestablishment," thereby conforming to the terminology used in § 986.58. The regulatory text included in this Secretary's Decision reflects these changes.

Further, USDA is providing a correction to the Regulatory Flexibility Act (RFA) analysis published in the Recommended Decision. The RFA incorrectly referenced a Small Business Administration (SBA) threshold of \$7

million in annual receipts to identify small handler entities, while hearing testimony correctly identified a \$7.5 million threshold. The RFA included in this Secretary's Decision uses the correct SBA threshold of \$7.5 million.

The material issues presented on the record of hearing and addressed in the Recommended Decision are as follows:

1. Whether the handling of pecans produced in the proposed production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce;

2. Whether the economic and marketing conditions are such that they justify a need for a Federal marketing agreement and order which would tend to effectuate the declared policy of the Act;

3. What the definition of the production area and the commodity to be covered by the order should be;

4. What the identity of the persons and the marketing transactions to be regulated should be;

5. What the specific terms and provisions of the order should be, including:

(a) The definitions of terms used therein which are necessary and incidental to attain the declared objectives and policy of the Act and order;

(b) The establishment, composition, maintenance, procedures, powers and duties of an administrative Council for pecans that would be the local administrative agency for assisting USDA in the administration of the order;

(c) The authority to incur expenses and the procedure to levy assessments on handlers to obtain revenue for paying such expenses;

(d) The authority to conduct research and promotion activities;

(e) The authority to recommend grade, quality and size regulation, as well as pack and container regulation, for pecans grown and handled in the proposed production area;

(f) The establishment of requirements for handler reporting and recordkeeping;

(g) The requirement for compliance with all provisions of the order and with any regulation issued under it;

(h) An exemption for handlers of non-commercial quantities of pecans;

(i) The requirement for periodic continuance referenda; and

(j) Additional terms and conditions as set forth in § 986.88 through § 986.93, and § 986.97 through § 986.99 that are common to marketing agreements only.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA),

the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$750,000. Small agricultural service firms, which include handlers that would be regulated under the proposed pecan order, are defined as those with annual receipts of less than \$7,500,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed pecan marketing order program on small businesses. The record evidence is that while the program would impose some costs on the regulated parties, those costs would be outweighed by the benefits expected to accrue to the U. S. pecan industry.

Specific evidence on the number of large and small pecan farms (above and below the SBA threshold figure of \$750,000 in annual sales) was not presented at the hearing. However, percentages can be estimated based on record evidence.

The 2014 season average grower prices per pound for improved and native seedling pecans were \$2.12 and \$0.88, respectively. A weighted grower price of \$1.85 is computed by applying as weights the percentage split between improved and native acreage on a representative U.S. pecan farm, which are 78 and 22 percent, respectively. The average yield on the representative farm is 1,666.67 pounds per acre. Multiplying the \$1.85 price by the average yield gives a total revenue per acre figure of \$3,080. Dividing the \$750,000 SBA annual sales threshold figure by the revenue per acre figure of \$3,080 gives an estimate of 243 acres as the size of farm that would have annual sales about equal to \$750,000, given the previous assumptions. Any farm of that size or larger would qualify as a large farm under the SBA definition.

Data presented in the record show that about 52 percent of commercial U.S. pecan farms have 250 or more acres of pecans. Since the 243 acre estimate above is close to 250 acres, it can be extrapolated that 52 percent is a reasonable approximation of the proportion of large farms and 48 percent is the proportion of small pecan farms. According to the record, this estimate

does not include “backyard” production.

According to record evidence, there are an estimated 250 handlers in the U.S. Of these handlers, which include accumulators, there are an estimated 50 commercially viable shellers with production over 1 million pounds of inshell pecans operating within the proposed production area. Fourteen of these shellers meet the SBA definition for large business entity and the remaining 36 are small business entities.

Record evidence indicates that implementing the proposed order would not represent a disproportionate burden on small businesses. An economic impact study of the proposed authority for generic promotion presented at the hearing provided that the proposed program would likely benefit all industry participants.

Impact of Generic Promotion Through a Marketing Order

The record shows that generic promotion over a wide variety of agricultural products stimulates product demand and translates into higher prices for growers than would have been the case without promotion.

Promotional impact studies of other tree nuts (almonds and walnuts), and of Texas pecans, show price increases as high as 6 percent, but the record indicates that 0 to 3 percent is a more representative range. Since the other tree nut promotion programs are well-

established, the record shows that a representative middle (most likely) scenario would be a price increase from promotion of 1.5 percent for the early years of a new pecan promotion program. Low and high scenarios were 0.5 and 3.0 percent, respectively.

The record indicates that an analytical method used historical yearly prices from 1997 to 2014 in a simulation covering that period to obtain an expected average price without promotion. In a subsequent step, the simulation applied a demand increase of 1.5 percent to the entire distribution of prices to represent the impact of promotion. The projected increases in grower prices from promotion for improved and native pecans were 6.3 and 3.6 cents per pound, respectively, as shown in Table 1. These two price increase projections represent a range of results. Based on a range of simulated price increases as high as 3 percent, the low and high price increase projections for improved pecans were 4.0 and 9.6 cents, respectively. For native varieties, the results ranged from 2.7 to 4.2 cents.

The record indicates that a key analytical step was developing an example farm with specific characteristics to explain market characteristics and marketing order impacts. An important characteristic of this “representative farm” is the acreage allocation between improved and native pecans of 78 and 22 percent, respectively. This is similar to the

proportion of the U.S. pecan crop in recent years allocated to improved and native varieties. Average yield per acre of the representative farm (covering all states and varieties) is 1,666.67 pounds per acre.

The acreage split of 78 and 22 percent are used as weights to compute weighted average prices (combining improved and native pecans) of 5.7 and 2.3 cents, respectively, as shown in the fourth column of Table 1.

The record shows that the proposed initial ranges of marketing order assessments per pound are 2 to 3 cents for improved pecans and 1 to 2 cents for native pecans. The midpoints of these ranges (2.5 and 1.5 cents, respectively) are used to compute a benefit-cost ratio from promotion, with a weighted average assessment cost of 2.3 cents, as shown in Table 2. Assessments would be collected from handlers, not growers, but for purposes of this analysis, it is assumed that 100 percent of the assessment cost would be passed through to growers.

Table 1 shows that dividing the projected benefit of 5.7 cents per pound (weighted price increase from promotion) by the estimated assessment cost of 2.3 cents (weighted assessment rate per pound), yields a benefit-cost ratio of 2.5. Each dollar spent on pecan promotion through a Federal marketing order is expected to result in \$2.50 in increased revenue to the pecan growers of the United States.

TABLE 1—ESTIMATED BENEFIT-COST RATIO OF PECAN PROMOTION THROUGH A FEDERAL MARKETING ORDER

	Improved pecans	Native pecans	Weighted
Benefit: Projected price increase from pecan promotion (cents per pound)	6.3	3.6	5.7
Cost: FMO Assessment rate (cents per pound)	2.5	1.5	2.3
Benefit-cost ratio	2.52	2.40	2.50

*Weights for improved and native pecans are 78% and 22%, respectively, which is the acreage allocation of a representative U.S. pecan farm, according to the record.

Examining potential costs and benefits from promotion across different farm sizes is done in Table 2. Record evidence showed that the minimum size of a commercial pecan farm is 30 acres, and that a representative average yield across the entire production area is 1,666.67 pounds per acre. This combination of acreage and yield results in a minimum threshold level of commercial production of 50,000 pounds. Witnesses stated that expenditures for the minimum necessary level of inputs for commercial pecan production cannot be justified for any operation smaller than this.

In Table 2, a very small farm is defined as being at the minimum commercial threshold level of 30 acres

and 50,000 pounds. Small and large farms are represented by farm size levels of 175 and 500 acres, respectively. Multiplying those acreage levels by the average yield for the entire production area gives total annual production level estimates of 291,667 and 833,335 pounds, respectively.

Multiplying the 2014 grower price per pound of \$2.14 by the 291,677 pounds of production from the small farm (175 acres) yields an annual crop value estimate of about \$618,000. This computation shows that the small farm definition from the record is consistent with the SBA definition of a small farm (annual sales value of up to \$750,000).

Table 2 shows for the three representative pecan farm sizes the

allocation of total production levels between improved and native varieties (78 and 22 percent, respectively).

Although marketing order assessments are paid by handlers, not growers, it is nevertheless useful to estimate the impact on growers, based on the assumption that handlers may pass part or all of the assessment cost onto growers from whom they purchase pecans. To compute the marketing order burden for each farm size, the improved and native production quantities are multiplied by 2.5 and 1.5 cents per pound of improved and native pecans, respectively. For the representative small farm (175 acres), summing the improved and native assessments yields a total annual assessment cost of \$6,650.

For the large farm, the total assessment cost is \$19,000.

A parallel computation is made to obtain the total dollar benefit for each farm size. The improved and native quantities for the representative farm

sizes are multiplied by the corresponding projected price increases of 6.3 and 3.6 cents. Summing the improved and native benefits for the small and large farm size yields projected annual total benefits for the

small and large representative farm sizes of \$16,643 and \$47,550, respectively. The results of dividing the benefits for each farm size by the corresponding costs is 2.5, which equals the benefit-cost ratio shown in Table 2.

TABLE 2—COSTS AND BENEFITS OF PROMOTION FOR THREE SIZES OF REPRESENTATIVE U.S. PECAN FARMS

	Very small farm	Small farm	Large farm
Representative Pecan Farms: Acres and Production:			
Acres per farm	30	175	500
Production on Representative Farms (Acres multiplied by estimated U.S. average yield of 1666.67 pounds per acre)	50,000	291,667	833,335
Improved pecan production (78% of farm acres)	39,000	227,500	650,001
Native pecan production (22% of farm acres)	11,000	64,167	183,334
Cost per farm: Grower burden of proposed program represented as cost per pound:			
Improved (2.5 cents)	\$975	\$5,688	\$16,250
Native (1.5 cents)	\$165	\$963	\$2,750
Total Estimated Cost per Farm	\$1,140	\$6,650	\$19,000
Benefit per farm: Price increase per pound from pecan promotion multiplied by improved and native production:			
Improved (6.3 cents)	\$2,457	\$14,333	\$40,950
Native (3.6 cents)	\$396	\$2,310	\$6,600
Total Estimated Benefit per Farm	\$2,853	\$16,643	\$47,550

The computations in Table 2 provide an illustration, based on evidence from the record, that there would be no disproportionate impact on smaller size farms from establishing a marketing order and implementing a promotion program. Costs are assessed per pound and thus represent an equal burden regardless of size. The projected benefits from promotion are realized through increases in price per pound and are thus distributed proportionally among different sizes of farms.

All of the grower and handler witnesses, both large and small, testified

that the projected price increases from promotion of pecans (6.3 and 3.6 cents per pound for improved and native pecans, respectively) were reasonable estimates of the benefits from generic promotion of pecans. A number of them expressed the view that the price increase estimates were conservative and that, over time, the price impact would be larger.

As mentioned above, marketing order assessments are paid by handlers, not growers. However, since handlers may pass some or all of the assessment cost onto growers, it is useful to provide this

illustration of potential impact on both growers and handlers.

Using the most recent three years of prices as examples of typical U.S. annual grower prices, Table 3 summarizes evidence from the record that shows the proposed marketing order assessment rates as percentages of grower and handler prices received. Based on record evidence that a representative handler margin is 57.5 cents per pound, handler prices are estimated by summing the grower price and handler margin.

TABLE 3—PROPOSED MARKETING ORDER ASSESSMENT RATES AS A PERCENTAGE OF PRICES FOR PECANS RECEIVED BY GROWERS AND HANDLERS

	Grower and handler prices			Assessment rates ***	Assessment rates as a % of prices received		
	2012	2013	2014		2012 (%)	2013 (%)	2014 (%)
Grower price *							
Improved	\$1.73	\$1.90	\$2.12	\$0.025	1.4	1.3	1.2
Native	0.88	0.92	0.88	0.015	1.7	1.6	1.7
Handler price **							
Improved	2.31	2.48	2.70	0.025	1.08	1.01	0.93
Native	1.46	1.50	1.46	0.015	1.03	1.00	1.03

* Season average grower price per pound from NASS/USDA.

** Grower price plus average handler margin of 57.5 cents per pound, based on hearing evidence.

*** Midpoints of proposed initial marketing order assessment rates: Improved (2 to 3 cents); Native (1 to 2 cents). For growers this represents the cost of the marketing order burden and for handlers this represents the cost of the assessment paid.

For both improved and native pecans, using 2012 to 2014 prices as examples, Table 3 shows that the potential burden of the proposed program can be

calculated at between 1 and 2 percent of operating expenses for growers and are approximately 1 percent of operating expenses for handlers. Grower and

handler witnesses, both large and small, covering both improved and native pecans, testified that the proposed initial marketing order assessment rates

would not represent a significant burden to their businesses and that the benefits of the proposed generic promotion program substantially outweigh the cost. Sheller witnesses (large and small) that would likely become handlers under a Federal marketing order testified that the additional recordkeeping required to collect assessments to send to the marketing order board (American Pecan Council) would not be a significant additional burden and that the benefits would substantially outweigh the costs. Several witnesses stated that one reason that collecting the assessments would have only a minor impact is that they already perform similar functions for promotion and other pecan-related programs (or other commodity programs) organized under state law.

Additional Marketing Order Program Benefits

Statements of support for additional benefits that could come from a Federal marketing order came from grower and handler witnesses, both large and small, covering both improved and native pecans. The additional benefits cited included: (1) Additional and more accurate market information, including data on production, inventory, and total supplies, (2) funding of research on health and nutrition aspects of pecans, improved technology relating to the pecan supply chain and crop health, consumer trends, and other topics, and (3) uniform, industry-wide quality standards for pecans, as well as packaging standards and shipping protocols. Witnesses testified that the burden of funding and participating in marketing order programs with these features would be minor, and that the benefits would substantially outweigh the costs.

The proposed order would impose some reporting and recordkeeping requirements on handlers. However, testimony indicated that the expected burden that would be imposed with respect to these requirements would be negligible. Most of the information that would be reported to the Council is already compiled by handlers for other uses and is readily available. Reporting and recordkeeping requirements issued under other tree nut programs impose an average annual burden on each regulated handler of about 8 hours. It is reasonable to expect that a similar burden may be imposed under this proposed marketing order on the estimated 250 handlers of pecans in the proposed production area.

The record evidence also indicates that the benefits to small as well as large handlers are likely to be greater than

would accrue under the alternatives to the order proposed herein; namely, no marketing order.

In determining that the proposed order and its provisions would not have a disproportionate economic impact on a substantial number of small entities, all of the issues discussed above were considered. Based on hearing record evidence and USDA's analysis of the economic information provided, the proposed order provisions have been carefully reviewed to ensure that every effort has been made to eliminate any unnecessary costs or requirements.

Although the proposed order may impose some additional costs and requirements on handlers, it is anticipated that the order will help to strengthen demand for pecans. Therefore, any additional costs would be offset by the benefits derived from expanded sales benefiting handlers and growers alike. Accordingly, it is determined that the proposed order would not have a disproportionate economic impact on a substantial number of small handlers or growers.

Finally, the Act requires that, prior to the issuance of a marketing order, a referendum be conducted among the affected growers to determine if they favor issuance of the order.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104-13), the ballot material that will be used in conducting the referendum has been submitted to and approved by OMB. The forms to be used for nomination and selection of the initial administrative committee have also been reviewed and approved by OMB.

Any additional information collection and recordkeeping requirements that may be imposed under the order would be submitted to OMB for approval. Those requirements would not become effective prior to OMB approval.

Civil Justice Reform

The marketing agreement and order proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed order would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Department a petition stating

that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted there from. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Department's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Findings and Conclusions

The findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the October 28, 2015, issue of the **Federal Register** (80 FR 66372), and as further revised in this Secretary's Decision, are hereby approved and adopted.

Rulings on Exceptions

In arriving at the findings and conclusions and the regulatory provisions of this decision, all exceptions to the proposed order were carefully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are denied.

Marketing Agreement and Order

Annexed hereto and made a part hereof is the document entitled "Order Regulating the Handling of Pecans Grown in the States of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400-407) to determine whether the issuance of the annexed order regulating the handling of pecans grown in the States of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New

Mexico, Oklahoma, South Carolina, and Texas is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production of pecans in the production area.

The representative period for the conduct of such referendum is hereby determined to be August 1, 2014, through July 31, 2015.

The agents of the Secretary to conduct such referendum are hereby designated to be Christian Nissen and Jennie Varela, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1124 First Street South, Winter Haven, Florida 33880; telephone: (863) 324-3375; or fax: (863) 291-8614, or Email: *Christian.Nissen@ams.usda.gov* or *Jennie.Varela@ams.usda.gov*, respectively.

Order Regulating the Handling of Pecans Grown in the States of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas.¹

Findings and Determinations

Pursuant to the provisions of the Agricultural Marketing Agreement of 1937, as amended (7 U.S.C. 601 *et seq.*) and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon a proposed marketing agreement and order regulation the handling of pecans grown in the States of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas.

Upon the basis of evidence introduced at such hearing and the record thereof, it is found that:

(1) The proposed marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The proposed marketing agreement and order regulate the handling of pecans grown in the proposed production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(3) The proposed marketing agreement and order are limited in its application to the smallest regional production area that is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The proposed marketing agreement and order prescribe, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of pecans grown in the proposed production area; and

(5) All handling of pecans grown in the proposed production area as defined in the proposed marketing agreement and order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of pecans grown in the States of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing agreement and order contained in the Recommended Decision issued on October 20, 2015, and published in the **Federal Register** on October 28, 2015 (80 FR 66372), and as further revised in this decision, shall be and are the terms and provisions of this proposed agreement and order and are set forth in full herein. Sections 986.97 through 986.99 apply only to the proposed marketing agreement and not the proposed order.

List of Subjects in 7 CFR Part 986

Marketing agreements, Pecans, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, The Agricultural Marketing Service proposes to add 7 CFR part 986 to read as follows:

PART 986—PECANS GROWN IN THE STATES OF ALABAMA, ARKANSAS, ARIZONA, CALIFORNIA, FLORIDA, GEORGIA, KANSAS, LOUISIANA, MISSOURI, MISSISSIPPI, NORTH CAROLINA, NEW MEXICO, OKLAHOMA, SOUTH CAROLINA, AND TEXAS

Subpart A—Order Regulating Handling of Pecans

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Subpart B—[Reserved]

Authority: 7 U.S.C. 601–674.

Subpart A—Order Regulating Handling of Pecans**Definitions****§ 986.1 Accumulator.**

Accumulator means a person who compiles inshell pecans from other persons for the purpose of resale or transfer.

§ 986.2 Act.

Act means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*).

§ 986.3 Affiliation.

Affiliation. This term normally appears as “affiliate of” or “affiliated with,” and means a person such as a grower or sheller who is: A grower or handler that directly, or indirectly through one or more intermediaries,

owns or controls, or is controlled by, or is under common control with the grower or handler specified; or a grower or handler that directly, or indirectly through one or more intermediaries, is connected in a proprietary capacity, or shares the ownership or control of the specified grower or handler with one or more other growers or handlers. As used in this part, the term “control” (including the terms “controlling,” “controlled by,” and “under the common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a handler or a grower, whether through voting securities, membership in a cooperative, by contract or otherwise.

§ 986.4 Blowouts.

Blowouts mean lightweight or underdeveloped inshell pecan nuts that are considered of lesser quality and market value.

§ 986.5 To certify.

To certify means the issuance of a certification of inspection of pecans by the inspection service.

§ 986.6 Confidential data or information.

Confidential data or information submitted to the Council consists of data or information constituting a trade secret or disclosure of the trade position, financial condition, or business operations of a particular entity or its customers.

§ 986.7 Container.

Container means a box, bag, crate, carton, package (including retail packaging), or any other type of receptacle used in the packaging or handling of pecans.

§ 986.8 Council.

Council means the American Pecan Council established pursuant to § 986.45, American Pecan Council.

§ 986.9 Crack.

Crack means to break, crack, or otherwise compromise the outer shell of a pecan so as to expose the kernel inside to air outside the shell.

§ 986.10 Cracks.

Cracks refer to an accumulated group or container of pecans that have been cracked in harvesting or handling.

§ 986.11 Custom harvester.

Custom harvester means a person who harvests inshell pecans for a fee.

§ 986.12 Department or USDA.

Department or *USDA* means the United States Department of Agriculture.

§ 986.13 Disappearance.

Disappearance means the difference between the sum of grower-cleaned production and handler-cleaned production (whether from improved orchards or native and seedling groves) and the sum of inshell and shelled merchantable pecans reported on an inshell weight basis.

§ 986.14 Farm Service Agency.

Farm Service Agency or *FSA* means that agency of the U.S. Department of Agriculture.

§ 986.15 Fiscal year.

Fiscal year means the twelve months from October 1 to September 30, both inclusive, or any other such period deemed appropriate by the Council and approved by the Secretary.

§ 986.16 Grade and size.

Grade and size means any of the officially established grades of pecans and any of the officially established sizes of pecans as set forth in the United States standards for inshell and shelled pecans or amendments thereto, or modifications thereof, or other variations of grade and size based thereon recommended by the Council and approved by the Secretary.

§ 986.17 Grower.

(a) *Grower* is synonymous with producer and means any person engaged within the production area in a proprietary capacity in the production of pecans if such person:

(1) Owns an orchard and harvests its pecans for sale (even if a custom harvester is used); or

(2) Is a lessee of a pecan orchard and has the right to sell the harvest (even if the lessee must remit a percentage of the crop or rent to a lessor).

(b) The term “grower” shall only include those who produce a minimum of 50,000 pounds of inshell pecans during a representative period (average of four years) or who own a minimum of 30 pecan acres according to the FSA, including acres calculated by the FSA based on pecan tree density. In the absence of any FSA delineation of pecan acreage, the regular definition of an acre will apply. The Council may recommend changes to this definition subject to the approval of the Secretary.

§ 986.18 Grower-cleaned production.

Grower-cleaned production means production harvested and processed through a cleaning plant to determine volumes of improved pecans, native and seedling pecans, and substandard pecans to transfer to a handler for sale.

§ 986.19 Handler.

Handler means any person who handles inshell or shelled pecans in any manner described in § 986.20.

§ 986.20 To handle.

To handle means to receive, shell, crack, accumulate, warehouse, roast, pack, sell, consign, transport, export, or ship (except as a common or contract carrier of pecans owned by another person), or in any other way to put inshell or shelled pecans into any and all markets in the stream of commerce either within the area of production or from such area to any point outside thereof. The term “to handle” shall not include: Sales and deliveries within the area of production by growers to handlers; grower warehousing; custom handling (except for selling, consigning or exporting) or other similar activities paid for on a fee-for-service basis by a grower who retains the ownership of the pecans; or transfers between handlers.

§ 986.21 Handler inventory.

Handler inventory means all pecans, shelled or inshell, as of any date and wherever located within the production area, then held by a handler for their account.

§ 986.22 Handler-cleaned production.

Handler-cleaned production is production that is received, purchased or consigned from the grower by a handler prior to processing through a cleaning plant, and then subsequently processed through a cleaning plant so as to determine volumes of improved pecans, native and seedling pecans, and substandard pecans.

§ 986.23 Hican.

Hican means a tree resulting from a cross between a pecan and some other type of hickory (members of the genus *Carya*) or the nut from such a hybrid tree.

§ 986.24 Inshell pecans.

Inshell pecans are nuts whose kernel is maintained inside the shell.

§ 986.25 Inspection Service.

Inspection service means the Federal-State Inspection Service or any other inspection service authorized by the Secretary.

§ 986.26 Inter-handler transfer.

Inter-handler transfer means the movement of inshell pecans from one handler to another inside the production area for the purposes of additional handling. Any assessments or requirements under this part with respect to inshell pecans so transferred

may be assumed by the receiving handler.

§ 986.27 Merchantable pecans.

(a) *Inshell. Merchantable inshell* pecans mean all inshell pecans meeting the minimum grade regulations that may be effective pursuant to § 986.69, Authorities regulating handling.

(b) *Shelled. Merchantable shelled* pecans means all shelled pecans meeting the minimum grade regulations that may be effective pursuant to § 986.69, Authorities regulating handling.

§ 986.28 Pack.

Pack means to clean, grade, or otherwise prepare pecans for market as inshell or shelled pecans.

§ 986.29 Pecans.

(a) *Pecans* means and includes any and all varieties or subvarieties of Genus: *Carya*, Species: *illinoensis*, expressed also as *Carya illinoensis* (*syn. C. illinoensis*) including all varieties thereof, excluding hicans, that are produced in the production area and are classified as:

(1) *Native or seedling* pecans harvested from non-grafted or naturally propagated tree varieties;

(2) *Improved pecans* harvested from grafted tree varieties bred or selected for superior traits of nut size, ease of shelling, production characteristics, and resistance to certain insects and diseases, including but not limited to: Desirable, Elliot, Forkert, Sumner, Creek, Excel, Gracross, Gratex, Gloria Grande, Kiowa, Moreland, Sioux, Mahan, Mandan, Moneymaker, Morrill, Cunard, Zinner, Byrd, McMillan, Stuart, Pawnee, Eastern and Western Schley, Wichita, Success, Cape Fear, Choctaw, Cheyenne, Lakota, Kanza, Caddo, and Oconee; and

(3) *Substandard pecans* that are blowouts, cracks, stick-tights, and other inferior quality pecans, whether native or improved, that, with further handling, can be cleaned and eventually sold into the stream of commerce.

(b) The Council, with the approval of the Secretary, may recognize new or delete obsolete varieties or sub-varieties for each category.

§ 986.30 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 986.31 Production area.

Production area means the following fifteen pecan-producing states within the United States: Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Mississippi,

Missouri, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas.

§ 986.32 Proprietary capacity.

Proprietary capacity means the capacity or interest of a grower or handler that, either directly or through one or more intermediaries or affiliates, is a property owner together with all the appurtenant rights of an owner, including the right to vote the interest in that capacity as an individual, a shareholder, member of a cooperative, partner, trustee or in any other capacity with respect to any other business unit.

§ 986.33 Regions.

(a) *Regions* within the production area shall consist of the following:

(1) *Eastern Region*, consisting of: Alabama, Florida, Georgia, North Carolina, South Carolina

(2) *Central Region*, consisting of: Arkansas, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Texas

(3) *Western Region*, consisting of: Arizona, California, New Mexico

(b) With the approval of the Secretary, the boundaries of any region may be changed pursuant to § 986.58, Reapportionment and reestablishment of regions.

§ 986.34 Representative period.

Representative period is the previous four fiscal years for which a grower's annual average production is calculated, or any other period recommended by the Council and approved by the Secretary.

§ 986.35 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any other officer or employee of the United States Department of Agriculture who is, or who may be, authorized to perform the duties of the Secretary of Agriculture of the United States.

§ 986.36 Sheller.

Sheller refers to any person who converts inshell pecans to shelled pecans and sells the output in any and all markets in the stream of commerce, both within and outside of the production area; *Provided*, That the term “sheller” shall only include those who shell more than 1 million pounds of inshell pecans in a fiscal year. The Council may recommend changes to this definition subject to the approval of the Secretary.

§ 986.37 Shelled pecans.

Shelled pecans are pecans whose shells have been removed leaving only edible kernels, kernel pieces or pecan meal. *Shelled pecans* are synonymous with *pecan meats*.

§ 986.38 Stick-tights.

Stick-tights means pecans whose outer shuck has adhered to the shell causing their value to decrease or be discounted.

§ 986.39 Trade supply.

Trade supply means the quantity of merchantable inshell or shelled pecans that growers will supply to handlers during a fiscal year for sale in the United States and abroad or, in the absence of handler regulations § 986.69 setting forth minimum grade regulations for merchantable pecans, the sum of handler-cleaned and grower-cleaned production.

§ 986.40 Unassessed inventory.

Unassessed inventory means inshell pecans held by growers or handlers for which no assessment has been paid to the Council.

§ 986.41 Varieties.

Varieties mean and include all cultivars, classifications, or subdivisions of pecans.

§ 986.42 Warehousing.

Warehousing means to hold assessed or unassessed inventory.

§ 986.43 Weight.

Weight means pounds of inshell pecans, received by handler within each fiscal year; *Provided*, That for shelled pecans the actual weight shall be multiplied by two to obtain an inshell weight.

Administrative Body**§ 986.45 American Pecan Council.**

The American Pecan Council is hereby established consisting of 17 members selected by the Secretary, each of whom shall have an alternate member nominated with the same qualifications as the member. The 17 members shall include nine (9) grower seats, six (6) sheller seats, and two (2) at-large seats allocated to one accumulator and one public member. The grower and sheller nominees and their alternates shall be growers and shellers at the time of their nomination and for the duration of their tenure. Grower and sheller members and their alternates shall be selected by the Secretary from nominees submitted by the Council. The two at-large seats shall be nominated by the Council and appointed by the Secretary.

(a) Each region shall be allocated the following member seats:

- (1) *Eastern Region*: three (3) growers and two (2) shellers;
- (2) *Central Region*: three (3) growers and two (2) shellers;
- (3) *Western Region*: three (3) growers and two (2) shellers.

(b) Within each region, the grower and sheller seats shall be defined as follows:

(1) *Grower seats*: Each region shall have a grower Seat 1 and Seat 2 allocated to growers whose acreage is equal to or exceeds 176 pecan acres. Each region shall also have a grower Seat 3 allocated to a grower whose acreage is less than 176 pecan acres.

(2) *Sheller seats*: Each region shall have a sheller Seat 1 allocated to a sheller who handles more than 12.5 million pounds of inshell pecans in the fiscal year preceding nomination, and a sheller Seat 2 allocated to a sheller who handles less than or equal to 12.5 million pounds of inshell pecans in the fiscal year preceding nomination.

(c) The Council may recommend, subject to the approval of the Secretary, revisions to the above requirements for grower and sheller seats to accommodate changes within the industry.

§ 986.46 Council nominations and voting.

Nomination of Council members and alternate members shall follow the procedure set forth in this section, or as may be changed as recommended by the Council and approved by the Secretary. All nominees must meet the requirements set forth in §§ 986.45, American Pecan Council, and 986.48, Eligibility, or as otherwise identified by the Secretary, to serve on the Council.

(a) *Initial members*. Nominations for initial Council members and alternate members shall be conducted by the Secretary by either holding meetings of shellers and growers, by mail, or by email, and shall be submitted on approved nomination forms. Eligibility to cast votes on nomination ballots, accounting of nomination ballot results, and identification of member and alternate nominees shall follow the procedures set forth in this section, or by any other criteria deemed necessary by the Secretary. The Secretary shall select and appoint the initial members and alternate members of the Council.

(b) *Successor members*. Subsequent nominations of Council members and alternate members shall be conducted as follows:

(1) *Call for nominations*. (i) Nominations for the grower member seats for each region shall be received from growers in that region on approved forms containing the information stipulated in this section.

(ii) If a grower is engaged in producing pecans in more than one region, such grower shall nominate in the region in which they grow the largest volume of their production.

(iii) Nominations for the sheller member seats for each region shall be received from shellers in that region on approved forms containing the information stipulated in this section.

(iv) If a sheller is engaged in handling in more than one region, such sheller shall nominate in the region in which they shelled the largest volume in the preceding fiscal year.

(2) *Voting for nominees*. (i) Only growers, through duly authorized officers or employees of growers, if applicable, may participate in the nomination of grower member nominees and their alternates. Each grower shall be entitled to cast only one nomination ballot for each of the three grower seats in their region.

(ii) If a grower is engaged in producing pecans in more than one region, such grower shall cast their nomination ballot in the region in which they grow the largest volume of their production. Notwithstanding this stipulation, such grower may vote their volume produced in any or all of the three regions.

(iii) Only shellers, through duly authorized officers or employees of shellers, if applicable, may participate in the nomination of the sheller member nominees and their alternates. Each sheller shall be entitled to cast only one nomination ballot for each of the two sheller seats in their region.

(iv) If a sheller is engaged in handling in more than one region, such sheller shall cast their nomination ballot in the region in which they shelled the largest volume in the preceding fiscal year. Notwithstanding this stipulation, such sheller may vote their volume handled in all three regions.

(v) If a person is both a grower and a sheller of pecans, such person may not participate in both grower and sheller nominations. Such person must elect to participate either as a grower or a sheller.

(3) *Nomination procedure for grower seats*. (i) The Council shall mail to all growers who are on record with the Council within the respective regions a grower nomination ballot indicating the nominees for each of the three grower member seats, along with voting instructions. Growers may cast ballots on the proper ballot form either at meetings of growers, by mail, or by email as designated by the Council. For ballots to be considered, they must be submitted on the proper forms with all required information, including signatures.

(ii) On the ballot, growers shall indicate their vote for the grower nominee candidates for the grower seats and also indicate their average annual

volume of inshell pecan production for the preceding four fiscal years.

(iii) *Seat 1* (growers with equal to or more than 176 acres of pecans). The nominee for this seat in each region shall be the grower receiving the highest volume of production (pounds of inshell pecans) votes from the respective region, and the grower receiving the second highest volume of production votes shall be the alternate member nominee for this seat. In case of a tie vote, the nominee shall be selected by a drawing.

(iv) *Seat 2* (growers with equal to or more than 176 acres of pecans). The nominee for this seat in each region shall be the grower receiving the highest number of votes from their respective region, and the grower receiving the second highest number of votes shall be the alternate member nominee for this seat. In case of a tie vote, the nominee shall be selected by a drawing.

(v) *Seat 3* (grower with less than 176 acres of pecans). The nominee for this seat in each region shall be the grower receiving the highest number of votes from the respective region, and the grower receiving the second highest number of votes shall be the alternate member nominee for this seat. In case of a tie vote, the nominee shall be selected by a drawing.

(4) *Nomination procedure for sheller seats.* (i) The Council shall mail to all shellers who are on record with the Council within the respective regions the sheller ballot indicating the nominees for each of the two sheller member seats in their respective regions, along with voting instructions. Shellers may cast ballots on approved ballot forms either at meetings of shellers, by mail, or by email as designated by the Council. For ballots to be considered, they must be submitted on the approved forms with all required information, including signatures.

(ii) *Seat 1* (shellers handling more than 12.5 million lbs. of inshell pecans in the preceding fiscal year). The nominee for this seat in each region shall be assigned to the sheller receiving the highest number of votes from the respective region, and the sheller receiving the second highest number of votes shall be the alternate member nominee for this seat. In case of a tie vote, the nominee shall be selected by a drawing.

(iii) *Seat 2* (shellers handling equal to or less than 12.5 million lbs. of inshell pecans in the preceding fiscal year). The nominee for this seat in each region shall be assigned to the sheller receiving the highest number of votes from the respective region, and the sheller receiving the second highest number of

votes shall be the alternate member nominee for this seat. In case of a tie vote, the nominee shall be selected by a drawing.

(5) *Reports to the Secretary.* Nominations in the foregoing manner received by the Council shall be reported to the Secretary on or before 15 of each July of any year in which nominations are held, together with a certified summary of the results of the nominations and other information deemed by the Council to be pertinent or requested by the Secretary. From those nominations, the Secretary shall select the fifteen grower and sheller members of the Council and an alternate for each member, unless the Secretary rejects any nomination submitted. In the event the Secretary rejects a nomination, a second nomination process may be conducted to identify other nominee candidates, the resulting nominee information may be reported to the Secretary after July 15 and before September 15. If the Council fails to report nominations to the Secretary in the manner herein specified, the Secretary may select the members without nomination. If nominations for the public and accumulator at-large members are not submitted by September 15 of any year in which their nomination is due, the Secretary may select such members without nomination.

(6) *At-large members.* The grower and sheller members of the Council shall select one public member and one accumulator member and respective alternates for consideration, selection and appointment by the Secretary. The public member and alternate public member may not have any financial interest, individually or corporately, or affiliation with persons vested in the pecan industry. The accumulator member and alternate accumulator member must meet the criteria set forth in § 986.1, Accumulator, and may reside or maintain a place of business in any region.

(7) *Nomination forms.* The Council may distribute nomination forms at meetings, by mail, by email, or by any other form of distribution recommended by the Council and approved by the Secretary.

(i) *Grower nomination forms.* Each nomination form submitted by a grower shall include the following information:

- (A) The name of the nominated grower;
- (B) The name and signature of the nominating grower;
- (C) Two additional names and respective signatures of growers in support of the nomination;

(D) Any other such information recommended by the Council and approved by the Secretary.

(ii) *Sheller nomination forms.* Each nomination form submitted by a sheller shall include the following:

- (A) The name of the nominated sheller;
- (B) The name and signature of the nominating sheller;
- (C) One additional name and signature of a sheller in support of the nomination;
- (D) Any other such information recommended by the Council and approved by the Secretary.

(8) *Changes to the nomination and voting procedures.*

The Council may recommend, subject to the approval of the Secretary, a change to these procedures should the Council determine that a revision is necessary.

§ 986.47 Alternate members.

(a) Each member of the Council shall have an alternate member to be nominated in the same manner as the member.

(b) An alternate for a member of the Council shall act in the place and stead of such member in their absence or in the event of their death, removal, resignation, or disqualification, until the next nomination and elections take place for the Council or the vacancy has been filled pursuant to § 986.48, Eligibility.

(c) In the event any member of the Council and their alternate are both unable to attend a meeting of the Council, any alternate for any other member representing the same group as the absent member may serve in the place of the absent member.

§ 986.48 Eligibility.

(a) Each grower member and alternate shall be, at the time of selection and during the term of office, a grower or an officer, or employee, of a grower in the region and in the classification for which nominated.

(b) Each sheller member and alternate shall be, at the time of selection and during the term of office, a sheller or an officer or employee of a sheller in the region and in the classification for which nominated.

(c) A grower can be a nominee for only one grower member seat. If a grower is nominated for two grower member seats, he or she shall select the seat in which he or she desires to run, and the grower ballot shall reflect that selection.

(d) Any member or alternate member who at the time of selection was employed by or affiliated with the

person who is nominated shall, upon termination of that relationship, become disqualified to serve further as a member and that position shall be deemed vacant.

(e) No person nominated to serve as a public member or alternate public member shall have a financial interest in any pecan grower or handling operation.

§ 986.49 Acceptance.

Each person to be selected by the Secretary as a member or as an alternate member of the Council shall, prior to such selection, qualify by advising the Secretary that if selected, such person agrees to serve in the position for which that nomination has been made.

§ 986.50 Term of office.

(a) Selected members and alternate members of the Council shall serve for terms of four years: *Provided*, That at the end of the first four (4) year term and in the nomination and selection of the second Council only, four of the grower member and alternate seats and three of the sheller member and alternate seats shall be seated for terms of two years so that approximately half of the memberships' and alternates' terms expire every two years thereafter. Member and alternate seats assigned two-year terms for the seating of the second Council only shall be as follows:

(1) Grower member Seat 2 in all regions shall be assigned a two-year term;

(2) Grower member Seat 3 in all regions shall, by drawing, identify one member seat to be assigned a two-year term; and,

(3) Sheller Seat 2 in all regions shall be assigned a two-year term.

(b) Council members and alternates may serve up to two consecutive, four-year terms of office. Subject to section (c) below, in no event shall any member or alternate serve more than eight consecutive years on the Council as either a member or an alternate.

However, if selected, an alternate having served up to two consecutive terms may immediately serve as a member for two consecutive terms without any interruption in service. The same is true for a member who, after serving for up to two consecutive terms, may serve as an alternate if nominated without any interruption in service. A person having served the maximum number of terms as set forth above may not serve again as a member or an alternate for at least twelve consecutive months. For purposes of determining when a member or alternate has served two consecutive terms, the accrual of terms shall begin following any period of at

least twelve consecutive months out of office.

(c) Each member and alternate member shall continue to serve until a successor is selected and has qualified.

(d) A term of office shall begin as set forth in the by-laws or as directed by the Secretary each year for all members.

(e) The Council may recommend, subject to approval of the Secretary, revisions to the start day for the term of office, the number of years in a term, and the number of terms a member or an alternate can serve.

§ 986.51 Vacancy.

Any vacancy on the Council occurring by the failure of any person selected to the Council to qualify as a member or alternate member due to a change in status making the member ineligible to serve, or due to death, removal, or resignation, shall be filled, by a majority vote of the Council for the unexpired portion of the term. However, that person shall fulfill all the qualifications set forth in this part as required for the member whose office that person is to fill. The qualifications of any person to fill a vacancy on the Council shall be certified in writing to the Secretary. The Secretary shall notify the Council if the Secretary determines that any such person is not qualified.

§ 986.52 Council expenses.

The members and their alternates of the Council shall serve without compensation, but shall be reimbursed for the reasonable and necessary expenses incurred by them in the performance of their duties under this part.

§ 986.53 Powers.

The Council shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make bylaws, rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 986.54 Duties.

The duties of the Council shall be as follows:

(a) To act as intermediary between the Secretary and any handler or grower;

(b) To keep minute books and records which will clearly reflect all of its acts and transactions, and such minute books and records shall at any time be subject to the examination of the Secretary;

(c) To furnish to the Secretary a complete report of all meetings and such other available information as he or she may request;

(d) To appoint such employees as it may deem necessary and to determine the salaries, define the duties, and fix the bonds of such employees;

(e) To cause the books of the Council to be audited by one or more certified public accountants at least once for each fiscal year and at such other times as the Council deems necessary or as the Secretary may request, and to file with the Secretary three copies of all audit reports made;

(f) To investigate the growing, shipping and marketing conditions with respect to pecans and to assemble data in connection therewith;

(g) To investigate compliance with the provisions of this part; and,

(h) To recommend by-laws, rules and regulations for the purpose of administering this part.

§ 986.55 Procedure.

(a) The members of the Council shall select a chairman from their membership, and shall select such other officers and adopt such rules for the conduct of Council business as they deem advisable.

(b) The Council may provide for meetings by telephone, or other means of communication, and any vote cast at such a meeting shall be confirmed promptly in writing. The Council shall give the Secretary the same notice of its meetings as is given to members of the Council.

(c) *Quorum.* A quorum of the Council shall be any twelve voting Council members. The vote of a majority of members present at a meeting at which there is a quorum shall constitute the act of the Council; *Provided*, That:

(1) Actions of the Council with respect to the following issues shall require a two-thirds (12 members) concurring vote of the Council:

(i) Establishment of or changes to by-laws;

(ii) Appointment or administrative issues relating to the program's manager or chief executive officer;

(iii) Budget;

(iv) Assessments;

(v) Compliance and audits;

(vi) Reestablishment of regions and reapportionment or reallocation of Council membership;

(vii) Modifying definitions of grower and sheller;

(viii) Research or promotion activities under § 986.68;

(ix) Grade, quality and size regulation under § 986.69(a)(1) and (2);

(x) Pack and container regulation under § 986.69(a)(3); and,

(2) Actions of the Council with respect to the securing of commercial bank loans for the purpose of financing start-up costs of the Council and its activities or securing financial assistance in emergency situations shall require a unanimous vote of all members present at an in-person meeting; *Provided*, That in the event of an emergency that warrants immediate attention sooner than a face-to-face meeting is possible, a vote for financing may be taken. In such event, the Council's first preference is a videoconference and second preference is phone conference, both followed by written confirmation of the members attending the meeting.

§ 986.56 Right of the Secretary.

The members and alternates for members and any agent or employee appointed or employed by the Council shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 986.57 Funds and other property.

(a) All funds received pursuant to any of the provisions of this part shall be used solely for the purposes specified in this part, and the Secretary may require the Council and its members to account for all receipts and disbursements.

(b) Upon the death, resignation, removal, disqualification, or expiration of the term of office of any member or employee, all books, records, funds, and other property in their possession belonging to the Council shall be delivered to their successor in office or to the Council, and such assignments and other instruments shall be executed as may be necessary to vest in such successor or in the Council full title to all the books, records, funds, and other property in the possession or under the control of such member or employee pursuant to this subpart.

§ 986.58 Reapportionment and reestablishment of regions.

The Council may recommend, subject to approval of the Secretary, reestablishment of regions, reapportionment of members among regions, and may revise the groups eligible for representation on the Council. In recommending any such changes, the following shall be considered:

(a) Shifts in acreage within regions and within the production area during recent years;

(b) The importance of new production in its relation to existing regions;

(c) The equitable relationship between Council apportionment and regions;

(d) Changes in industry structure and/or the percentage of crop represented by various industry entities; and

(e) Other relevant factors.

Expenses, Assessments and Marketing Policy

§ 986.60 Budget.

As soon as practicable before the beginning of each fiscal year, and as may be necessary thereafter, the Council shall prepare a budget of income and expenditures necessary for the administration of this part. The Council may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The Council shall present such budget to the Secretary with an accompanying report showing the basis for its calculations, and all shall be subject to Secretary approval.

§ 986.61 Assessments.

(a) Each handler who first handles inshell pecans shall pay assessments to the Council. Assessments collected each fiscal year shall defray expenses which the Secretary finds reasonable and likely to be incurred by the Council during that fiscal year. Each handler's share of assessments paid to the Council shall be equal to the ratio between the total quantity of inshell pecans handled by them as the first handler thereof during the applicable fiscal year, and the total quantity of inshell pecans handled by all regulated handlers in the production area during the same fiscal year. The payment of assessments for the maintenance and functioning of the Council may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative. Handlers may avail themselves of an inter-handler transfer, as provided for in § 986.62, Inter-handler transfers.

(b) Based upon a recommendation of the Council or other available data, the Secretary shall fix three base rates of assessment for inshell pecans handled during each fiscal year. Such base rates shall include one rate of assessment for any or all varieties of pecans classified as native and seedling; one rate of assessment for any or all varieties of pecans classified as improved; and one rate of assessment for any pecans classified as substandard.

(c) Upon implementation of this part and subject to the approval of the Secretary, initial assessment rates per classification shall be set within the following prescribed ranges: Native and seedling classified pecans shall be assessed at one-cent to two-cents per pound; improved classified pecans shall be assessed at two-cents to three-cents per pound; and, substandard classified pecans shall be assessed at one-cent to two-cents per pound. These assessment ranges shall be in effect for the initial four years of the order.

(d) Subsequent assessment rates shall not exceed two percent of the aggregate of all prices in each classification across the production area based on Council data, or the average of USDA reported average price received by growers for each classification, in the preceding fiscal year as recommended by the Council and approved by the Secretary. After four years from the implementation of this part, the Council may recommend, subject to the approval of the Secretary, revisions to this calculation or assessment ranges.

(e) The Council, with the approval of the Secretary, may revise the assessment rates if it determines, based on information including crop size and value, that the action is necessary, and if the revision does not exceed the assessment limitation specified in this section and is made prior to the final billing of the assessment.

(f) In order to provide funds for the administration of the provisions of this part during the first part of a fiscal year, before sufficient operating income is available from assessments, the Council may accept the payment of assessments in advance and may also borrow money for such purposes; *Provided*, That no loan may amount to more than 50 percent of projected assessment revenue projected for the year in which the loan is secured, and the loan must be repaid within five years.

(g) If a handler does not pay assessments within the time prescribed by the Council, the assessment may be increased by a late payment charge and/or an interest rate charge at amounts prescribed by the Council with approval of the Secretary.

(h) On August 31 of each year, every handler warehousing inshell pecans shall be identified as the first handler of those pecans and shall be required to pay the assessed rate on the category of pecans in their possession on that date. The terms of this paragraph may be revised subject to the recommendation of the Council and approval by the Secretary.

(i) On August 31 of each year, all inventories warehoused by growers

from the current fiscal year shall cease to be eligible for inter-handler transfer treatment. Instead, such inventory will require the first handler that handles such inventory to pay the assessment thereon in accordance with the prevailing assessment rates at the time of transfer from the grower to the said handler. The terms of this paragraph may be revised subject to the recommendation of the Council and approval by the Secretary.

§ 986.62 Inter-handler transfers.

Any handler inside the production area, except as provided for in § 986.61 (h) and (i), Assessments, may transfer inshell pecans to another handler inside the production area for additional handling, and any assessments or other marketing order requirements with respect to pecans so transferred may be assumed by the receiving handler. The Council, with the approval of the Secretary, may establish methods and procedures, including necessary reports, to maintain accurate records for such transfers. All inter-handler transfers will be documented by forms or electronic transfer receipts approved by the Council, and all forms or electronic transfer receipts used for inter-handler transfers shall require that copies be sent to the selling party, the receiving party, and the Council. Such forms must state which handler has the assessment responsibilities.

§ 986.63 Contributions.

The Council may accept voluntary contributions. Such contributions may only be accepted if they are free from any encumbrances or restrictions on their use and the Council shall retain complete control of their use. The Council may receive contributions from both within and outside of the production area.

§ 986.64 Accounting.

(a) Assessments collected in excess of expenses incurred shall be accounted for in accordance with one of the following:

(1) Excess funds not retained in a reserve, as provided in paragraph (a)(2) of this section shall be refunded proportionately to the persons from whom they were collected; or

(2) The Council, with the approval of the Secretary, may carry over excess funds into subsequent fiscal periods as reserves: *Provided*, That funds already in reserves do not equal approximately three fiscal years' expenses. Such reserve funds may be used:

(i) To defray expenses during any fiscal period prior to the time

assessment income is sufficient to cover such expenses;

(ii) To cover deficits incurred during any fiscal period when assessment income is less than expenses;

(iii) To defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative; and

(iv) To cover necessary expenses of liquidation in the event of termination of this part.

(b) Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate. To the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(c) All funds received by the Council pursuant to the provisions of this part shall be used solely for the purposes specified in this part and shall be accounted for in the manner provided for in this part. The Secretary may at any time require the Council and its members to account for all receipts and disbursements.

(d) Upon the removal or expiration of the term of office of any member of the Council, such member shall account for all receipts and disbursements and deliver all property and funds in their possession to the Council, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the Council full title to all of the property, funds, and claims vested in such member pursuant to this part.

(e) The Council may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other Council property during periods of suspension of this subpart, or during any period or periods when regulations are not in effect and if the Secretary determines such action appropriate, he or she may direct that such person or persons shall act as trustee or trustees for the Council.

§ 986.65 Marketing policy.

By the end of each fiscal year, the Council shall make a report and recommendation to the Secretary on the Council's proposed marketing policy for the next fiscal year. Each year such report and recommendation shall be adopted by the affirmative vote of at least two-thirds (2/3) of the members of the Council and shall include the following and, where applicable, on an inshell basis:

(a) Estimate of the grower-cleaned production and handler-cleaned production in the area of production for the fiscal year;

(b) Estimate of disappearance;

(c) Estimate of the improved, native, and substandard pecans;

(d) Estimate of the handler inventory on August 31, of inshell and shelled pecans;

(e) Estimate of unassessed inventory;

(f) Estimate of the trade supply, taking into consideration imports, and other factors;

(g) Preferable handler inventory of inshell and shelled pecans on August 31 of the following year;

(h) Projected prices in the new fiscal year;

(i) Competing nut supplies; and

(j) Any other relevant factors.

Authorities Relating to Research, Promotion, Data Gathering, Packaging, Grading, Compliance and Reporting

§ 986.67 Recommendations for regulations.

Upon complying with § 986.65, Marketing policy, the Council may propose regulations to the Secretary whenever it finds that such proposed regulations may assist in effectuating the declared policy of the Act.

§ 986.68 Authority for research and promotion activities.

The Council, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development projects, and marketing promotion, including paid generic advertising, designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of pecans including product development, nutritional research, and container development. The expenses of such projects shall be paid from funds collected pursuant to this part.

§ 986.69 Authorities regulating handling.

(a) The Council may recommend, subject to the approval of the Secretary, regulations that:

(1) Establish handling requirements or minimum tolerances for particular grades, sizes, or qualities, or any combination thereof, of any or all varieties or classifications of pecans during any period;

(2) Establish different handling requirements or minimum tolerances for particular grades, sizes, or qualities, or any combination thereof for different varieties or classifications, for different containers, for different portions of the production area, or any combination of the foregoing, during any period;

(3) Fix the size, capacity, weight, dimensions, or pack of the container or containers, which may be used in the packaging, transportation, sale, preparation for market, shipment, or other handling of pecans; and

(4) Establish inspection and certification requirements for the purposes of paragraphs (a)(1) through (3) of this section.

(b) Regulations issued hereunder may be amended, modified, suspended, or terminated whenever it is determined:

(1) That such action is warranted upon recommendation of the Council and approval by the Secretary, or other available information; or

(2) That regulations issued hereunder no longer tend to effectuate the declared policy of the Act.

(c) The authority to regulate as put forward in this subsection shall not in any way constitute authority for the Council to recommend volume regulation, such as reserve pools, producer allotments, or handler withholding requirements which limit the flow of product to market for the purpose of reducing market supply.

(d) The Council may recommend, subject to the approval of the Secretary, rules and regulations to effectuate this subpart.

§ 986.70 Handling for special purposes.

Regulations in effect pursuant to § 986.69, Authorities regulating handling, may be modified, suspended, or terminated to facilitate handling of pecans for:

- (a) Relief or charity;
- (b) Experimental purposes; and
- (c) Other purposes which may be recommended by the Council and approved by the Secretary.

§ 986.71 Safeguards.

The Council, with the approval of the Secretary, may establish through rules such requirements as may be necessary to establish that shipments made pursuant to § 986.70, Handling for special purposes, were handled and used for the purpose stated.

§ 986.72 Notification of regulation.

The Secretary shall promptly notify the Council of regulations issued or of any modification, suspension, or termination thereof. The Council shall give reasonable notice thereof to industry participants.

Reports, Books and Other Records

§ 986.75 Reports of handler inventory.

Each handler shall submit to the Council in such form and on such dates as the Council may prescribe, reports showing their inventory of inshell and shelled pecans.

§ 986.76 Reports of merchantable pecans handled.

Each handler who handles merchantable pecans at any time during a fiscal year shall submit to the Council in such form and at such intervals as the Council may prescribe, reports showing the quantity so handled and such other information pertinent thereto as the Council may specify.

§ 986.77 Reports of pecans received by handlers.

Each handler shall file such reports of their pecan receipts from growers, handlers, or others in such form and at such times as may be required by the Council with the approval of the Secretary.

§ 986.78 Other handler reports.

Upon request of the Council made with the approval of the Secretary each handler shall furnish such other reports and information as are needed to enable the Council to perform its duties and exercise its powers under this part.

§ 986.79 Verification of reports.

For the purpose of verifying and checking reports filed by handlers on their operations, the Secretary and the Council, through their duly authorized representatives, shall have access to any premises where pecans and pecan records are held. Such access shall be available at any time during reasonable business hours. Authorized representatives of the Council or the Secretary shall be permitted to inspect any pecans held and any and all records of the handler with respect to matters within the purview of this part. Each handler shall maintain complete records on the receiving, holding, and disposition of all pecans. Each handler shall furnish all labor necessary to facilitate such inspections at no expense to the Council or the Secretary. Each handler shall store all pecans held by him in such manner as to facilitate inspection and shall maintain adequate storage records which will permit accurate identification with respect to inspection certificates of respective lots and of all such pecans held or disposed of theretofore. The Council, with the approval of the Secretary, may establish any methods and procedures needed to verify reports.

§ 986.80 Certification of reports.

All reports submitted to the Council as required in this part shall be certified to the Secretary and the Council as to the completeness and correctness of the information contained therein.

§ 986.81 Confidential information.

All reports and records submitted by handlers to the Council, which include data or information constituting a trade secret or disclosing the trade position, or financial condition or business operations of the handler shall be kept in the custody of one or more employees of the Council and shall be disclosed to no person except the Secretary.

§ 986.82 Books and other records.

Each handler shall maintain such records of pecans received, held and disposed of by them as may be prescribed by the Council for the purpose of performing its duties under this part. Such books and records shall be retained and be available for examination by authorized representatives of the Council and the Secretary for the current fiscal year and the preceding three (3) fiscal years.

Additional Provisions

§ 986.86 Exemptions.

(a) Any handler may handle inshell pecans within the production area free of the requirements of this part if such pecans are handled in quantities not exceeding 1,000 inshell pounds during any fiscal year.

(b) Any handler may handle shelled pecans within the production area free of the requirements of this part if such pecans are handled in quantities not exceeding 500 shelled pounds during any fiscal year.

(c) Mail order sales are not exempt sales under this part.

(d) The Council, with the approval of the Secretary, may establish such rules, regulations, and safeguards, and require such reports, certifications, and other conditions, as are necessary to ensure compliance with this part.

§ 986.87 Compliance.

Except as provided in this subpart, no handler shall handle pecans, the handling of which has been prohibited by the Secretary in accordance with provisions of this part, or the rules and regulations thereunder.

§ 986.88 Duration of immunities.

The benefits, privileges, and immunities conferred by virtue of this part shall cease upon termination hereof, except with respect to acts done under and during the existence of this part.

§ 986.89 Separability.

If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remaining provisions and the

applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 986.90 Derogation.

Nothing contained in this part is or shall be construed to be in derogation of, or in modification of, the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 986.91 Liability.

No member or alternate of the Council nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any party under this part or to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, agent or employee, except for acts of dishonesty, willful misconduct, or gross negligence. The Council may purchase liability insurance for its members and officers.

§ 986.92 Agents.

The Secretary may name, by designation in writing, any person, including any officer or employee of the USDA or the United States to act as their agent or representative in connection with any of the provisions of this part.

§ 986.93 Effective time.

The provisions of this part and of any amendment thereto shall become effective at such time as the Secretary may declare, and shall continue in force until terminated in one of the ways specified in § 986.94.

§ 986.94 Termination.

(a) The Secretary may at any time terminate this part.

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this part whenever he or she finds that such operation obstructs or does not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this part applicable to pecans for market or pecans for handling at the end of any fiscal year whenever the Secretary finds, by referendum or otherwise, that such termination is favored by a majority of growers; *Provided*, That such majority of growers has produced more than 50 percent of the volume of pecans in the production area during such fiscal year. Such termination shall be effective only if announced on or before the last day of the then current fiscal year.

(d) The Secretary shall conduct a referendum within every five-year period beginning from the implementation of this part, to ascertain whether continuance of the provisions of this part applicable to pecans are favored by two-thirds by number or volume of growers voting in the referendum. The Secretary may terminate the provisions of this part at the end of any fiscal year in which the Secretary has found that continuance of this part is not favored by growers who, during an appropriate period of time determined by the Secretary, have been engaged in the production of pecans in the production area: *Provided*, That termination of this part shall be effective only if announced on or before the last day of the then current fiscal year.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 986.95 Proceedings after termination.

(a) Upon the termination of this part, the Council members serving shall continue as joint trustees for the purpose of liquidating all funds and property then in the possession or under the control of the Council, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The joint trustees shall continue in such capacity until discharged by the Secretary; from time to time accounting for all receipts and disbursements; delivering all funds and property on hand, together with all books and records of the Council and of the joint trustees to such person as the Secretary shall direct; and, upon the request of the Secretary, executing such assignments or other instruments necessary and appropriate to vest in such person full title and right to all of the funds, property, or claims vested in the Council or in said joint trustees.

(c) Any funds collected pursuant to this part and held by such joint trustees or such person over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the joint trustees or such other person in the performance of their duties under this subpart, as soon as practicable after the termination hereof, shall be returned to the handlers pro rata in proportion to their contributions thereto.

(d) Any person to whom funds, property, or claims have been transferred or delivered by the Council, upon direction of the Secretary, as provided in this part, shall be subject to the same obligations and duties with respect to said funds, property, or

claims as are imposed upon said joint trustees.

§ 986.96 Amendments.

Amendments to this part may be proposed from time to time by the Council or by the Secretary.

§ 986.97 Counterparts.

Handlers may sign an agreement with the Secretary indicating their support for this marketing order. This agreement may be executed in multiple counterparts by each handler. If more than fifty percent of the handlers, weighted by the volume of pecans handled during an appropriate period of time determined by the Secretary, enter into such an agreement, then a marketing agreement shall exist for the pecans marketing order. This marketing agreement shall not alter the terms of this part. Upon the termination of this part, the marketing agreement has no further force or effect.

§ 986.98 Additional parties.

After this part becomes effective, any handler may become a party to the marketing agreement if a counterpart is executed by the handler and delivered to the Secretary.

§ 986.99 Order with marketing agreement.

Each signatory handler hereby requests the Secretary to issue, pursuant to the Act, an order for regulating the handling of pecans in the same manner as is provided for in this agreement.

Subpart B—[Reserved]

Dated: February 22, 2016.

Elanor Starmer,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2016–04043 Filed 2–26–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2015–BT–STD–0008]

RIN 1904–AD52

Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Open Meetings for the Dedicated Purpose Pool Pumps (DPPP) Working Group To Negotiate a Notice of Proposed Rulemaking (NOPR) for Energy Conservation Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking; public meetings.

SUMMARY: The Department of Energy (DOE) announces public meetings and webinars for the DPPP Working Group. The Federal Advisory Committee Act requires that agencies publish notice of an advisory committee meeting in the **Federal Register**.

On July 30, 2015, ASRAC met and unanimously passed the recommendation to form a dedicated purpose pool pumps (DPPP) working group to meet and discuss and, if possible, reach consensus on proposed Federal rules that would apply to this equipment. The ASRAC Charter allowed for 3 months of working group meetings to establish the scope, metric, definitions, and test procedure for dedicated purpose pool pumps and decide on a path forward at that time. The working group met this requirement and now more time is required to discuss potential energy conservation standards for this equipment. On January 20, 2016, ASRAC met and recommended that the DPPP Working Group continue its work to develop and recommend potential energy conservation standards for this equipment. This notice announces the next series of meetings for this working group.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: The meetings will be held at U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 unless otherwise stated in the **SUPPLEMENTARY INFORMATION** section. Individuals will also have the opportunity to participate by webinar. To register for the webinars and receive call-in information, please register at DOE's Web site https://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/14.

FOR FURTHER INFORMATION CONTACT: Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE-5B, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 287-1692. Email: asrac@ee.doe.gov.

Ms. Johanna Jochum, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-9496. Email: Johanna.Jochum@Hq.Doe.Gov.

SUPPLEMENTARY INFORMATION: DOE will host public meetings and webinars on the below dates. Meetings will be hosted

at DOE's Forrestal Building, unless otherwise stated.

- March 21, 2016; 9:00 a.m.–5:00 p.m. at 955 L'Enfant Plaza, 8th Floor
- March 22, 2016; 9:00 a.m.–5:00 p.m. at Navigant, 1200 19th St. NW., #700, Washington, DC 20036
- April 18, 2016; 9:00 a.m.–5:00 p.m. at DOE's Forrestal Building, Room 6E-069
- April 19, 2016; 9:00 a.m.–5:00 p.m. at DOE's Forrestal Building, Room 6A-110

Members of the public are welcome to observe the business of the meeting and, if time allows, may make oral statements during the specified period for public comment. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, email asrac@ee.doe.gov. In the email, please indicate your name, organization (if appropriate), citizenship, and contact information. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If you are a foreign national, and wish to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Regina Washington at (202) 586-1214 or by email: Regina.Washington@ee.doe.gov so that the necessary procedures can be completed. Anyone attending the meeting will be required to present a government photo identification, such as a passport, driver's license, or government identification. Due to the required security screening upon entry, individuals attending should arrive early to allow for the extra time needed.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS) recent changes have been made regarding ID requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. Driver's licenses from the following states or territory will not be accepted for building entry and one of the alternate forms of ID listed below will be required.

DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, Louisiana, New York, American Samoa, Maine, Oklahoma, Arizona, Massachusetts, Washington, and Minnesota.

Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the states of Minnesota, New York or Washington

(Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License); A military ID or other Federal government issued Photo-ID card.

Docket: The docket is available for review at www.regulations.gov, including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the www.regulations.gov index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

Issued in Washington, DC, on February 19, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2016-04321 Filed 2-26-16; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 552

[BOP-1167-P]

RIN 1120-AB67

Use of Chemical Agents or Other Less-Than-Lethal Force in Immediate Use of Force Situations

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes to amend its regulation on the use of chemical agents or other less-than-lethal force to provide that such use is authorized for staff in immediate use of force (emergency) situations.

DATES: Written comments must be submitted on or before April 29, 2016.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah N. Qureshi, Rules Unit, Office of General Counsel, Bureau of Prisons, phone (202) 353-8248.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments. Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your

name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on <http://www.regulations.gov>.

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the "For Additional Information" paragraph.

Discussion

In this document, the Bureau of Prisons (Bureau) proposes to amend its regulations to explicitly authorize staff to utilize chemical agents or other less-than-lethal force in immediate use of force (emergency) situations. We also make a few minor edits for clarification and organization. We describe the proposed changes in further detail below.

At the outset, we note that we are replacing the term "weapons" with the term "devices" both in the title and the body of the regulation. This is consistent with terminology used in Department of Justice policy describing the use of less-than-lethal force.

§ 552.25 Use of Less-Than-Lethal Devices, Including Chemical Agents—New Paragraph (a)

Currently § 552.25 allows the Warden to authorize the use of less-than-lethal devices, including chemical agents, when the situation is such that a delay in action would constitute a serious

hazard to the inmate or others, or would result in a major disturbance or serious property damage, and the inmate is either armed and/or barricaded; or cannot be approached without a danger to self or others. The Warden may delegate his authority to one or more supervisors on duty and physically present, but not below the position of Lieutenant.

In addition, under current § 552.21(d), the use of less-than-lethal devices could also be appropriate "where the facts and circumstances known to the staff member would warrant a person using sound correctional judgment to reasonably believe other action is necessary (as a last resort) to prevent serious physical injury, or serious property damage which would immediately endanger the safety of staff, inmates, or others." Although this language indicates that a staff member in a situation where he or she reasonably believed action was necessary *could* use less-than-lethal force to "prevent serious physical injury, or serious property damage which would immediately endanger the safety of staff, inmates or others," use of less-than-lethal devices, including chemical agents, by staff in immediate use of force (emergency) situations is not explicitly authorized.

The Bureau therefore proposes to amend § 552.25 by adding a new paragraph (a), clearly indicating that "Staff are authorized to use chemical agents or other less-than-lethal devices in immediate use of force situations pursuant to this subpart."

Current BOP regulations already define the parameters for immediate use of force situations. Section 552.21(a) currently defines "immediate use of force," stating that "[st]aff may immediately use force and/or apply restraints when the behavior described in § 552.20 constitutes an immediate, serious threat to the inmate, staff, others, property, or to institution security and good order." Section 552.20 authorizes Bureau staff to use force only as a last alternative, and only to the extent necessary to address the inmate behavior which threatens the safety, security and good order of the facility, or protection of the public.

Bureau of Prisons staff frequently respond to critical incidents and dangerous situations in Bureau facilities. Several incidents in recent years have resulted in injury to Bureau staff. Inmate attacks on staff continue to escalate, evolve and diversify, recent attacks have proceeded quickly, with more planning than in previous dangerous encounters. Sudden violent large-scale incidents involving large

numbers of inmates, require immediate action. Measures are therefore necessary to ensure that staff are clearly authorized to promptly and safely control inmates during violent situations and mitigate the risk of serious bodily harm. This rule change would directly authorize staff to carry less-than-lethal devices for deployment in immediate use of force (emergency) situations.

The goal of the proposed rule is to increase the safety of staff and inmates when staff respond to incidents involving violence, and to prevent injury to staff and inmates due to an assault or serious resistance to staff control. The rule will provide staff with immediate access to a less-than-lethal device, enabling quick containment of incidents, reducing opportunities for injuries to staff and inmates. Currently, responders to dangerous encounters do not have self-protection capability without direct physical contact with involved inmates. There have been occasions where disruptive inmates have resisted control techniques by responding staff. In some instances, inmates armed with weapons have turned their attacks on staff. Staff have also responded to critical incidents on recreation yards which were not successfully interrupted by verbal commands and the non-immediate discharge of one or more less-than-lethal devices and warning shots. These dangers increase the potential for assaults and injury, both to staff and to other inmates, and pose a general risk to the safety and security of the facility.

The use of less-than-lethal devices has become accepted throughout the law enforcement community. Correctional staff at the majority of state and local correctional facilities routinely carry and utilize less-than-lethal devices to protect themselves from inmate attacks and prevent dangerous encounters from escalating. Several of these state agencies have allowed line staff to utilize less-than-lethal devices for more than a decade.

National Institute of Justice (NIJ) studies of the use of chemical agents published in 1997 (*Evaluation of Pepper Spray*. NJC 162358, February 1997, by Steven M. Edwards, John Granfield, and Jamie Onnen (8 pages).) and 2003 (*The Effectiveness and Safety of Pepper Spray*. NJC 195739, April 2003, by National Institute of Justice (19 pages).) documented similar increases in compliance and reductions in injuries in community law enforcement situations. Although the study did not examine use of chemical agents in correctional settings, the long term studies by NIJ show that the use of force

complaints, injuries to officers, and injuries to aggressive persons have fallen significantly anywhere less-than-lethal force is an option.

Based on the above information and the authority already provided in § 552.21(d), the Bureau conducted a limited test of the usefulness and effectiveness of staff use of less-than-lethal devices (Oleoresin Capsicum [OC, or MK-4]) in select Bureau facilities. During the period from October 15, 2012 to March 14, 2013, the Bureau found that the average containment time in facilities using OC in immediate use of force situations was 2.93 minutes, as compared to the 5.48 minutes in facilities which did not use any less-than lethal weapon in immediate use of force situations. In other words, the use of OC resulted in an average containment time that was a full 2.55 minutes faster.

We therefore make this change to increase the safety of staff and inmates when staff respond to incidents involving violence, and to prevent injury to staff and inmates due to an assault or serious resistance to staff control, by providing staff with immediate access to a less-than lethal device, thereby enabling quick containment of incidents and reducing opportunities for injuries to staff and inmates.

§ 552.25 Use of Less-Than-Lethal Devices, Including Chemical Agents—Paragraph (b)

The Bureau also proposes to redesignate current § 552.25(a) and (b) into paragraph (b) and (c), respectively. The only changes made are non-substantive conforming changes to accommodate new paragraph (a), as described above. The wording and intent of this language remains the same.

Executive Orders 12866 and 13563—Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review” section 1(b), Principles of Regulation and in accordance with Executive Order 13563 “Improving Regulation and Regulatory Review” section 1(b) General Principles of Regulation.

The Department of Justice has determined that this rule is not a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget. This rule is a delegation of authority from the Director of BOP to

explicitly authorize the use of less-than-lethal devices in immediate use of force (emergency) situations.

Further, both Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has assessed the costs and benefits of this regulation and believes that the regulatory approach selected maximizes net benefits.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This regulation pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons. Its economic impact is limited to the Bureau’s appropriated funds.

Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This regulation is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of

1996. This regulation will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 571.

Prisoners.

Kathleen M. Kenney,

Assistant Director/General Counsel, Federal Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 301, 28 U.S.C. 509, 510, and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we propose to amend 28 CFR part 552, chapter V, subchapter C, as follows:

Subchapter C—Institutional Management

PART 552—CUSTODY

■ 1. The authority citation for part 552 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

■ 2. Revise § 552.25 to read as follows:

§ 552.25 Use of less-than-lethal devices, including chemical agents.

(a) Staff are authorized to use chemical agents or other less-than-lethal devices in immediate use of force situations pursuant to this subpart.

(b) For situations other than immediate use of force situations, the Warden may authorize the use of less-than-lethal devices, including those containing chemical agents, only when a delay in bringing the situation under control would constitute a serious hazard to the inmate or others, or would result in a major disturbance or serious property damage, and the situation is such that the inmate:

(1) Is armed and/or barricaded; or

(2) Cannot be approached without danger to self or others.

(c) The Warden may delegate the authority under paragraph (b) to one or more supervisors on duty and physically present, but not below the position of Lieutenant.

[FR Doc. 2016–04069 Filed 2–26–16; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 110**

[Docket No. USCG–2014–0142]

RIN 1625–AA01

Anchorage Regulations: Special Anchorage Areas, Marina del Rey Harbor, California**AGENCY:** Coast Guard, DHS.**ACTION:** Supplemental notice of proposed rulemaking.

SUMMARY: On May 28, 2014, the Coast Guard published a notice of proposed rulemaking (NPRM) to disestablish the special anchorage in Marina del Rey Harbor, California. Based on the comments received in response to that NPRM, we are now proposing to amend the shape and reduce the size of the special anchorage in Marina del Rey Harbor, California. Additionally, we propose to clarify the language in the note section of the existing regulation. This SNPRM would leave sufficient navigable water on adjacent sides of the anchorage for vessel traffic, effectively removing this special anchorage area from a location where it could endanger vessel traffic.

DATES: Comments and related material must be received by the Coast Guard on or before April 14, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2014–0142 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Van Vu, Waterways Management Division, U.S. Coast Guard District 11, telephone (510) 437–2978, email van.h.vu@uscg.mil.

SUPPLEMENTARY INFORMATION:**I. Table of Abbreviations**

CFR Code of Federal Regulations
 DHS Department of Homeland Security
 FR Federal Register
 NOAA National Oceanic and Atmospheric Administration
 NPRM Notice of proposed rulemaking
 SNPRM Supplemental notice of proposed rulemaking
 § Section
 U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The legal basis for the proposed rule is: 33 U.S.C. 471, 1221, through 1236, and 2071; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1, which collectively authorized the Coast Guard to define anchorage areas. A special anchorage area is a designated water area within which vessels less than 65 feet (20 meters) in length are not required to: Sound signals required by Rule 35 of the Inland Navigation Rules (33 CFR 83.35); or exhibit the white anchor lights or shapes required by Rule 30 of the Inland Navigation Rules (33 CFR 83.30). By regulation, special anchorage areas should be well removed from the fairways and located where general navigation will not endanger or be endangered by unlighted vessels (33 CFR 109.10).

This supplemental notice of proposed rulemaking (SNPRM) is intended to reduce the size of the anchorage. The amended anchorage will leave sufficient navigable water on adjacent sides of the anchorage for vessel traffic, effectively removing the anchorage from a location where it could endanger vessel traffic. The proposed rule would better accommodate transiting vessels and create a clearly defined area for anchored vessels, thus improving navigation safety.

A. Regulatory History and Information

In 1967, the Coast Guard placed the regulation for a special anchorage area in the main channel of Marina del Rey in 33 CFR, as anchorage regulations were transferred from the Army Corp of Engineers to the Coast Guard (32 FR 17726, 17737, Dec. 12, 1967). The specific regulations and boundaries for this special anchorage area are defined by coordinates in 33 CFR 110.111.

On May 28, 2014, we published a notice of proposed rulemaking (NPRM) entitled Anchorage Regulations: Special Anchorage Area, Marina del Rey, California, in the **Federal Register** (79 FR 30509) to disestablish the anchorage. The purpose was to align the regulations with the current and future configuration of the main channel and docking facilities. On November 4, 2014, we published a notice for a public meeting (79 FR 65361). The meeting was held in Marina del Rey, CA on November 20, 2014. At the public meeting, we heard from six speakers. For greater public participation, all comments submitted to the public docket as late as January 5, 2015 were considered. In addition to the six speakers at the public meeting, we

received comments in 44 written submissions to the docket. Based on all comments received we have prepared this supplemental notice of proposed rulemaking (SNPRM) which proposes to maintain the anchorage but amend the boundaries and reduce the size of the anchorage.

B. Discussion of Comments on NPRM and Changes

The Coast Guard received 44 written submissions to the docket and heard from six speakers at the public meeting regarding the NRPM to disestablish the anchorage. All written submissions through the portal, the recorded transcript of the public meeting and all other documents pertaining to this topic are available in the public docket for this rulemaking, where indicated under **ADDRESSES**.

Below, we have summarized the received comments and our response to these comments.

The Coast Guard received 31 comments to keep the anchorage as is or to establish an alternate anchorage at another location in the harbor. The Coast Guard understands the commenters’ concern of the need for a safe refuge for transiting recreational vessels during storms or other dangerous conditions. Thus, we are proposing a smaller anchorage as an option for mariners.

The Coast Guard received eight comments for a public hearing and additional time for public comment. We held a public meeting in Marina Del Rey on November 20, 2014 and considered comments received until January 5, 2015.

The Coast Guard received nine comments in support of removing the anchorage. Some of those comments indicated that vessels anchoring in the existing anchorage in the main channel create an unsafe situation. Other comments reported mariners rarely use the anchorage and there is little knowledge of its existence. The special anchorage is clearly marked on the chart with reference to the applicable regulation. A copy of the National Oceanic and Atmospheric Administration (NOAA) Office of Coast Survey Chart number 18744 has been posted to the docket to illustrate this point. The Coast Guard has determined the current special anchorage area encompassing the entire channel width at the north end of the harbor could cause an unsafe situation. In this SNPRM, the Coast Guard is proposing a smaller special anchorage area which will allow vessel traffic to pass safely on all sides.

The Coast Guard received two comments and questions at the public

meeting in November concerning proposed projects located outside of the anchorage area. The Coast Guard indicated these comments addressed areas and subjects outside the anchorage that would not impact the existing anchorage and were beyond the scope of the proposed rulemaking.

III. Discussion of SNPRM Proposed Rule

This proposed rule would decrease the size of the current anchorage in Marina del Rey harbor. Currently, it is a trapezoid-shaped anchorage of approximately 0.48 square nautical miles. The Coast Guard proposes to change the shape of the anchorage from a trapezoid to a rectangle and decrease its size from approximately 0.48 to 0.11 square nautical miles. The revised anchorage would be moved to the middle of the channel across from Burton Chace Park, with its northern boundary line approximately from the midpoint of basin G extending south to the midpoint of Basin H. The anchorage dimensions would be 1154 feet in length and 365 feet in width. The distance from the closest shore side dock to the anchorage boundary would be approximately 243 feet. The anchorage boundaries are described, using precise coordinates, in the proposed regulatory text at the end of this document.

This proposed rule would also amend the note section for 33 CFR 110.111 to clarify the purpose of the anchorage, as well as the types of vessels eligible to use the anchorage. It would also reflect that the Marina del Rey Harbor Master, Los Angeles County, prescribes local regulations for mooring and boating activities in this harbor, rather than the Director, Department of Small Craft Harbors, Los Angeles County, which is obsolete. This updated note will clarify the role of the Marina del Rey Harbor Master in the administration of the special anchorage.

IV. 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 or executive orders.

A. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under

section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this proposed rule would not be significant to the maritime and local community. The existing anchorage is currently used only in emergency circumstances, and this proposed change will not significantly reduce the number of vessels using the anchorage.

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 would not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which might be small entities: The owners or operator of recreational vessels that have a need to anchor in Marina del Rey special anchorage.

This proposed rule would not have a significant impact on a substantial number of small entities. Although this rule would decrease the size of the special anchorage area, the proposed dimensions provide sufficient space for vessels to anchor when authorized by the Harbor Master, without presenting a hazard to vessels transiting in the channel.

C. Collection of Information

This rule will not call for a 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 or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal

Governments, because it would 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 proposed rule would not result in such an 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 M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the amendment of a currently-existing anchorage area. Normally such actions are categorically excluded from further review under paragraph 34(f) of Figure 2–1 of the Commandant Instruction M16475.1D. A preliminary environmental analysis checklist and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material

received during the comment period. As demonstrated by this SNPRM, your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal rulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instruction.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this SNPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

We plan to hold a public meeting to receive oral comments on this SNPRM and will announce the date, time, and location in a separate document published in the **Federal Register**. If you signed up for docket email alerts mentioned in the paragraph above, you will receive an email notice when the public meeting notice is published and placed in the docket.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

- 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

- 2. Revise § 110.111 to read as follows:

§ 110.111 Marina del Rey Harbor, Calif.

An area in the main channel encompassed within the following described boundaries: Beginning at the northeasterly corner in position latitude 33°58'41.6" N., longitude 118°26'50.8" W.; thence southerly to latitude 33°58'30.2" N., longitude 118°26'50.8" W.; thence westerly to latitude 33°58'30.2" N., longitude 118°26'55.1" W.; thence northerly to latitude 33°58'41.6" N., longitude 118°26'55.1" W.; thence easterly to the point of origin. All coordinates referenced North American Datum 1983.

Note to § 110.111: The Marina Del Rey Harbor Master, Los Angeles County prescribes local regulations for mooring and boating activities in this area.

Dated: February 8, 2016.

J. A. Servidio,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 2016–04336 Filed 2–26–16; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 501

Revisions to the Requirements for Authority To Manufacture and Distribute Postage Evidencing Systems

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to revise its rules concerning PC postage payment methodology by adding supplementary information to clarify the revenue assurance guidelines.

DATES: Submit comments on or before March 30, 2016.

ADDRESSES: Mail or deliver written comments to the Manager, Payment Technology, U.S. Postal Service®, 475 L'Enfant Plaza SW., Room 3500, Washington, DC 20260. You may inspect and photocopy all written comments at the Payment Technology office by appointment only between the hours of 9 a.m. and 4 p.m., Monday through Friday by calling 1–202–268–7613 in advance. Email and faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Marlo Kay Ivey, Business Systems Analyst, Payment Technology, U.S. Postal Service, (202) 268–7613.

SUPPLEMENTARY INFORMATION: On July 17, 2015, the United States Postal Service published a final rule to revise the rules concerning authorization to manufacture and distribute postage

evidencing systems and to reflect new revenue assurance practices. (See 80 FR 42392–42393.) Postage collection under the new rules will start on December 31, 2016. This document proposes minor additional changes to the rules in support of our efforts to collect the appropriate revenue on mail pieces in a more automated fashion. If this proposal is adopted, the proposed clarifying changes will also be implemented on December 31, 2016. The revenue assurance guidelines can be found in 39 CFR 501.16, and on <https://ribbs.usps.gov> in the site index of Automated Package Verification (APV) documents, named *APV Standard Operating Procedure (SOP)*.

List of Subjects in 39 CFR Part 501

Administrative practice and procedure.

Accordingly, for the reasons stated, the Postal Service proposes to amend 39 CFR part 501 as follows:

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE EVIDENCING SYSTEMS

- 1. The authority citation for 39 CFR part 501 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605, Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended); 5 U.S.C. App. 3.

- 2. In § 501.16, revise paragraph (i) to read as follows:

§ 501.16 PC postage payment methodology.

* * * * *

(i) *Revenue Assurance.* (1) The provider must support business practices to assure Postal Service revenue and accurate payment from customers. For purposes of this paragraph and the Automated Package Verification (APV) Standard Operating Procedure (SOP) document available at <https://ribbs.usps.gov>, references to “provider” and “PC Postage Vendor” shall include postage resellers when such resellers transmit postage revenue to the Postal Service in any manner other than through a PC Postage provider. With respect to such transactions, the resellers, and not the PC Postage providers who provides the labels, are responsible for complying with these regulations. A “reseller” is an entity that obtains postage through a provider and is authorized to resell such postage to its customers pursuant to an agreement with the Postal Service.

(2) Specifically, the provider is required to pay the Postage Adjustment or to notify the customer and adjust the balance in the postage evidencing

system or otherwise facilitate postage corrections to address any postage discrepancies as directed by the Postal Service no later than 60 days after initial notification by the Postal Service, subject to the applicable notification periods and dispute mechanisms available to customers for these corrections. Postage Adjustment is defined as a difference between the postage paid for a service offered by the Postal Service and the current published/negotiated rate indicating the postage due to the Postal Service for the weight, packaging, dimensions and zone of the mail piece as applicable. The Postal Service will supply the provider with the necessary detail to justify the correction and amount of the postage correction to be used in the adjustment process. The provider must pay the postage adjustment or supply customers with visibility into identified postage correction, facilitate a payment adjustment from the customer in the amount equivalent to the identified postage discrepancies to the extent possible, and enable customers to submit electronic disputes of such postage discrepancies to the Postal Service. Further if the Customer does not have funds sufficient to cover the amount of the discrepancies or the postage discrepancies have not been resolved, the provider may be required to temporarily suspend or permanently shut down the customer's ability to print PC Postage as described in Domestic Mail Manual (DMM) 604.4.

(3) If the provider incorrectly programmed postage rates, delayed programming postage rate changes or otherwise provided systems or software, which caused customers to pay incorrect postage amounts, within two calendar weeks of the provider being made aware of such error, the provider shall correct the error and, in the event that the amount of collected revenue is less than the amount of revenue that should have been collected absent the error, (i) pay the Postal Service for the postage deficiency and (ii) provide the Postal Service with a detailed breakdown of how the error affected the provider's collection of revenue.

(4) Except as may otherwise expressly be agreed to by contract, the provider is responsible for ensuring that:

(i) All customers pay (and the Postal Service receives) the current published prices that are available to mailers who purchase postage through an approved PC Postage provider; and

(ii) Payments to the Postal Service (or the log files necessary for the Postal Service to collect payments directly from customers) are complete and accurate and are initiated or

transmitted, as applicable, to the Postal Service each day.

(5) Each PC Postage Provider:

(i) Is responsible for ensuring that customers are informed, understand and agree that they may be charged for deficient payment before they complete their initial transactions;

(ii) Shall comply with applicable laws and ensure that its systems, software, interfaces, communications and other properties that are used to sell or market postal products accurately describe such products;

(iii) Shall cover any costs that the Postal Service may incur as a result of any act or omission of such provider or its employees, contractors or representatives in connection with its role as a PC Postage provider; and

(iv) In performing its obligations hereunder, shall comply with the APV SOP and all agreed to interface documentation (as updated from time to time).

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016-04237 Filed 2-26-16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2016-0061, FRL-9943-03-Region 2]

Disapproval of Air Quality Implementation Plans; Puerto Rico; Attainment Demonstration for the Arecibo Lead Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove a State Implementation Plan, submitted by the Commonwealth of Puerto Rico to the EPA on January 30, 2015, for the purpose of providing for attainment of the 2008 Lead National Ambient Air Quality Standards in the Arecibo 2008 Lead nonattainment area. While the SIP includes all of the required elements for the Arecibo Area, the EPA proposes disapproval because the dispersion modeling analysis does not demonstrate attainment of the lead standard.

DATES: Comments must be received on or before March 30, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R02-OAR-2016-0061 at <http://www.regulations.gov>. Follow the online

instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Mazeeda Khan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3715, or by email at khan.mazeeda@epa.gov.

SUPPLEMENTARY INFORMATION:

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i. National Technology Transfer Advancement Act

I. What action is the EPA proposing?

The Environmental Protection Agency (EPA) is proposing to disapprove Puerto Rico's State Implementation Plan (SIP), as submitted through the Puerto Rico Environmental Quality Board (PREQB) to the EPA on January 30, 2015, for the purpose of demonstrating attainment of the 2008 Lead National Ambient Air Quality Standards (NAAQS) in the Arecibo 2008 Lead nonattainment area (hereafter referred to as the "Arecibo Area" or "Area"). The Arecibo Area is comprised of a portion of Arecibo County in Puerto Rico with a 4 kilometer radius surrounding The Battery Recycling Company, Inc. (hereafter referred to as "TBRCI"). Puerto Rico's lead attainment plan for the Arecibo Area includes a base year emissions inventory, a modeling demonstration of lead attainment, an analysis of reasonably available control measures (RACM)/reasonably available control technology (RACT), a reasonable further progress (RFP) plan, and contingency measures.

The EPA proposes to determine that Puerto Rico's attainment plan for the 2008 Lead NAAQS for the Arecibo Area does not meet the applicable requirements of the Act. The EPA is proposing to disapprove Puerto Rico's attainment plan for the Arecibo Area because the dispersion modeling analysis does not demonstrate attainment of the lead standard in all areas, as discussed in Section IV of this proposed rulemaking.

II. What is the background information for this proposal?

On November 12, 2008 (73 FR 66964), the EPA revised the Lead NAAQS, lowering the level from 1.5 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to 0.15 $\mu\text{g}/\text{m}^3$ calculated over a three-month rolling average. The EPA established the 2008 Lead NAAQS based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to lead emissions.

Following promulgation of a new or revised NAAQS, the EPA is required by the Clean Air Act (CAA) to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1) of the CAA. On November 22, 2010 (75 FR 71033), the EPA promulgated initial air quality designations for the 2008 Lead NAAQS, which became effective on December 31, 2010, based on air quality monitoring data for calendar years

2007–2009, where there was sufficient data to support a nonattainment designation. Designations for all remaining areas were completed on November 22, 2011 (76 FR 72097), which became effective on December 31, 2011, based on air quality monitoring data for calendar years 2008–2010. Effective on December 31, 2011, the Arecibo Area was designated as nonattainment for the 2008 Lead NAAQS, based on air quality monitoring data from June 2010. This designation triggered a requirement for Puerto Rico to submit a SIP revision by July 1, 2013 with a plan for how the Area would attain the 2008 Lead NAAQS, as expeditiously as practicable, but no later than December 31, 2016.

III. What is included in Puerto Rico's proposed SIP submittal?

In accordance with section 172(c) of the CAA and 40 CFR 51.117, Puerto Rico's attainment plan for the Arecibo Area includes: (1) An emissions inventory for the plan's base year (2011); and (2) an attainment demonstration. The attainment demonstration includes: Technical analyses that locate, identify and quantify sources of emissions contributing to violations of the 2008 Lead NAAQS; a modeling analysis of an emissions control strategy for TBRCI facility that does not attain the Lead NAAQS by the attainment year (2016); and contingency measures required under section 172(c)(9) of the CAA.

IV. What is the EPA's analysis of Puerto Rico's attainment plan submittal?

The CAA requirements (*see, e.g.*, section 172(c)(4)) and the Lead SIP regulations found at 40 CFR 51.117) require states to employ atmospheric dispersion modeling for the demonstration of attainment of the Lead NAAQS for areas in the vicinity of point sources listed in 40 CFR 51.117(a)(1), as expeditiously as practicable. Section 302(d) of the CAA includes the Commonwealth of Puerto Rico in the definition of the term "State." The demonstration must also meet the requirements of 40 CFR 51.112 and 40 CFR part 51, App. W, and include inventory data, modeling results, and emissions reduction analyses on which the Commonwealth has based its projected attainment. All these requirements comprise the "attainment plan" that is required for lead nonattainment areas.

The Puerto Rico modeling analysis was prepared using the EPA's preferred dispersion modeling system, the American Meteorological Society/ Environmental Protection Agency

Regulatory Model (AERMOD) consisting of the AERMOD model and two data input preprocessors AERMET, and AERMAP, consistent with the EPA's Modeling Guidance¹ and 40 CFR 51.117. More detailed information on the AERMOD Modeling system and other modeling tools and documents can be found on the EPA Technology Transfer Network Support Center for Regulatory Atmospheric Modeling (SCRAM) (<http://www.the EPA.gov/ttn/scram/>) and in Puerto Rico's January 30, 2015 SIP submittal, in the docket for this proposed action (EPA–R04–OAR–2014–0220) on the www.regulations.gov Web site. A brief description of the modeling used to support the Commonwealth of Puerto Rico's attainment demonstration is provided below.

a. Modeling Approach

The following is an overview of the air quality modeling approach used in Puerto Rico's SIP submittal on January 30, 2015.

AERMOD pre-processors, AERMET and AERMAP were used to process one year of site-specific meteorological data from 1992–1993 collected at the PREPA Cambalache station, based on PREQB's land use classifications, in combination with meteorological data from the San Juan station for substitution of the site-specific missing data.

TBRCI emissions points were divided into stack, area source and volume source fugitive emissions. The volume source is the main process building. The area source was selected for the modeling of the emissions generated from the vehicle movement between the carbon, scrap and soda ash storage areas.

The EPA LEADPOST processor is used for the calculation of the Lead rolling 3-month average using the monthly modeling results. Lead background concentration was omitted because the PREQB does not have an Arecibo Lead air quality monitor that is not affected by the emissions from TBRCI facility that would be representative of the Arecibo area. The PREQB addressed this issue by using a multi-source modeling scenario with projected or controlled emissions to 2016 of the facilities in the six municipalities (Arecibo, Barceloneta, Ciales, Florida Hatillo and Utuado), including the Arecibo airport.

The PREQB developed the 2011 base year and the 2016 control strategy

¹ 40 CFR part 51 Appendix W (The EPA's *Guideline on Air Quality Models*) (November 2005) located at http://www.epa.gov/ttn/scram/guidance/guide/appw_05.pdf.

emissions inventory for input into the air quality model to perform the dispersion modeling. The 2016 emissions inventory was used in the multi-source modeling scenario (see modeling protocol).

b. Modeling Results

The Lead NAAQS compliance results of the AERMOD modeling are summarized in Table 1 below. As can be seen in Table 1, the maximum 3-month rolling average predicted impact with the meteorological data (2006–2010) is

more than the 2008 Lead NAAQS of 0.15 µg/m³ for one set of AERMOD modeling runs. Output from the LEADPOST processor which details all of the concentrations can be found in the body of the January 30, 2015 submittal.

TABLE 1—SUMMARY OF MODELING RESULTS

Pollutant	Avg. time	Maximum monthly predicted impact (µg/m ³)	Background conc. (µg/m ³)	Maximum 3-high avg. predicted impact (µg/m ³)	NAAQS (µg/m ³)	Impact greater than NAAQS
Pb	3-month rolling	0.34729	0.0	0.3313	0.15	Yes.

The post-control, which includes the RACM and RACT analysis, resulted in a predicted impact of 0.33 µg/m³. This data indicates the control scenario of total full enclosure of TBRCI will not result in the emission reductions necessary to show attainment.

The EPA has reviewed the modeling that Puerto Rico submitted to support the attainment demonstration for the Arecibo Area and has determined that this modeling is consistent with CAA requirements, Appendix W and the EPA guidance for lead attainment demonstration modeling. However, the modeling analysis does not demonstrate attainment with the Lead NAAQS. Therefore, the EPA proposes to disapprove Puerto Rico’s Lead SIP for the Arecibo Area. The EPA understands that the PREQB is in the process of revising the attainment demonstration modeling to demonstrate attainment in the Arecibo area, and address this deficiency.

V. What are the consequences of a disapproved SIP?

This section explains the consequences of a disapproval of a SIP under the CAA. The CAA provides for the imposition of sanctions and the promulgation of a federal implementation plan (FIP) if the Commonwealth fails to submit a plan revision that corrects the deficiencies identified by the EPA in its disapproval.

a. What are the Act’s provisions for sanctions?

If the EPA disapproves a required SIP or component of a SIP, such as the Attainment Demonstration SIP, CAA § 179(a) provides for the imposition of sanctions unless the deficiency is corrected within 18 months of the final rulemaking of disapproval. The first sanction would apply 18 months after the EPA disapproves the SIP. Under the EPA’s sanctions regulations, 40 CFR

52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under CAA § 173. If the Commonwealth fails to submit a SIP for which the EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds in the nonattainment area. The EPA also has authority under CAA § 110(m) to sanction a broader area, but is not proposing to take such action in today’s rulemaking.

b. What federal implementation plan provisions apply if a State fails to submit an approvable plan?

In addition to sanctions, if the EPA finds that a State/Commonwealth failed to submit the required SIP revision or disapproves the required SIP revision, or a portion thereof, the EPA must promulgate a FIP no later than 2 years from the date of the finding if the deficiency has not been corrected within that time period.

c. What are the ramifications regarding conformity?

One consequence of the EPA’s disapproval of a control strategy SIP is a conformity freeze whereby affected metropolitan planning organizations (MPOs) cannot make new conformity determinations on long range transportation plans and transportation improvement programs (TIPs). If we finalize the disapproval of the attainment demonstration SIP, a conformity freeze will be in place as of the effective date of the disapproval. (40 CFR 93.120(a)(2)) This means that no transportation plan, TIP, or project not in the first four years of the currently conforming transportation plan and TIP or that meet the requirements of 40 CFR 93.104(f) during a 12-month lapse grace

period² may be found to conform until another attainment demonstration SIP is submitted and the motor vehicle emissions budgets are found adequate or the attainment demonstration is approved. In addition, if the highway funding sanction is implemented, the conformity status of the transportation plan and TIP will lapse on the date of implementation of the highway sanctions. During a conformity lapse, only projects that are exempt from transportation conformity (e.g., road resurfacing, safety projects, reconstruction of bridges without adding travel lanes, bicycle and pedestrian facilities), transportation control measures that are in the approved SIP and project phases that were approved prior to the start of the lapse can proceed during the lapse. No new project-level approvals or conformity determinations can be made and no new transportation plan or TIP may be found to conform until another attainment demonstration SIP is submitted and the motor vehicle emissions budget is found adequate.

VI. What are the EPA’s conclusions?

The EPA is proposing to disapprove Puerto Rico’s Lead attainment plan for the Arecibo Area. The EPA has determined that the SIP does not meet the applicable requirements of the CAA. Therefore, the EPA is proposing to disapprove Puerto Rico’s January 30, 2015 SIP submittal since the modelling analysis does not demonstrate attainment of the NAAQS.

Since the time that Puerto Rico submitted the SIP to the EPA, the PREQB formally revoked TBRCI’s operating and construction permits on August 19, 2015. The EPA understands that Puerto Rico is in the process of

² Additional information on the implementation of the lapse grace period can be found in the final transportation conformity rule published on January 24, 2008. (73 FR 4423–4425).

revising the attainment demonstration modeling to address this change in TBRCI's operating status. Therefore, while we are proposing disapproval, the EPA fully expects Puerto Rico to submit a new Attainment Demonstration SIP to reflect this change in TBRCI's operating status in the Arecibo Area. If the Attainment Demonstration SIP is submitted to the EPA as a SIP revision, the EPA will review it and, if it is approvable, will withdraw the proposed disapproval.

VII. Statutory and Executive Order Reviews

a. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget.

b. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

c. Regulatory Flexibility Act

I certify that this action will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This action will not impose any requirements on small entities. This action merely disapproves Puerto Rico's Lead SIP as not meeting Federal requirements and imposes no additional requirements beyond those imposed by the plan.

d. Unfunded Mandates Reform Act

This action does not impose any additional enforceable duty beyond that which is required by Puerto Rico law because this rule disapproves a SIP revision and it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

e. Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the Commonwealth, on the relationship between the national government and the Commonwealth, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely disapproves the Puerto Rico Lead SIP and does not alter the relationship or

the distribution of power and responsibilities established in the CAA.

f. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000);

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

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it disapproves the Puerto Rico Lead SIP.

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

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

i. National Technology Transfer Advancement Act

In reviewing SIP submissions, the EPA's role is to approve state or commonwealth choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the Commonwealth to use voluntary consensus standards (VCS), the EPA has no authority to disapprove a commonwealth submission for failure to use VCS. It would thus be inconsistent with applicable law for the EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

List of Subjects in 40 Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and Recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 22, 2016.

Judith Enck,

Regional Administrator, Region 2.

[FR Doc. 2016-04438 Filed 2-26-16; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2015-0708; FRL-9942-78-Region 7]

Approval and Promulgation of Air Quality Implementation Plans; State of Kansas; 2015 Kansas State Implementation Plan for the 2008 Lead Standard

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to grant full approval of Kansas's attainment demonstration State Implementation Plan (SIP) for the lead National Ambient Air Quality Standard (NAAQS) nonattainment area of Salina, Saline County, Kansas, received by EPA on February 25, 2015. The applicable standard addressed in this action is the lead NAAQS promulgated by EPA in 2008. EPA believes that the SIP submitted by the state satisfies the applicable requirements of the Clean Air Act identified in EPA's Final Rule published in the **Federal Register** on October 15, 2008, and will bring the designated portions of Salina, Kansas, into attainment of the 0.15 microgram per cubic meter ($\mu\text{g}/\text{m}^3$) lead NAAQS. **DATES:** Comments must be received on or before March 30, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2015-0708, to <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or

other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Publicly available docket materials are available either electronically in www.regulations.gov or at the EPA, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Stephanie Doolan, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551-7719, or by email at doolan.stephanie@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to EPA.

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I. What is being addressed in this document?

In this document, EPA is addressing Kansas' attainment demonstration State Implementation Plan (SIP) for the lead National Ambient Air Quality Standard (NAAQS) nonattainment area in portions of Salina, Saline County, Kansas. The applicable standard addressed in this action is the lead NAAQS promulgated by EPA in 2008. EPA believes that the SIP submitted by the state satisfies the applicable requirements of the CAA identified in

EPA's Final Rule (73 FR 66964, October 15, 2008), and will bring the area into attainment of the 0.15 microgram per cubic meter ($\mu\text{g}/\text{m}^3$) lead NAAQS.

II. Have the requirements for the approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, the revision meets the substantive SIP requirements of the Clean Air Act (CAA), including section 110 and implementing regulations.

III. What action is EPA taking?

EPA is proposing to grant full approval of Kansas' attainment demonstration SIP for the 2008 lead NAAQS. EPA is proposing this action in order to solicit comments. Final rulemaking will occur after consideration of any comments received.

IV. Background

EPA established the NAAQS for lead on October 5, 1978 (43 FR 46246). On October 15, 2008, EPA established a new lead NAAQS of $0.15 \mu\text{g}/\text{m}^3$ in air, measured as a rolling three-month average. (73 FR 66964). On November 22, 2011, portions of Salina, Saline County, Kansas, were designated as nonattainment for the 2008 lead NAAQS. (76 FR 72097). Under sections 191(a) and 192(a) of the CAA, Kansas is required to submit to EPA an attainment demonstration SIP revision for lead and to demonstrate the nonattainment area will reach attainment of the 2008 lead NAAQS no later than five years from the date of the nonattainment area designation.

V. Technical Review of the Attainment Demonstration SIP for the 2008 Lead NAAQS

A. Facility Description

There are two lead-emitting sources contributing to the Salina lead nonattainment area: Exide Technologies (Exide) and Metlcast Products (Metlcast). A description of the operation of these two facilities is presented below.

1. Exide Process Description

The Exide facility in Salina, Kansas, manufactures lead acid batteries for automobiles, trucks, and watercraft. Lead emissions result from breaking open used batteries, re-melting the lead, and reformulating new batteries. The lead is released in particulate form and generally captured within building

structures or by air pollution control equipment; however, some lead particulates escape to the ambient air, despite facility process enclosures and the efficiency of air pollution control equipment. The facility reports lead emissions greater than 0.5 tons per year (tpy).

The production operations at the facility consist of seven pasting lines, five ball mills and ten oxide mills with emissions controlled by 15 process baghouses, 16 battery assembly lines, and 41 lead reclaim pots with emissions controlled for 29 of those pots by five baghouses. Lead alloy ingots are charged to a melting pot, from which the molten lead flows into molds that form the battery grids. Paste is made in a batch process. A mixture of lead oxide powder, water, and sulfuric acid produces a positive paste, and the same ingredients in a slightly difference proportion with the addition of an expander make the negative paste. Pasting machines then force pastes into the interstices of the grids, which are then made into plates. The pasted plates are then cured through alternating cycles of steaming and drying. From the ovens, the cured plates are loaded into the assembly process where they are automatically stacked in an alternating positive/negative order. Emissions from the battery manufacturing process are controlled by baghouses.

2. Metlcast Process Description

The Metlcast facility is located to the north of the Exide facility, near the violating lead monitor. The Metlcast facility uses three electric induction furnaces to cast gray iron. The scrap metal used to produce the gray iron most likely has varying amounts of lead, depending on the source of the scrap. When heated, the lead is driven off the molten metal in the form of particulates. Elemental lead and lead compounds in the form of particulates are captured by the facility's air pollution control equipment; however, some lead-contaminated particulates escape to the ambient air.

B. Model Selection, Meteorological and Emissions Inventory Input Data

Exide conducted air dispersion modeling to evaluate the effectiveness of the proposed control strategy. Kansas reviewed the results of the air model which demonstrates attainment of the 2008 Lead NAAQS and the results form the basis of the attainment SIP. EPA conducted an independent review of the modeling. The results of the modeling will be discussed in more detail in section V.C. of this document.

The model, AERMOD, was utilized and is EPA's preferred model for demonstrating attainment of the lead NAAQS. AERMOD estimates the combined ambient impact of sources by simulating Gaussian dispersion of emissions plumes. Emission rates, wind speed and direction, atmospheric mixing heights, terrain, plume rise from stack emissions, initial dispersion characteristics of fugitive sources, particle size and density are all factors considered by the model when estimating ambient impacts. Exide conducted the dispersion modeling in accordance with "Air Quality Dispersion Modeling Protocol for SIP Attainment Demonstration," dated March 2013. Results of the modeling are reported in appendix A of the Kansas attainment SIP, available in the docket associated with this proposed action.

Exide used the surface and upper air meteorological data from the Salina airport (SLN) for years 2007 through 2011. EPA recommends the use of five years of meteorological data for the model (40 CFR part 51, appendix W, section 8.3.1.2). EPA conducted a review of the meteorological data used for the modeling and agreed with Kansas's determination that it is representative of meteorological conditions in the nonattainment area. The meteorological data were run through AERMOD's pre-processors to make the data usable by the model.

As required by section 172(c)(3) of the CAA, an emission inventory was developed for this nonattainment area. At Exide, ten baghouses were each modeled as separate point sources and ten oxide mills stacks were modeled as discharging from one 65-foot stack. Potential emissions rates for the point sources were determined from stack test data, using an average of three runs from the highest measured average emissions rates since 2007, or the most recent infrastructure update for the source. Appendix A of the attainment SIP contains a detailed listing of the emissions modeled for each point source. A factor of 3.3 to 12 times each point source emission rate was applied to demonstrate the levels necessary to achieve attainment of the 2008 Pb NAAQS.

Fugitive sources of lead at the Exide facility include process fugitives and vehicular fugitives from truck haul routes. The fugitive emissions were modeled as volume sources. Building process fugitives were estimated with a 99 percent capture efficiency on the basis of total building enclosures with negative pressure and local exhaust ventilation (LEV). Haul route fugitives were estimated using the Paved Roads

section of Chapter 13.2.1 of EPA's AP-42 guidelines.¹

Metlcast's emissions were modeled as volume sources because its operations occur in an open building with wall and roof vents, so there are no stacks from which to conduct emissions testing. Emissions estimates were based on the volatilized fraction of the lead fraction of the facility's 2011 production, which was estimated to be 6910 tons. The quantity of lead emissions was estimated over a 12-hour per day operating shift over 365 days per year.

In accordance with 40 CFR part 51, appendix W, background concentrations must be considered when determining NAAQS compliance. Background concentrations are intended to include impacts attributable to natural sources, nearby sources (excluding the dominant source(s)), and unidentified sources. The calculated background concentration includes all sources of lead not already included in the model run script. The background concentration includes distant sources of lead or naturally occurring lead in soils that has become re-entrained in the atmosphere.

A background value is typically calculated by averaging the monitored concentrations of lead in air from an ambient air monitor within the nonattainment area. In this case, however, the ambient air monitor is located between the two facilities so that it is not possible to calculate a background value for lead from the monitoring data that does not include the influence of one of the facilities, regardless of wind direction. Instead, Kansas used a background level of 0.01 $\mu\text{g}/\text{m}^3$ which is the national non-source oriented monthly average ambient lead concentration determined by EPA in its final "Integrated Science Assessment for Lead (ISA)," dated June 2013 (<http://www.epa.gov/ncea/isa/lead.htm>). Tables 2-13 and 2-15 of the ISA provide detailed statistics based upon the national monitoring network to support a background lead level of 0.01 $\mu\text{g}/\text{m}^3$. The use of this nationally determined background level is further supported by data from the temporary non-source oriented lead monitor located north of the nonattainment area in Salina, Kansas, which recorded an average lead concentration of 0.005 $\mu\text{g}/\text{m}^3$. Also, a lead monitor formerly located in Wichita, Kansas, reported average concentrations of 0.0076 $\mu\text{g}/\text{m}^3$.

In the absence of the ability to establish a background lead level

derived from a monitor within the nonattainment area, EPA agrees that the use of this non-source oriented average monthly ambient lead value from the ISA represents a conservative estimate of background for use in the Salina attainment modeling.

C. Control Strategy

The following describes the control strategy detailed in the Kansas attainment SIP to achieve the 2008 lead NAAQS. The Kansas control strategy focuses on control measures to be implemented at Exide because it is the greater source of lead emissions of the two facilities in the nonattainment area.

In April 2006, Exide began a five-year project to replace all ten of its oxide mills. The project included replacement of associated baghouses and the addition of HEPA filters for each oxide mill source. The project was completed in March 2011. On October 1, 2013, the oxide mill baghouse emissions were routed to a new 65-foot stack.

From September 2009 to February 2014, Exide also replaced its five general purpose baghouses (BH1 through BH5). Baghouse 1 (BH1) was replaced and its stack height was increased to 80 feet in a project completed on February 19, 2014.

On July 19, 2013, Exide completed increasing the stack heights of the ball mill baghouses (BH11 through BH15) by 37 feet as necessary by the attainment modeling.

To address process fugitives, Exide installed LEVs over processing operations located in negative pressure total enclosures to increase the effectiveness of lead particulate capture. This 99 percent reduction in emissions from the ball mill process is required by the Federally-enforceable construction permit issued by Kansas to Exide, effective date August 18, 2014. The permit is appendix C of the attainment SIP. The construction permit contains total enclosure standards including the requirement to maintain a negative pressure of at least 0.013 mm of mercury which is consistent with the secondary lead smelter NESHAP (77 FR 556, January 5, 2012). Although the Exide facility is not a secondary lead smelter, the concepts for controlling lead emissions are similar, and are therefore relevant.

The Federally-enforceable construction permit also required Exide to complete paving all roadways by July 31, 2014. The additional paving of an area of approximately 15,200 square yards in the northwest section of the facility demonstrates a reduction of 0.04 tons of lead per year which represents

¹ AP-42, Compilation of Air Pollutant Emission Factors, Fifth Edition, <http://www.epa.gov/ttnchie1/ap42/>.

a 29 percent reduction in lead emissions.

D. Modeling Results

Exide's modeling report can be found in appendix A of the Kansas attainment SIP. The modeling was conducted to determine the impacts of the additive lead emissions of both the Exide and Metlcast facilities, and the assumed area background of 0.01 $\mu\text{g}/\text{m}^3$ lead, on off-site receptors including the air monitor and two nearby elementary schools.

The results of the modeling demonstrate that with the control strategy described above in paragraph V.C. above, the facilities will attain the 2008 Lead NAAQS. At the point of maximum impact, which is approximately 50 feet to the northeast of the ambient air monitor, the model predicts a lead concentration of 0.137 $\mu\text{g}/\text{m}^3$. This is below the 2008 Lead NAAQS of 0.15 $\mu\text{g}/\text{m}^3$. At the ambient air monitor, the model predicts a lead concentration of 0.137 $\mu\text{g}/\text{m}^3$.

By comparison, the ambient air monitoring data demonstrate that the facility has measured lead concentrations below the 0.15 $\mu\text{g}/\text{m}^3$ lead standard since the rolling calendar quarter ending September of 2013. The average rolling quarterly lead level in ambient air from the quarter ending September 2013 to the quarter ending May 2015 is 0.096 $\mu\text{g}/\text{m}^3$, which is less than the model-predicted lead level.

Exide also modeled the lead concentrations at two nearby elementary schools to ensure that there would be no unacceptable lead impacts. At Schilling Elementary School, the ambient lead levels in air are predicted to be 0.018 $\mu\text{g}/\text{m}^3$, and the predicted lead levels for Coronado Elementary School are predicted to be 0.028 $\mu\text{g}/\text{m}^3$. The predicted levels of lead in ambient air are less than 15 percent of the standard; therefore, there is no concern for exceeding the standard at either of these locations under the Federally-enforceable control strategy described in paragraph V.C. above.

EPA reviewed and independently verified the modeling conducted by Exide. Based on EPA's analysis of the attainment modeling and its outcomes, EPA believes that the Kansas control strategy will bring the designated portions of Saline County, Kansas, into attainment of the 2008 Lead NAAQS.

E. Reasonably Available Control Measures (RACM) Including Reasonably Available Control Technology (RACT) and Reasonable Further Progress (RFP)

Section 172(c)(1) of the CAA requires nonattainment areas to implement all RACM, including emissions reductions

through the adoption of Reasonably Available Control Technologies (RACT), as expeditiously as practicable. EPA interprets this as requiring all nonattainment areas to consider all available controls and to implement all measures that are determined to be reasonably available, except that measures which will not assist the area to more expeditiously attain the standard are not required to be implemented.² In March 2012, EPA issued guidance titled, "Implementation of Reasonably Available Control Measures (RACM) for Controlling Lead Emissions" (RACM Guidance).³

Section 172(c)(2) of the CAA requires areas designated as nonattainment for criteria pollutants to include a demonstration of Reasonable Further Progress (RFP) in attainment demonstrations. Section 171(1) of the CAA defines RFP as annual incremental reductions in emissions of the relevant air pollutants as required by part D, or emission reductions that may reasonably be required by EPA to ensure attainment of the applicable NAAQS by the applicable date. Part D does not include specific RFP requirements for lead.

EPA recommends a RACT analysis for facilities emitting 0.5 tpy lead per year or more. (73 FR 66964). In 2011, Exide reported lead emissions of 1.45 tons per year.⁴ Metlcast's annual emissions were conservatively estimated based on its production to be approximately 0.004 tons of lead per year. Thus, only Exide exceeds the threshold for determining RACT to comply with the 2008 Lead NAAQS. Page 12 of the lead attainment SIP discusses the Kansas RACT/RACM analysis.

Kansas determined that the ongoing emission control projects detailed in appendix B of the attainment SIP document and listed above in paragraph V.C. meet the requirements of EPA's RACM Guidance. As stated in the final lead NAAQS rule, RFP is satisfied by the strict adherence to a compliance schedule which is expected to periodically yield significant emission reductions. The control measures described in paragraph V.C. above have been modeled and demonstrated to achieve the lead NAAQS and also comply with RACM and RFP.

RFP is addressed by the control strategy occurring in a timeframe consistent with the CAA. Upon implementation of the control strategy

and practices described above, ambient air quality concentrations are expected to drop at or below attainment levels immediately. The nonattainment area's ambient air quality monitor began reporting lead concentrations below the 2008 lead NAAQS for the three-month rolling average for July through September 2013.

Based on the RACM analysis and the combined reduction in lead emissions to meet the 2008 Lead NAAQS, which demonstrates RFP, EPA proposes to approve the Kansas SIP as meeting the requirements of sections 172(c)(1) and (c)(2) of the CAA.

F. Attainment Demonstration

CAA section 172 requires a state to submit a plan for each of its nonattainment areas that demonstrates attainment of the applicable ambient air quality standard as expeditiously as practicable, but no later than the specified attainment date. This demonstration should consist of four parts: (1) Technical analyses that locate, identify, and quantify sources of emissions that are contributing to violations of the lead NAAQS; (2) analyses of future year emissions reductions and air quality improvement resulting from already-adopted national, state, and local programs and from potential new state and local measures to meet the RACT, RACM, and RFP requirements in the area; (3) adopted emissions reduction measures with schedules for implementation; and (4) contingency measures required under section 172(c)(9) of the CAA.

The requirements for the first two parts are described in the sections on emissions inventories, RACT/RACM and air quality above and in the discussion of the attainment demonstration that follows immediately below. Requirements for the third and fourth parts are described in the sections on the control strategy and the contingency measures, respectively.

The dispersion modeling is the attainment demonstration used to verify that the control strategies will bring the area into attainment of the 2008 Lead NAAQS. In order to determine whether the emission reduction strategies will result in continued attainment of the NAAQS, the modeled maximum lead concentration in ambient air (based on a rolling three-month average) is added to the calculated background lead concentration of 0.01 $\mu\text{g}/\text{m}^3$, then compared to the 2008 Lead NAAQS, which is 0.150 $\mu\text{g}/\text{m}^3$. As discussed above, the dispersion modeling predicts that the cumulative impacts of both facilities, with the addition of background lead levels, meet the 2008

² See 58 FR 67751, December 22, 1993, for a discussion of this interpretation as it relates to lead.

³ <http://www.epa.gov/oar/lead/pdfs/2012ImplementationGuide.pdf>.

⁴ EPA's 2011 National Emissions Inventory (NEI) v.2, February 5, 2015.

Lead NAAQS. The predicted maximum three-month rolling average lead concentration is $0.137 \mu\text{g}/\text{m}^3$. Therefore, EPA proposes to approve the Kansas attainment demonstration because the dispersion modeling demonstrates attainment of the standard.

G. New Source Review (NSR)

Within the CAA, section 172(c)(5) requires permits for construction and operation of new and modified major sources located within the nonattainment area. A special permitting process applies to such sources, referred to as a nonattainment new source review program. Section 173 of the CAA mandates nonattainment new source review and an approved state SIP must meet the requirements of 40 CFR 51.165.

Kansas Administrative Regulation (K.A.R.) 28–19–16 *et seq.* require major stationary sources of air pollution emissions located within any area that has been identified as not meeting a national ambient air quality standard for the pollutant for which the source is major to obtain a permit prior to construction or major modification. EPA approved the Kansas nonattainment new source review regulations on January 16, 1990, (55 FR 1420).

K.A.R. 28–19–300(a)(1)(F) requires any person who proposes to construct or modify a stationary source or emissions unit to obtain a construction permit before commencing such construction or modification if the potential-to-emit of the proposed stationary source or emissions unit, or the increase in the potential-to-emit resulting from the modification, equals or exceeds 0.6 tons per year of lead or lead compound. In addition, K.A.R. 28–19–301(d) states that a construction permit or approval shall not be issued if the air contaminant emissions from the source will interfere with the attainment or maintenance of any ambient air quality standard. EPA approved K.A.R. 28–19–300(a) and K.A.R. 28–19–301(d) on July 17, 1995. (60 FR 36361).

H. Contingency Measures

As required by CAA section 172(c)(9), the SIP submittal includes contingency measures to be implemented if the area has failed to make RFP or if the area fails to attain the NAAQS by December 2016. If the air quality data for any three-month rolling period after the implementation of the control measures identified in the construction permit for Exide exceed the $0.15 \mu\text{g}/\text{m}^3$ three-month rolling average lead standard, the facility shall implement the contingency measures set forth in sections X and XI of the construction permit which are

found in appendix C of the attainment SIP.

The Exide construction permit contains the following contingency measures described below.

(1) Within 60 days after the effective date of the permit, Exide shall develop and submit to the Kansas Department of Environmental Health (KDHE) for approval, compliance plans that shall be implemented in accordance with section XII of the construction permit and include:

a. An analysis of site conditions and operations that potentially may impact, directly or indirectly, KDHE ambient air monitors, including, but not limited to a root cause analysis and corrective/preventive action process for attaining and maintaining the $0.15 \mu\text{g}/\text{m}^3$ standard, start up and shut down procedures, and other improvements or optimizations that may become evident based on identified potential sources of lead emissions. Each measure is to be assigned a timeline for implementation and to be ranked with regard to ease of implementation, cost and effectiveness;

b. A fugitive dust control plan that shall include an implementations timeline for each measures. The plan may include, but not be limited to new enclosures or improvements to existing enclosures, work practices for minimizing fugitive emissions during maintenance activities, and countermeasures during period of adverse meteorological conditions and/or agricultural conditions and practices on grounds surrounding the plant that may affect fugitive dust impact on KDHE ambient monitors;

c. Identification and prioritization of measures, as developed in a. and b. above that shall be implemented immediately upon notification by KDHE of the first lead NAAQS violation. The contingent list of measures may be modified upon approval by KDHE of more effective measures identified by the root cause analysis.

The compliance plan found in appendix F of the SIP was placed on public notice on November 20, 2014. No comments were received. KDHE submitted Exide's compliance plan for approval as an enforceable part of the attainment SIP.

(2) Within 30 days after KDHE notification, for each NAAQS violation or for failure to maintain reasonable further progress (RFP), Exide shall develop and submit to KDHE a root cause analysis which shall include but not be limited to: The investigation of production/operations performance, including startup, shutdown, malfunction and maintenance periods and the resulting data and discussion;

meteorological data for the site and surrounding area; Exide's fence line site monitoring data; and any other conditions or events that may be relevant to lead emissions and/or that may influence or impact KDHE ambient air monitor results. Exide shall develop and submit to KDHE documentation of corrective actions taken for each occurrence for which there is found to be a controllable or preventable contributing factor or root cause.

(3) In addition to the root cause analysis described above and corrective/preventative action process, Exide shall implement selected and approved contingency measures as outlined in the compliance plan developed by Exide described in paragraph (1) above. Exide shall submit to KDHE documentation of implemented measures, including identification of measures and timeline for implementation and effect.

(4) Exide shall compile analyses and results from the contingency measures described above in paragraphs (2) and (3) and shall implement further contingency measures identified in the KDHE-approved compliance plan.

(5) Exide shall implement measures from the compliance plan for control of fugitive dust and submit to KDHE the documentation from implementation of these measures, the timeline for implementation and effect.

(6) Exide shall conduct stack testing on an increased frequency as determined by KDHE. The scope and frequency will be based on KDHE's evaluation of the root cause analysis required by paragraph (2) above.

(7) Exide shall submit to KDHE for approval a revised attainment demonstration with new modeling of emissions rates and/or work practices, or other proposed changes, for attainment of the 2008 lead NAAQS. The demonstration shall include the timeline for implementation.

These additional contingency measures will also be subject to EPA approval as part of the SIP. Any future changes to contingency measures would require a public hearing at the state level and EPA approval as a formal SIP revision. Until such time as EPA approves any substitute measure, the measures included in the approved SIP will be the enforceable measure. EPA does not intend to approve any substitutions that cannot be implemented in the same timeframe as the original measure. These measures will help ensure compliance with the 2008 lead NAAQS as well as meet the requirements of section 172(c)(9) of the CAA. EPA proposes to approve Kansas's SIP as meeting the requirements of section 172(c)(9) of the CAA.

I. Enforceability

As specified in section 172(c)(6) and section 110(a)(2)(A) of the CAA, and 57 FR 13556, all measures and other elements in the SIP must be enforceable by the state and EPA. The enforceable document included in the Kansas SIP submittal is the construction permit dated August 18, 2014. The construction permit contains all control and contingency measures with enforceable dates for implementation. Upon EPA approval of the SIP submission, Exide's construction permit will become state and Federally enforceable, and enforceable by citizens under section 304 of the CAA.

EPA proposes to approve the Kansas SIP as meeting the requirements of sections 172(c)(6) and 110(a)(2)(A) of the CAA, and 57 FR 13556.

VI. Proposed Action

EPA is proposing to grant full approval of the Kansas attainment demonstration SIP for the Saline County 2008 lead NAAQS nonattainment area. EPA believes that the SIP submitted by the state satisfies the applicable requirements of the CAA identified in EPA's Final Rule (73 FR 66964, October 15, 2008), and will result in attainment of the 0.15 µg/m³ standard in the Saline County, Kansas, area.

Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the proposed amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond

those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the

Congress and to the Comptroller General of the United States. EPA will submit a report containing this proposed action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This proposed action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 2016. Filing a petition for reconsideration by the Administrator of this proposed rule does not affect the finality of this rulemaking for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such future rule or action. This proposed action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 17, 2016.

Mark Hague,

Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart R—Kansas

■ 2. Amend § 52.870 by:

- a. Revising paragraph (d) by adding new entry (5) at the end of the table; and
- b. Revising paragraph (e) by adding entry (43) at the end of the table.

The revisions read as follows:

§ 52.870 Identification of plan.

(d) * * *

EPA-APPROVED KANSAS SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit or case No.	State effective date	EPA approval date	Explanation
(5) Exide Technologies	1690035	8/18/14	2/29/16 [Insert Federal Register citation]	

* * * * * (e) * * *

EPA-APPROVED KANSAS NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Explanation
(43) Attainment plan for 2008 lead NAAQS.	Salina	2/3/15	2/29/16 [Insert Federal Register citation].	[EPA-R07-OAR-2015-0708].

[FR Doc. 2016-04080 Filed 2-26-16; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2015-0402; FRL-9943-07-Region 1]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Infrastructure State Implementation Plan Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of State Implementation Plan (SIP) submissions from Rhode Island regarding the infrastructure requirements of the Clean Air Act (CAA or Act) for the 1997 fine particle matter (PM_{2.5}), 2006 PM_{2.5}, 2008 lead (Pb), 2008 ozone, 2010 nitrogen dioxide (NO₂), and 2010 sulfur dioxide (SO₂) National Ambient Air Quality Standards (NAAQS). Additionally, EPA is proposing to disapprove the submissions with respect to CAA section 110(a)(2)(H); a federal implementation plan has been in place for this requirement since 1973. EPA is also proposing to correct an earlier approval of this element for the 1997 8-hour ozone NAAQS. Finally, EPA is proposing to approve several statutes submitted by Rhode Island in support of

their demonstration that the infrastructure requirements of the CAA have been met. The infrastructure requirements are designed to ensure that the structural components of each state’s air quality management program are adequate to meet the state’s responsibilities under the CAA.

DATES: Comments must be received on or before March 30, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2015-0402 at <http://www.regulations.gov>, or via email to Arnold.Anne@EPA.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy,

information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Publicly available docket materials are available either electronically in www.regulations.gov or at the U.S. Environmental Protection Agency, Region 1, Air Programs Branch, 5 Post Office Square, Boston, Massachusetts. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05-02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109-3912; (617) 918-1664; Burkhart.Richard@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

- I. What should I consider as I prepare my comments for EPA?
- II. What is the background of these SIP submissions?
 - A. What Rhode Island SIP submissions does this rulemaking address?
 - B. Why did the state make these SIP submissions?
 - C. What is the scope of this rulemaking?

- III. What guidance is EPA using to evaluate these SIP submissions?
- IV. What is the result of EPA's review of these SIP submissions?
- A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures
- B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System
- C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures and for Construction or Modification of Stationary Sources
- D. Section 110(a)(2)(D)—Interstate Transport
- E. Section 110(a)(2)(E)—Adequate Resources
- F. Section 110(a)(2)(F)—Stationary Source Monitoring System
- G. Section 110(a)(2)(G)—Emergency Powers
- H. Section 110(a)(2)(H)—Future SIP Revisions
- I. Section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D
- J. Section 110(a)(2)(J)—Consultation with Government Officials; Public Notifications; Prevention Of Significant Deterioration; Visibility Protection
- K. Section 110(a)(2)(K)—Air Quality Modeling/Data
- L. Section 110(a)(2)(L)—Permitting Fees
- M. Section 110(a)(2)(M)—Consultation/ Participation by Affected Local Entities
- N. Rhode Island Statutes Submitted for Incorporation Into the SIP
- V. What action is EPA taking?
- VI. Incorporation by Reference
- VII. Stationary and Executive Order Reviews

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

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

II. What is the background of these SIP submissions?

A. What Rhode Island SIP submissions does this rulemaking address?

This rulemaking addresses submissions from the Rhode Island Department of Environmental Management (RI DEM or DEM). The state submitted its infrastructure SIP for each NAAQS on the following dates: 1997 PM_{2.5}¹—September 10, 2008; 2006 PM_{2.5}—November 6, 2009; 2008 Pb—October 26, 2011; 2008 ozone—January 2, 2013; 2010 NO₂—January 2, 2013; and 2010 SO₂—June 27, 2014.

B. Why did the state make these SIP submissions?

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for the NAAQS already meet those requirements.

EPA highlighted this statutory requirement in an October 2, 2007, guidance document entitled “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards” (2007 Memo). On September 25, 2009, EPA issued an additional guidance document pertaining to the 2006 p.m._{2.5} NAAQS entitled “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS)” (2009 Memo), followed by the October 14, 2011, “Guidance on infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)” (2011 Memo). Most recently, EPA issued “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)” on September 13, 2013 (2013 Memo). The SIP submissions referenced in this rulemaking pertain to the applicable requirements of section 110(a)(1) and (2) and address the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS. To the extent that the prevention of

significant deterioration (PSD) program is comprehensive and non-NAAQS specific, a narrow evaluation of other NAAQS, such as the 1997 ozone NAAQS, will be included in the appropriate sections.

C. What is the scope of this rulemaking?

EPA is acting upon the SIP submissions from Rhode Island that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

The requirement for states to make a SIP submission of this type arises out of CAA sections 110(a)(1) and 110(a)(2). Pursuant to these sections, each state must submit a SIP that provides for the implementation, maintenance, and enforcement of each primary or secondary NAAQS. States must make such SIP submission “within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a new or revised NAAQS.” This requirement is triggered by the promulgation of a new or revised NAAQS and is not conditioned upon EPA's taking any other action. Section 110(a)(2) includes the specific elements that “each such plan” must address.

EPA commonly refers to such SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submissions. Although the term “infrastructure SIP” does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as “nonattainment SIP” or “attainment plan SIP” submissions to address the nonattainment planning requirements of part D of title I of the CAA.

This rulemaking will not cover three substantive areas that are not integral to acting on a state's infrastructure SIP submission: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources (“SSM” emissions) that may be contrary to the CAA and EPA's policies addressing such excess emissions; (ii) existing provisions related to “director's variance” or “director's discretion” that purport to permit revisions to SIP-approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (“director's discretion”); and, (iii) existing provisions for PSD programs that may be inconsistent with current

¹PM_{2.5} refers to particulate matter of 2.5 microns or less in diameter, oftentimes referred to as “fine” particles.

requirements of EPA's "Final New Source Review (NSR) Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). Instead, EPA has the authority to address each one of these substantive areas separately. A detailed history, interpretation, and rationale for EPA's approach to infrastructure SIP requirements can be found in EPA's May 13, 2014, proposed rule entitled, "Infrastructure SIP Requirements for the 2008 Lead NAAQS" in the section, "What is the scope of this rulemaking?" See 79 FR 27241 at 27242–45.

III. What guidance is EPA using to evaluate these SIP submissions?

EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate. Historically, EPA has elected to use non-binding guidance documents to make recommendations for states' development and EPA review of infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements. EPA guidance applicable to these infrastructure SIP submissions is embodied in several documents. Specifically, attachment A of the 2007 Memo (Required Section 110 SIP Elements) identifies the statutory elements that states need to submit in order to satisfy the requirements for an infrastructure SIP submission. The 2009 Memo provides additional guidance for certain elements regarding the 2006 PM_{2.5} NAAQS, and the 2011 Memo provides guidance specific to the 2008 Pb NAAQS. Lastly, the 2013 Memo identifies and further clarifies aspects of infrastructure SIPs that are not NAAQS specific.

IV. What is the result of EPA's review of these SIP submissions?

EPA is soliciting comment on our evaluation of Rhode Island's infrastructure SIP submissions in this notice of proposed rulemaking. In each of Rhode Island's submissions, a detailed list of Rhode Island Laws and, previously SIP-approved Air Quality Regulations, show precisely how the various components of its EPA approved SIP meet each of the requirements of section 110(a)(2) of the CAA for the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS, as applicable. The following review evaluates the state's submissions in light of section 110(a)(2)

requirements and relevant EPA guidance.

A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures

This section (also referred to in this action as an element) of the Act requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. However, EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.² In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

Rhode Island's infrastructure submittals for this element cite Rhode Island General Law (RIGL) and several RI Air Pollution Control Regulations (APCR) as follows:

Rhode Island General Law § 23–23–5(12), "Powers and duties of the director," authorizes the RI DEM Director "[t]o make, issue, and amend rules and regulations . . . for the prevention, control, abatement, and limitation of air pollution. . . ." In addition, this section authorizes the Director to "prohibit emissions, discharges and/or releases and . . . require specific control technology." The state has submitted RIGL § 23–23–5 for inclusion in its SIP.

The Rhode Island submittals cite more than a dozen specific rules that the state has adopted to control the emissions of Pb, SO₂, PM_{2.5}, volatile organic compounds (VOCs), and NO_x. A few, with their EPA approval citation are listed here: No. 9—Air Pollution Control Permits (except for Section 9.13, 9.14 9.15 and Appendix A which were not submitted) (64 FR 67495; December 2, 1999); No. 11—Petroleum Liquids Marketing and Storage (80 FR 32469; June 9, 2015); No. 12—Incinerators (47 FR 17816; April 26, 1982); No. 27—Control of Nitrogen Oxide Emissions (62 FR 46202; September 2, 1997); No. 37—Rhode Island's Low Emissions Vehicle Program (80 FR 50203; August 19, 2015); and No. 45—Rhode Island Diesel Engine Anti-Idling Program (73 FR 16203; March 27, 2008).

The RI regulations listed above were previously approved into the RI SIP by EPA. See 40 CFR 52.2070. In addition, EPA proposes to approve RIGL § 23–23–

5 for inclusion in the SIP. Based upon EPA's review of the submittals, EPA further proposes to find that RI DEM's submittal meets the requirements of CAA Section 110(a)(2)(A). Therefore, EPA proposes that Rhode Island meets the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

In addition EPA is proposing to remove 40 CFR 52.2079, which was promulgated on January 24, 1995 (60 FR 4738). This section states that Rhode Island must comply with the requirements of 40 CFR 51.120, which are to implement the Ozone Transport Commission (OTC) Low Emission Vehicle (LEV) Program (a program which requires that only cleaner "LEV" cars can be sold in Rhode Island), or equivalent measures. Subsequently, Rhode Island adopted a Low Emission Vehicle Program based on California's LEV program (APCR No. 37), which has been approved into the SIP (65 FR 12476, March 9, 2000). In addition, Rhode Island recently adopted California's LEV II program (in revisions to APCR No. 37) which is even more stringent than LEV I, and that has also been approved into the SIP (80 FR 50203; August 19, 2015). Thus, Rhode Island has satisfied 40 CFR 52.2079, and therefore, EPA proposes to remove 40 CFR 52.2079 from the CFR.

As previously noted, EPA is not proposing to approve or disapprove any existing state provisions or rules related to SSM or director's discretion in the context of section 110(a)(2)(A).

B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System

This section requires SIPs to include provisions to provide for establishing and operating ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. Each year, states submit annual air monitoring network plans to EPA for review and approval. EPA's review of these annual monitoring plans includes our evaluation of whether the state: (i) Monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System (AQS) in a timely manner; and (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

RI DEM operates an air quality monitoring network, and EPA approved the state's 2015 Annual Air Monitoring

² See, e.g., EPA's final rule on "National Ambient Air Quality Standards for Lead," 73 FR 66964, 67034 (Nov. 12, 2008).

Network Plan for PM_{2.5}, Pb, ozone, NO₂, and SO₂ on September 8, 2015. Furthermore, RI DEM populates AQS with air quality monitoring data in a timely manner, and provides EPA with prior notification when considering a change to its monitoring network or plan. EPA proposes that RI DEM has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures and for Construction or Modification of Stationary Sources

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet NSR requirements under PSD and nonattainment new source review (NNSR) programs. Part C of the CAA (sections 160–169B) addresses PSD, while part D of the CAA (sections 171–193) addresses NNSR requirements.

The evaluation of each state's submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers the following: (i) Enforcement of SIP measures; (ii) PSD program for major sources and major modifications; and (iii) a permit program for minor sources and minor modifications. A discussion of greenhouse gas (GHG) emissions permitting and the "Tailoring Rule"³ is included within our evaluation of the PSD provisions of Rhode Island's submittals.

Sub-Element 1: Enforcement of SIP Measures

The Rhode Island General Laws provide the Director of RI DEM with the legal authority to enforce air pollution control requirements. Such enforcement authority is provided by RIGL § 23–23–5, which grants the Director of RI DEM general enforcement power, inspection

³In EPA's April 28, 2011 proposed rulemaking for infrastructure SIPs for the 1997 ozone and PM_{2.5} NAAQS, we stated that each state's PSD program must meet applicable requirements for evaluation of all regulated NSR pollutants in PSD permits (See 76 FR 23757 at 23760). This view was reiterated in EPA's August 2, 2012 proposed rulemaking for infrastructure SIPs for the 2006 PM_{2.5} NAAQS (See 77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address Pb, NO_x as a precursor to ozone, PM_{2.5} precursors, PM_{2.5} and PM₁₀ condensables, PM_{2.5} increments, or the Federal GHG permitting thresholds, the provisions of section 110(a)(2)(C) requiring a suitable PSD permitting program must be considered not to be met irrespective of the NAAQS that triggered the requirement to submit an infrastructure SIP, including the 2008 Pb NAAQS.

and investigative authority, and the power to issue administrative orders, among other things. In addition, RI APCR No. 9, "Air Pollution Control Permits," sets forth requirements for new and modified major and minor stationary sources. Section 9.3 of the regulation contains specific requirements for new and modified minor sources. Section 9.4 of the regulation contains specific new source review requirements applicable to major stationary source or major modifications located in nonattainment areas. Section 9.5 contains specific new source review requirements applicable to major stationary sources or major modifications located in attainment or unclassifiable areas (PSD).

EPA proposes that Rhode Island has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

Sub-Element 2: PSD Program for Major Sources and Major Modifications

Prevention of significant deterioration (PSD) applies to new major sources or modifications made to major sources for pollutants where the area in which the source is located is in attainment of, or unclassifiable with regard to, the relevant NAAQS. RI DEM's EPA-approved PSD rules, contained at APCR No. 9, contain provisions that address the majority of the applicable infrastructure SIP requirements related to the 1997 PM_{2.5}, 2006 p.m._{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

EPA's "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline" (Phase 2 Rule) was published on November 29, 2005 (70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO_x as a precursor to ozone (see 70 FR 71612 at 71679, 71699–700 (November 29, 2005)). This requirement was codified in 40 CFR 51.166, and requires that states submit SIP revisions incorporating the requirements of the rule, including provisions that would treat NO_x as a precursor to ozone provisions. These SIP revisions were to have been submitted to EPA by states by June 15, 2007. See 70 FR 71612 at 71683.

Rhode Island has incorporated several of the changes required by the Phase 2 Rule, but has not made the necessary changes to the definition of "major stationary source" identifying NO_x as a precursor to ozone. Therefore, we are proposing that Rhode Island has met all but one of the requirements of section 110(a)(2)(C) for the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS obligated by the Phase 2 Rule. By letter dated February 18, 2016, Rhode Island committed to submit the required provisions for EPA approval by a date no later than one year from conditional approval of Rhode Island's infrastructure submissions. Consequently, we are proposing to conditionally approve with respect to this requirement of the Phase 2 Rule.

On May 16, 2008 (73 FR 28321), EPA issued the Final Rule on the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})" (2008 NSR Rule). The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct PM_{2.5} and other pollutants that contribute to secondary PM_{2.5} formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of PM_{2.5}, otherwise known as precursors. In the 2008 rule, EPA identified precursors to PM_{2.5} for the PSD program to be SO₂ and NO_x (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_x emissions in an area are not a significant contributor to that area's ambient PM_{2.5} concentrations). The 2008 NSR Rule also specifies that VOCs are not considered to be precursors to PM_{2.5} in the PSD program unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOCs in an area are significant contributors to that area's ambient PM_{2.5} concentrations.

The explicit references to SO₂, NO_x, and VOCs as they pertain to secondary PM_{2.5} formation are codified at 40 CFR 51.166(b)(49)(i)(b) and 40 CFR 52.21(b)(50)(i)(b). As part of identifying pollutants that are precursors to PM_{2.5}, the 2008 NSR Rule also required states to revise the definition of "significant" as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b)(23)(i) and 40 CFR 52.21(b)(23)(i) define "significant" for PM_{2.5} to mean the following emissions rates: 10 tons per year (tpy) of direct PM_{2.5}; 40 tpy of SO₂; and 40 tpy of NO_x (unless the state demonstrates to the Administrator's satisfaction or EPA

demonstrates that NO_x emissions in an area are not a significant contributor to that area's ambient PM_{2.5} concentrations). The deadline for states to submit SIP revisions to their PSD programs incorporating these changes was May 16, 2011 (See 73 FR 28321 at 28341).⁴

On January 18, 2011, Rhode Island submitted revisions to its PSD program incorporating the necessary changes obligated by the 2008 NSR Rule, with respect to provisions that explicitly identify precursors to PM_{2.5}. EPA approved Rhode Island's 2011 SIP revision on April 21, 2015 (80 FR 22106).

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as condensables, in PM_{2.5} and PM₁₀ emission limits in NSR permits. Instead, EPA determined that states had to account for PM_{2.5} and PM₁₀ condensables for applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in PSD permits beginning on or after January 1, 2011. See 73 FR 28321 at 28334. This requirement is codified in 40 CFR 51.166(b)(49)(i)(a) and 40 CFR 52.21(b)(50)(i)(a). Revisions to states' PSD programs incorporating the inclusion of condensables were required to be submitted to EPA by May 16, 2011 (See 73 FR 28321 at 28341).

Rhode Island's SIP-approved PSD program does not contain the exact

language in 40 CFR 51.166(b)(49)(i)(a). However, EPA has previously determined that Rhode Island's SIP-approved regulations define PM_{2.5} and PM₁₀ such that the state's PSD program adequately accounts for the condensable fraction of PM_{2.5} and PM₁₀. See 78 FR 63383 at 63386 (October 24, 2013).

Therefore, we are proposing that Rhode Island has met this set of requirements of section 110(a)(2)(C) for the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS regarding the requirements obligated by the 2008 NSR Rule.

On October 20, 2010 (75 FR 64864), EPA issued the final rule on the "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" (2010 NSR Rule). This rule established several components for making PSD permitting determinations for PM_{2.5}, including a system of "increments," which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. These increments are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c).

The 2010 NSR Rule also established a new "major source baseline date" for PM_{2.5} as October 20, 2010, and a new trigger date for PM_{2.5} of October 20, 2011 in the definition of "minor source baseline date." These revisions are codified in 40 CFR 51.166(b)(14)(i)(c) and (b)(14)(ii)(c), and 40 CFR 52.21(b)(14)(i)(c) and (b)(14)(ii)(c). Lastly, the 2010 NSR Rule revised the definition of "baseline area" to include a level of significance (SIL) of 0.3 micrograms per cubic meter, annual average, for PM_{2.5}. This change is codified in 40 CFR 51.166(b)(15)(i) and 40 CFR 52.21(b)(15)(i). Rhode Island has not yet made a SIP submission to EPA that addresses EPA's 2010 NSR rule. However, by letter dated February 18, 2016, Rhode Island committed to submitting the necessary updates to its NSR regulation within one year of EPA's conditional approval. Therefore, we are proposing to conditionally approve this part of sub-element 2 of section 110(a)(2)(C) relating to requirements for state NSR regulations outlined within our 2010 NSR regulation.

With respect to Elements (C) and (J), EPA interprets the Clean Air Act to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of Element

D(i)(II) may also be satisfied by demonstrating the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. Rhode Island has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including GHGs, with the exception of the deficiencies described elsewhere in this notice.

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group v. Environmental Protection Agency*, 134 S.Ct. 2427. The Supreme Court said that EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In accordance with the Supreme Court decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) issued an amended judgment vacating the regulations that implemented Step 2 of the EPA's PSD and Title V Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by EPA, the application of the Best Available Control Technology (BACT) requirement to GHG emissions from Step 1 or "anyway" sources. With respect to Step 2 sources, the D.C. Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v), "to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification."

On August 19, 2015, EPA amended its PSD and title V regulations to remove from the Code of Federal Regulations portions of those regulations that the D.C. Circuit specifically identified as vacated. EPA intends to further revise the PSD and title V regulations to fully

⁴ EPA notes that on January 4, 2013, the U.S. Court of Appeals for the DC Circuit, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir.), held that EPA should have issued the 2008 NSR Rule in accordance with the CAA's requirements for PM₁₀ nonattainment areas (Title I, Part D, subpart 4), and not the general requirements for nonattainment areas under subpart 1 (*Natural Resources Defense Council v. EPA*, No. 08–1250). As the subpart 4 provisions apply only to nonattainment areas, EPA does not consider the portions of the 2008 rule that address requirements for PM_{2.5} attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated by the 2008 NSR rule in order to comply with the court's decision. Accordingly, EPA's approval of Rhode Island's infrastructure SIP as to Elements C, D(i)(II), or J with respect to the PSD requirements promulgated by the 2008 implementation rule does not conflict with the court's opinion.

The Court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 implementation rule also does not affect EPA's action on the present infrastructure action. EPA interprets the CAA to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

implement the Supreme Court and D.C. Circuit rulings in a separate rulemaking. This future rulemaking will include revisions to additional definitions in the PSD regulations.

Some states have begun to revise their existing SIP-approved PSD programs in light of these court decisions, and some states may prefer not to initiate this process until they have more information about the additional planned revisions to EPA's PSD regulations. EPA is not expecting states to have revised their PSD programs in anticipation of EPA's additional actions to revise its PSD program rules in response to the court decisions for purposes of infrastructure SIP submissions. Instead, EPA is only evaluating such submissions to assure that the state's program addresses GHGs consistent with both the court decision, and the revisions to PSD regulations that EPA has completed at this time.

At present, EPA has determined that Rhode Island's SIP is sufficient to satisfy Elements (C), (D)(i)(II), and (J) with respect to GHGs. This is because the PSD permitting program previously approved by EPA into the SIP continues to require that PSD permits issued to "anyway sources" contain limitations on GHG emissions based on the application of BACT. The approved Rhode Island PSD permitting program still contains some provisions regarding Step 2 sources that are no longer necessary in light of the Supreme Court decision and D.C. Circuit amended judgment. Nevertheless, the presence of these provisions in the previously-approved plan does not render the infrastructure SIP submission inadequate to satisfy Elements (C), (D)(i)(II), and (J). The SIP contains the PSD requirements for applying the BACT requirement to GHG emissions from "anyway sources" that are necessary at this time. The application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of Step 2 sources. Accordingly, the Supreme Court decision and subsequent D.C. Circuit judgment do not prevent EPA's approval of Rhode Island's infrastructure SIP as to the requirements of Elements (C), (as well as sub-elements (D)(i)(II), and (J)(iii)).

For the purposes of the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS infrastructure SIPs, EPA reiterates that NSR Reform is not in the scope of these actions.

In summary, we are proposing to approve the majority of Rhode Island's submittals for this sub-element with

respect to the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS, but to conditionally approve these submittals regarding the identification of NO_x as a precursor to ozone in the definition of major stationary source and regarding the revisions required by the 2010 NSR Rule.

Sub-Element 3: Preconstruction Permitting for Minor Sources and Minor Modifications

To address the pre-construction regulation of the modification and construction of minor stationary sources and minor modifications of major stationary sources, an infrastructure SIP submission should identify the existing EPA-approved SIP provisions and/or include new provisions that govern the minor source pre-construction program that regulates emissions of the relevant NAAQS pollutants. EPA last approved Rhode Island's minor NSR program, on May 7, 1981 (46 FR 25446) as well as updates to that program. Since this date, Rhode Island and EPA have relied on the existing minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

We are proposing to find that Rhode Island has met the requirement to have a SIP-approved minor new source review permit program as required under Section 110(a)(2)(C) for the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

D. Section 110(a)(2)(D)—Interstate Transport

This section contains a comprehensive set of air quality management elements pertaining to the transport of air pollution that states must comply with. It covers the following 5 topics, categorized as sub-elements: Sub-element 1, Contribute to nonattainment, and interference with maintenance of a NAAQS; Sub-element 2, PSD; Sub-element 3, Visibility protection; Sub-element 4, Interstate pollution abatement; and Sub-element 5, International pollution abatement. Sub-elements 1 through 3 above are found under section 110(a)(2)(D)(i) of the Act, and these items are further categorized into the 4 prongs discussed below, 2 of which are found within sub-element 1. Sub-elements 4 and 5 are found under section 110(a)(2)(D)(ii) of the Act and include provisions insuring compliance with sections 115 and 126

of the Act relating to interstate and international pollution abatement.

Sub-Element 1: Section 110(a)(2)(D)(i)(I)—Contribute to Nonattainment (Prong 1) and Interfere With Maintenance of the NAAQS (Prong 2)

With respect to the 2008 Pb NAAQS, the 2011 Memo notes that the physical properties of Pb prevent it from experiencing the same travel or formation phenomena as PM_{2.5} or ozone. Specifically, there is a sharp decrease in Pb concentrations as the distance from a Pb source increases. Accordingly, although it may be possible for a source in a state to emit Pb at a location and in such quantities that contribute significantly to nonattainment in, or interference with maintenance by, any other state, EPA anticipates that this would be a rare situation, e.g., sources emitting large quantities of Pb in close proximity to state boundaries. The 2011 Memo suggests that the applicable interstate transport requirements of section 110(a)(2)(D)(i)(I) with respect to Pb can be met through a state's assessment as to whether or not emissions from Pb sources located in close proximity to its borders have emissions that impact a neighboring state such that they contribute significantly to nonattainment or interfere with maintenance in that state.

Rhode Island's infrastructure SIP submission for the 2008 Pb NAAQS notes that there are no large sources of Pb emissions located in close proximity to any of the state's borders with neighboring states. Additionally, Rhode Island's submittal and the emissions data the state collects from its sources indicate that there is no single source of Pb, or group of sources, anywhere within the state that emits enough Pb to cause ambient concentrations to approach the Pb NAAQS. Our review of the Pb emissions data from Rhode Island sources, which Rhode Island has entered into the EPA National Emissions Inventory (NEI) database, confirms this, and therefore, EPA agrees with Rhode Island and proposes that Rhode Island has met this set of requirements related to section 110(a)(2)(D)(i)(I) for the 2008 Pb NAAQS.

Rhode Island's submittals did not address section 110(a)(2)(D)(i)(I) for the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 ozone, 2010 NO₂, or 2010 SO₂ NAAQS. Rhode Island did, however, make subsequent submittals for this sub-element on June 23, 2015 (ozone) and October 15, 2015 (NO₂ and SO₂), which EPA will act on in a subsequent notice. Therefore, EPA

is not taking any action with respect to this requirement for purposes of the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 ozone, 2010 NO₂, or 2010 SO₂ NAAQS at this time.

Sub-Element 2: Section 110(a)(2)(D)(i)(II)—PSD (Prong 3)

One aspect of section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state. As has already been discussed in the paragraphs addressing the PSD sub-element of Element C, Rhode Island has satisfied many, though not all, of the applicable PSD implementation rule requirements.

States also have an obligation to ensure that sources located in nonattainment areas do not interfere with a neighboring state's PSD program. One way that this requirement can be satisfied is through an NNSR program consistent with the CAA that addresses any pollutants for which there is a designated nonattainment area within the state. EPA approved Rhode Island's latest NNSR regulations on April 21, 2015 (80 FR 22106). These regulations contain provisions for how the state must treat and control sources in nonattainment areas, consistent with 40 CFR 51.165, or appendix S to 40 CFR 51.

As noted above and in Element C, Rhode Island's PSD program does not fully satisfy the requirements of EPA's PSD implementation rules, although Rhode Island has committed to submit the required provisions for EPA approval by a date no later than one year from conditional approval of Rhode Island's infrastructure submissions. Consequently, we are proposing to conditionally approve this sub-element for the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS related to section 110(a)(2)(D)(i)(II) for the reasons discussed under Element C.

Sub-Element 3: Section 110(a)(2)(D)(i)(II)—Visibility Protection (Prong 4)

With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). The 2009 Memo, the 2011 Memo, and 2013 Memo state that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if

required, or an approved SIP addressing regional haze. A fully approved regional haze SIP meeting the requirements of 40 CFR 51.308 will ensure that emissions from sources under an air agency's jurisdiction are not interfering with measures required to be included in other air agencies' plans to protect visibility.

Rhode Island's Regional Haze SIP was approved by EPA on May 22, 2012 (77 FR 30214). Accordingly, EPA proposes that Rhode Island has met the visibility protection requirements of 110(a)(2)(D)(i)(II) for the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

Sub-Element 4: Section 110(a)(2)(D)(ii)—Interstate Pollution Abatement

One aspect of section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 126 relating to interstate pollution abatement.

Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources. A lack of such a requirement in state rules would be grounds for disapproval of this element. EPA approved Rhode Island's PSD program, as well as updates to that program, with the most recent approval occurring on April 21, 2015 (80 FR 22106), which includes a provision requiring notice to neighboring states of RI DEM's intention to either issue a draft PSD permit or deny a permit application. See APCR No. 9, section 9.12.3(e). Therefore, we propose to approve Rhode Island's compliance with the infrastructure SIP requirements of section 126(a) with respect to the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS. Rhode Island has no obligations under any other provision of section 126.

Sub-Element 5: Section 110(a)(2)(D)(ii)—International Pollution Abatement

One portion of section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 115 relating to international pollution abatement. Rhode Island does not have any pending obligations under section 115 for the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, or 2010 SO₂

NAAQS. Therefore, EPA is proposing that Rhode Island has met the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to section 115 of the CAA (international pollution abatement) for the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

E. Section 110(a)(2)(E)—Adequate Resources

This section requires each state to provide for adequate personnel, funding, and legal authority under state law to carry out its SIP and related issues. Additionally, Section 110(a)(2)(E)(ii) requires each state to comply with the requirements with respect to state boards under section 128. Finally, section 110(a)(2)(E)(iii) requires that, where a state relies upon local or regional governments or agencies for the implementation of its SIP provisions, the state retain responsibility for ensuring adequate implementation of SIP obligations with respect to relevant NAAQS. This sub-element, however, is inapplicable to this action, because Rhode Island does not rely upon local or regional governments or agencies for the implementation of its SIP provisions.

Sub-Element 1: Adequate Personnel, Funding, and Legal Authority Under State Law To Carry Out Its SIP, and Related Issues

Rhode Island, through its infrastructure SIP submittals, has documented that its air agency has the requisite authority and resources to carry out its SIP obligations. Rhode Island cites to RIGL § 23–23–5, which provides the Director of DEM with the legal authority to enforce air pollution control requirements. Additionally, this statute provides the Director with the authority to assess preconstruction permit fees and annual operating permit fees from air emissions sources and establishes a general revenue reserve account within the general fund to finance the state clean air programs. RI DEM further cites to RI APCR No. 28, "Operating Permit Fees," which requires that major sources pay annual operating permit fees. Finally, Section III of the 1972 RI SIP specifies RI DEM's legal authority to implement SIP measures, and Section VII of the 1972 SIP describes the resources and manpower estimates for RI DEM. EPA proposes that Rhode Island has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

Sub-Element 2: State Board Requirements Under Section 128 of the CAA

Section 110(a)(2)(E) also requires each SIP to contain provisions that comply with the state board requirements of section 128 of the CAA. That provision contains two explicit requirements: (i) That any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

In Rhode Island, no board or body approves permits or enforcement orders; these are approved by the Director of RI DEM. Thus, with respect to this sub-element, Rhode Island is subject only to the requirements of paragraph (a)(2) of section 128 of the CAA (regarding conflicts of interest). Accordingly, Rhode Island indicated in its January 2, 2013 infrastructure SIP submittals for the 2008 ozone and 2010 NO₂ NAAQS that it was submitting the Rhode Island Code of Ethics, RIGL chapter 36–14, for incorporation into the SIP.⁵ The Rhode Island Code of Ethics, applies to state employees and public officials (see RIGL § 36–14–4), requires disclosure of potential conflicts of interest (see RIGL § 36–14–6), and provides that “No person subject to this Code of Ethics shall have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction, or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his or her duties or employment in the public interest and of his or her responsibilities” (see RIGL § 36–14–5(a)). EPA is proposing to approve RIGL §§ 36–14–1 through –7 into the Rhode Island SIP.

EPA proposes that, with the inclusion of RIGL §§ 36–14–1 through –7 into the Rhode Island SIP as proposed, Rhode Island has met the applicable infrastructure SIP requirements for this sub-element for the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

F. Section 110(a)(2)(F)—Stationary Source Monitoring System

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.

Rhode Island’s infrastructure submittals reference existing state regulations previously approved by EPA that require sources to monitor emissions and submit reports. For example, Rhode Island’s submittals reference APCR No. 9, “Air Pollution Control Permits,” which requires emissions testing of permitted processes within 180 days of full operation and specifies that preconstruction permits issued contain an emissions testing section. Another example Rhode Island cites is APCR No. 14, “Record Keeping and Reporting,” which requires emission sources to annually report emissions and other data to RI DEM, and provides that information in certain reports obtained pursuant to APCR No. 14 “will be correlated with applicable emission and other limitations and will be available for public inspection.” Another example referenced in Rhode Island’s submittals is APCR No. 27, “Control of Nitrogen Oxide Emissions,” listed in Element A, which requires annual emissions testing of subject sources and includes specifications for continuous emissions monitors.

EPA proposes to find that deficiencies with Rhode Island’s recordkeeping authority outlined at 40 CFR 52.2074(a) have been remedied. In particular, in May 1972, EPA found that Rhode Island had not met the requirements of 40 CFR 51.230(e) (formerly 40 CFR 51.11(a)(5)), which provides that “Each plan must show that the State has legal authority to carry out the plan, including authority to . . . [o]btain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources.” In particular, EPA found that

Rhode Island’s “[a] uthority to require recordkeeping is deficient to the extent that [RIGL] section 23–25–13 requires only those sources with an air pollution control program to keep records.” 40 CFR 52.2074(a). Since this time, Rhode Island has revised (and renumbered) its statutes such that the applicable provision now applies not only to “any person owning or operating any air pollution control system,” but also to “any person owning or operating a source of air pollution which has the potential to emit any air contaminant, or any person owning or operating a source of air pollution which the director has reason to believe is emitting any extremely toxic air contaminant, that meets the definition in § 23–23–3 but may not have been adopted by the director.” RIGL § 23–23–13. In addition, RIGL § 23–23–5(16) provides RI DEM with the authority to “require any person who owns or operates any machine, equipment, device, article, or facility which has the potential to emit any air contaminant . . . to submit periodic reports on the nature and amounts of air contaminant emission from the machine, equipment, device, article, or facility.” In today’s notice, EPA proposes to approve RIGL § 23–23–5. Furthermore, APCR No. 14, the latest revision of which was approved into the SIP on December 2, 1999, *see* 64 FR 67495, similarly requires certain recordkeeping by the “owner or operator of any facility that emits air contaminants.” Section 14.2. Finally, and as noted above, APCR No. 14 requires emission sources to report emissions and other data to RI DEM at least annually. Taken together, these post-1972 provisions significantly enhance Rhode Island’s recordkeeping authority and remedy the deficiency identified in 40 CFR 52.2074(a) and, consequently, we are proposing to remove this provision from the Code of Federal Regulations.

EPA also proposes to approve Rhode Island’s SIP submittal with respect to the deficiencies outlined at 40 CFR 52.2073 and 52.2074(b) regarding the public availability of emission data. In May 1972, EPA found that Rhode Island had not met the requirements of 40 CFR 51.116(c) (formerly 40 CFR 51.10(e)), which provides that a state’s SIP “must provide for public availability of emission data reported by source owners or operators or otherwise obtained by a State or local agency.” EPA concluded that Rhode Island’s SIP was deficient “since the plan does not provide for public availability of emission data.” 40 CFR 52.2073(a). At the same time, EPA found that Rhode

⁵ Rhode Island also referenced incorporation of the Rhode Island Code of Ethics into the SIP in its June 27, 2014 infrastructure SIP submittal for the 2010 SO₂ NAAQS.

Island had not met the requirements of 40 CFR 51.230(f) (formerly 40 CFR 51.11(a)(6)), which provides, among other things, that “Each plan must show that the State has legal authority to carry out the plan, including authority to . . . [r]equire owners or operators of stationary sources to make periodic reports to the State on the nature and amounts of emissions from such stationary sources” and authority “to make such data available to the public as reported and as correlated with any applicable emission standards or limitations.” With respect to that requirement, EPA found that (1) Rhode Island’s “[a]uthority to release emission data to the public is deficient in that section 23–25–6 requires that only records concerning investigations be available to the public” and that (2) “section 23–25–5(g) and section 23–25–13 may limit the State’s authority to release emission data.” 40 CFR 52.2074(b). As a result, EPA promulgated regulations at 40 CFR 52.2073(b) regarding public availability of emission data.

While the present-day version of RIGL § 23–25–6 (now codified at RIGL § 23–23–6) still appears to apply only to records concerning investigations, the SIP-approved state regulation APCR No. 14 is not by its terms so limited. This regulation establishes certain recordkeeping requirements and provides that “[i]nformation obtained from owners or operators of facilities pursuant to Section 14.2.1 . . . will be available for public inspection.” Section 14.2.1 is not limited to records concerning investigations and specifically encompasses, among other things, “data on . . . emissions of air contaminants . . . or other data that may be necessary to determine if the facility is in compliance with air pollution control regulations.”⁶ The current version of RIGL § 23–25–13 (now codified at § 23–23–13) requires sources to “keep accurate records of

operation” and provides that such records “may be submitted to the department as trade secret or proprietary information to the extent that protection is available under the [Rhode Island] public records act.” By letter dated February 18, 2016, RI DEM informed EPA that, in practice, it makes emission data available to the public pursuant to APCR No. 14 and that it interprets RIGL § 23–23–13 and the state public records act at RIGL title 38 as not providing “trade secret or proprietary information” protection to emission data reported to the state. Furthermore, former RIGL § 23–25–5(g) has been amended since the disapproval, no longer containing the apparent limitation on the State’s authority to release emission data.⁷ Consequently, EPA proposes to approve Rhode Island’s SIP as providing for public availability of emission data and that Rhode Island’s authority to release emission data to the public is no longer deficient as described in 40 CFR 52.2073(a) and 52.2074(b). Thus, EPA proposes to approve Rhode Island’s SIP as providing for correlation by RI DEM of emissions reports by sources with applicable emission limitations or standards, and as providing for the public availability of those emission reports. Therefore, we are proposing to remove from the Code of Federal Regulations 40 CFR 52.2073 in its entirety and the provisions in 40 CFR 52.2074(b) regarding public availability of emissions data.

EPA also proposes to find that additional deficiencies outlined at 40 CFR 52.2074(b) and 52.2075(a) regarding source surveillance have also been remedied. Section 52.2074(b) provides in relevant part that Rhode Island’s SIP lacks adequate “[a]uthority to require sources to install and maintain monitoring equipment” and “[a]uthority to require sources to periodically report. . . .” Section 52.2075(a) provides that “[t]he requirements of § 51.211 of this chapter are not met since the plan lacks adequate legal authority to require owners or operators of stationary sources to maintain records of, and periodically report information as may be necessary to enable the state to determine whether such sources are in compliance with applicable portions of the control strategy.” As a result, section 52.2075(b) sets forth EPA regulations regarding source surveillance. As has

already been discussed above, RIGL § 23–23–5(16) now provides the RI DEM Director with the authority to “require any person who owns or operates [a source that has] the potential to emit any air contaminant, or which is emitting any extremely toxic air contaminant, to install, maintain, and use air pollution emission monitoring devices and to submit periodic reports on that nature and amounts of air contaminant emission from the machine, equipment, device, article, or facility.” As has also been discussed previously, APCR No. 14 implements this authority by requiring facility owners or operators to keep certain records (including “data that may be necessary to determine if the facility is in compliance with air pollution control regulations”) and report those records to RI DEM at least annually. Moreover, APCR No. 9, “Air Pollution Control Permits,” requires emissions testing of permitted processes within 180 days of full operation and specifies that any preconstruction permits issued contain an emissions testing section. In addition, APCR No. 27, “Control of Nitrogen Oxide Emissions,” requires annual emissions testing of subject sources and includes specifications for continuous emissions monitors. Consequently, EPA proposes to approve the Rhode Island SIP as providing adequate authority regarding source surveillance, and therefore proposes to remove 40 CFR 52.2074(b) and 52.2075(a) and (b) from the Code of Federal Regulations. For the foregoing reasons, EPA proposes that Rhode Island has met the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

G. Section 110(a)(2)(G)—Emergency Powers

This section requires that a plan provide for authority that is analogous to what is provided in section 303 of the CAA, and adequate contingency plans to implement such authority. Section 303 of the CAA provides authority to the EPA Administrator to seek a court order to restrain any source from causing or contributing to emissions that present an “imminent and substantial endangerment to public health or welfare, or the environment.” Section 303 further authorizes the Administrator to issue “such orders as may be necessary to protect public health or welfare or the environment” in the event that “it is not practicable to assure prompt protection . . . by commencement of such civil action.”

⁶ While EPA may have had reservations in 1976 as to whether the Rhode Island Department of Health—which at that time implemented the state’s air pollution control program—lacked the statutory authority to promulgate APCR No. 14, see 41 FR 2231, 2231 (Jan. 15, 1976), revisions to state law that have occurred since that time convince us that RI DEM has sufficient authority. In addition to changes to RIGL § 23–23–5(16) discussed in the main text above, Rhode Island added a provision to RIGL § 23–23–2 that authorizes the RI DEM Director “to exercise all powers, direct or incidental, necessary to carry out the purposes of this chapter to assure that the state of Rhode Island complies with the federal Clean Air Act.” Additionally, RIGL § 23–23–5(24) provides that, “[i]n addition to the powers and duties enumerated in this section, the director shall have all appropriate power to adopt rules, regulations, procedures, programs, and standards as mandated by the authorization of the federal Clean Air Act.”

⁷ In 1972, RIGL § 23–25–5(g) contained the following sentence, which has since been removed from the state Clean Air Act: “Any information relating to secret processes or methods of manufacture or production obtained in the course of such inspection shall be kept secret.” Compare RIGL § 23–23–5(7).

We propose to find that Rhode Island's submittals and certain state statutes and regulations provide for authority comparable to that in section 303. Rhode Island's submittals cite Section V of the 1972 RI SIP, which specifies RI DEM's Emergency Episode Authority and Procedures and RIGL chapter 23–23.1 and § 23–23–16, which set forth certain emergency powers of the RI DEM Director. In particular, RIGL § 23–23–16 allows the Director to order a source to cease operations if it is determined that the source is violating any provision of RIGL Chapter 23–23, or any regulation or order issued thereunder, and that the violation poses “an immediate danger to public health or safety.” Section 23–23.1–5 of the RIGL provides that, if the RI DEM Director finds that air pollution anywhere in the state “constitutes an unreasonable and emergency risk to the health of those present within that area,” the Director shall communicate that finding to the governor, who “may by proclamation declare . . . that an air pollution episode exists” and may issue orders to, among other things, “prohibit, restrict, or condition the operation of retail, commercial, manufacturing, industrial, or similar activity . . . [the] operation of incinerators . . . the burning or other consumption of any type of fuel [and/or] any and all other activity in the area which contributes or may contribute to the air pollution emergency.” State law further provides that such gubernatorial orders “shall not require any judicial or other order or confirmation of any type in order to become immediately effective as the legal obligation of all persons, firms, corporations, and other entities within the state.” See RIGL § 23–23.1–7. In addition, such orders “shall be enforced by [RI DEM], the state council of defense, state and local police, and air pollution enforcement personnel forces. Those enforcing any governor's order shall require no further authority or warrant in executing it than the issuance of the order itself.” See RIGL § 23–23.1–8(a). Rhode Island has submitted RIGL §§ 23–23–16 and 23–23.1–5 for inclusion in the SIP.

In a letter dated February 18, 2016, Rhode Island also specified that RIGL § 42–17.1–2 and APCR No. 7, taken together with the authorities in the submittals, satisfy the requirement that the SIP provide for authority comparable to section 303. More specifically, APCR No. 7, which was previously approved into Rhode Island's SIP in 1981 (see 46 FR 25446), provides that “[n]o person shall emit any contaminant which either alone or in

connection with other emissions, by reason of their concentration and duration, may be injurious to human, plant or animal life, or cause damage to property or which unreasonably interferes with the enjoyment of life and property.”⁸ Rhode Island notes that the emission standard set in APCR No. 7 is extremely broad, and intentionally so. Section 42–17.1–2(21) of the RIGL provides that, “[w]henver the director determines that there exists a violation of any law, rule, or regulation within his or her jurisdiction which requires immediate action to protect the environment, he or she may . . . issue an immediate compliance order stating the existence of the violation and the action he or she deems necessary.” Such orders may, at the Director's discretion, be effective immediately upon service. *Id.* With regard to the authority to bring suit, section 42–17.1–2(21) further empowers the Director to “institute injunction proceedings in the superior court of the state for enforcement of the compliance order and for appropriate temporary relief. . . .”⁹

Finally, the Rhode Island Environmental Rights Act (“RIERA”) provides that “each person is entitled by right to the protection, preservation, and enhancement of air, water, land, and other natural resources located within the state [and that] it is in the public interest to provide an adequate civil remedy to protect air, water, land and other natural resources located within the state from pollution, impairment, or destruction.” *Id.* § 10–20–1. Consequently, under RIERA, “[a]ny city or town” may bring suit against “any person to enforce, or to restrain the violation of, any environmental quality standard which is designed to prevent or minimize pollution, impairment, or destruction of the environment,” *id.* § 10–20–3(a), or bring an action “for declaratory and equitable relief against any other person for the protection of the environment, or the interest of the

⁸ Rhode Island's current version of APCR No. 7, though not incorporated into the SIP, has been expanded and contains a nearly identical provision, except that the “and” between “concentration” and “duration” has been replaced with an “or.” See APCR No. 7.2.

⁹ This section further provides that the remedy provided therein “shall be in addition to remedies relating to the removal or abatement of nuisances or any other remedies provided by law.” With regard to the abatement of nuisances, Rhode Island law provides that, “[w]henver a nuisance is alleged to exist, the attorney general or any citizen of the state may bring an action in the name of the state . . . to abate the nuisance and to perpetually enjoin the person or persons maintaining the nuisance and any or all persons owning any legal or equitable interest in the place from further maintaining or permitting the nuisance either directly or indirectly.” RIGL § 10–1–1.

public therein, from pollution, impairment, or destruction,” *id.* § 10–20–3(b). An “environmental quality standard” is defined quite broadly as “any statute, ordinance, limitation, regulation, rule, order, license, stipulation, agreement, or permit of the state or any instrumentality, agency, or political subdivision thereof.” *Id.* § 10–20–2(2). RIERA also establishes an “environmental advocate” within the office of the Attorney General who is authorized to “[m]aintain and/or intervene in civil actions authorized by” RIERA and to “take all possible actions, including but not limited to . . . formal legal action, to secure and insure compliance with the provisions of [RIERA] and any promulgated environmental quality standards.” *Id.* § 10–20–3(d).

While no single Rhode Island statute or regulation mirrors the authorities of CAA section 303, we propose to find that the combination of state statutes and regulations discussed herein provide for comparable authority to immediately bring suit to restrain, and issue orders against, any person causing or contributing to air pollution that presents an imminent and substantial endangerment to public health or welfare, or the environment.

Section 110(a)(2)(G) also requires that, for any NAAQS, Rhode Island have an approved contingency plan for any Air Quality Control Region (AQCR) within the state that is classified as Priority I, IA, or II. See 40 CFR 51.152(c). A contingency plan is not required if the entire state is classified as Priority III for a particular pollutant. *Id.* There is only one AQCR in Rhode Island—the Metropolitan Providence Interstate AQCR—and Rhode Island's portion thereof is classified as a Priority I area for PM, SO_x, carbon monoxide, and ozone and as a Priority III area for NO₂. See 40 CFR 52.2071. Consequently, as relevant to this proposed rulemaking action, Rhode Island's SIP must contain an emergency contingency plan meeting the specific requirements of 40 CFR 51.151 and 51.152 with respect to SO₂ and ozone.¹⁰

Rhode Island's submittals cite to APCR No. 10, “Air Pollution Episodes,” which specifies episode criteria for, and measures to be implemented during, air pollution alerts, warnings and emergencies to prevent ambient pollution concentrations from reaching significant harm levels and is very closely modeled on EPA's example regulations for contingency plans at 40 CFR part 51, Appendix L. As stated in

¹⁰ Those regulations do not specifically address PM_{2.5} and lead. See also 40 CFR 51.150.

Rhode Island's infrastructure SIP submittals under the discussion of public notification (Element J), Rhode Island also posts near real-time air quality data, air quality predictions and a record of historical data on the RI DEM Web site. DEM's predictions are also displayed daily in the *Providence Journal*. Alerts are sent by email to a large number of affected parties, including emissions sources, concerned individuals, schools, health and environmental agencies and the media. Alerts include information about the health implications of elevated pollutant levels and list actions that reduce emissions.

In addition, daily forecasted ozone and fine particle levels are also made available on the internet through the EPA AirNow and EnviroFlash systems. Information regarding these two systems is available on EPA's Web site at www.airnow.gov. Notices are sent out to EnviroFlash participants when levels are forecast to exceed the current 8-hour ozone or 24-hour PM_{2.5} standard.

Finally, we note that lead and PM_{2.5} are not explicitly included in the contingency plan requirements of 40 CFR subpart H. In addition, Rhode Island notes in its submittals that, with respect to lead, there are no sources in the state that exceed EPA's reporting threshold of 0.5 tons per year and that the largest source has lead emissions of 0.076 tons per year. With respect to the 2006 PM_{2.5} NAAQS, the EPA 2009 Guidance recommends that states develop emergency episode plans for any area that has monitored and recorded 24-hour PM_{2.5} levels greater than 140 µg/m³ since 2006. In its November 6, 2009 submittal, Rhode Island certified that the highest 24-hour PM_{2.5} concentration recorded in the state since 2006 was 44.7 µg/m³. Furthermore, EPA's review of Rhode Island's certified air quality data in AQS indicates that the highest 24-hour PM_{2.5} concentration since that time (*i.e.*, data through 2014) is 56.2 µg/m³, which occurred in 2010. Although not expected, if lead or PM_{2.5} conditions were to change, Rhode Island does have general authority, as noted previously (*e.g.*, RIGL §§ 23–23–16, 23–23.1–5, 42–17.1–2(21) and APCR No. 7), to order a source to cease operations if it is determined that emissions from the source pose an immediate danger, or unreasonable and emergency risk, to public health or safety or to the environment.

These Rhode Island statutes, rules and regulations are consistent with the requirements of 40 CFR part 51, subpart H, section 51.150 through 51.153.

EPA proposes that Rhode Island has met the applicable infrastructure SIP requirements for section 110(a)(2)(G) with respect to the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

Finally, EPA proposes to remove an outdated section from the Code of Federal Regulations related to abatement orders. In 1973, certain provisions enacted at RIGL §§ 23–25–5(h) and 23–25–8(a) (now renumbered as RIGL §§ 23–23–5(8) and 23–23–8(a), respectively) concerning state-issued abatement orders were found to be inconsistent with the Clean Air Act and, accordingly, disapproved. See 40 CFR 52.2078(a). EPA then promulgated regulations placing limitations on the extent to which state orders could defer compliance with the SIP. See 40 CFR 52.2078(b). Because Rhode Island has since remedied the inconsistency by striking the inappropriate language¹¹ from RIGL § 23–23–5(8) and adding limiting language¹² to RIGL § 23–23–8(a), EPA proposes to remove 40 CFR 52.2078 as no longer necessary.

H. Section 110(a)(2)(H)—Future SIP Revisions

This section requires that a state's SIP provide for revision in response to: Changes in the NAAQS; availability of improved methods for attaining the NAAQS; or an EPA finding that the SIP is substantially inadequate. In 1973, it was determined that Rhode Island's original SIP did not fully satisfy section 110(a)(2)(H) and EPA promulgated federal regulations to address the gap in the SIP. See 40 CFR 52.2080. Since Rhode Island's September 10, 2008, November 6, 2009, October 26, 2011, January 2, 2013, and June 27, 2014 submittals likewise do not address the gap in the SIP that led to a disapproval in 1973, EPA proposes to find that Rhode Island has not met applicable infrastructure SIP requirements for element H with respect to the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS. Accordingly, EPA proposes to disapprove this portion of the state's submittals. Further, EPA notes that our 2011 approval of the element H portion of Rhode Island's infrastructure submittal for the 1997 8-hour ozone NAAQS, see 76 FR 40248, was in error,

¹¹ “. . . and the economic and social necessity of the source of air pollution.” Former RIGL § 23–25–5(h).

¹² “No order or modification of the order may be entered by the director deferring compliance with a requirement of this chapter or the rules and regulations promulgated under this chapter, unless the deferral is consistent with provisions and procedures of the federal Clean Air Act.” RIGL § 23–23–8(a).

because the state's submittal in that case likewise did not address the gap. EPA proposes to correct this oversight pursuant to section 110(k)(6) and to disapprove the 1997 8-hour ozone infrastructure submittal for element H. No further action by EPA or the state is required, however, because remedying federal regulations are already in place. Moreover, mandatory sanctions under CAA section 179 are inapplicable, because the submittal is not required under CAA title I part D nor in response to a SIP call under CAA section 110(k)(5).

I. Section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas.

EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA takes action on part D attainment plans through separate processes.

J. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notifications; Prevention of Significant Deterioration; Visibility Protection

The evaluation of the submissions from Rhode Island with respect to the requirements of CAA section 110(a)(2)(J) are described below.

Sub-Element 1: Consultation With Government Officials

States must provide a process for consultation with local governments and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements.

Rhode Island General Law § 23–23–5, authorizes the RI DEM Director “[t]o advise, consult, and cooperate with the cities and towns and other agencies of the state, federal government, and other states and interstate agencies, and with effective groups in industries in furthering the purposes of this chapter.” Rhode Island has submitted this statute for inclusion into the SIP. In addition, APCR No. 9, which has been approved into Rhode Island's SIP (see 78 FR 63383, October 24, 2013), directs RI DEM to notify relevant municipal officials and FLMs, among others, of tentative determinations by RI DEM with respect to permit applications for major stationary sources and major modifications.

EPA proposes to approve RIGL § 23–23–5 into the SIP and proposes that Rhode Island has met the infrastructure

SIP requirements of this portion of section 110(a)(2)(J) with respect to the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

Sub-Element 2: Public Notification

Section 110(a)(2)(J) also requires states to notify the public if NAAQS are exceeded in an area and must enhance public awareness of measures that can be taken to prevent exceedances. Rhode Island's APCR No. 10, "Air Pollution Episodes," specifies criteria for, and measures to be implemented during, air pollution alerts, warnings and episodes. In addition, the RI DEM Web site includes near real-time air quality data, air quality predictions and a record of historical data. DEM's predictions are also displayed daily in the *Providence Journal*, a newspaper with statewide circulation. Alerts are sent by email to a large number of affected parties, including emissions sources, concerned individuals, schools, health and environmental agencies and the media. Alerts include information about the health implications of elevated pollutant levels and list actions that reduce emissions. In addition, Air Quality Data Summaries of the year's air quality monitoring results are issued annually. The summaries are sent to a mailing list of interested parties and posted on the RI DEM Web site. Rhode Island is also an active partner in EPA's AirNow and EnviroFlash air quality alert programs. EPA proposes that Rhode Island has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

Sub-Element 3: PSD

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. Rhode Island's PSD program in the context of infrastructure SIPs has already been discussed in the paragraphs addressing sections 110(a)(2)(C) and 110(a)(2)(D)(i)(II) and, as we have noted, does not fully satisfy the requirements of EPA's PSD implementation rules, although Rhode Island has committed to submit the required provisions for EPA approval by a date no later than one year from conditional approval of Rhode Island's infrastructure submissions. Consequently, we are proposing to conditionally approve the PSD sub-element of section 110(a)(2)(J) for the, 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS, consistent with the actions we

are proposing for sections 110(a)(2)(C) and 110(a)(2)(D)(i)(II).

Sub-Element 4: Visibility Protection

With regard to the applicable requirements for visibility protection, states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, as noted in EPA's 2013 Memo, we find that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective. In other words, the visibility protection requirements of section 110(a)(2)(J) are not germane to infrastructure SIPs for the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS. Accordingly, Rhode Island did not make a submittal for this sub-element, for the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, or 2010 SO₂ NAAQS infrastructure SIP submittals.

K. Section 110(a)(2)(K)—Air Quality Modeling/Data

To satisfy Element K, the state air agency must demonstrate that it has the authority to perform air quality modeling to predict effects on air quality of emissions of any NAAQS pollutant and submission of such data to EPA upon request. Rhode Island reviews the potential impact of major sources consistent with 40 CFR part 51, appendix W, "Guidelines on Air Quality Models." Rhode Island APCR No. 9, "Air Pollution Control Permits," requires permit applicants to submit air quality modeling to demonstrate impacts of new and modified major sources. The modeling data are sent to EPA along with the draft major permit.

The state also collaborates with the Ozone Transport Commission (OTC), and the Mid-Atlantic Regional Air Management Association and EPA in order to perform large scale urban air shed modeling for ozone and PM if necessary. EPA proposes that Rhode Island has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

L. Section 110(a)(2)(L)—Permitting Fees

This section requires SIPs to mandate that each major stationary source pay permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit. Section 23–23–5 of the RIGL provides for the

assessment of operating permit fees and preconstruction permit fees for air emissions sources. In addition, RI DEM's "Rules and Regulations Governing the Establishment of Various Fees" sets forth permit fee requirements for air emissions sources and the legal authority to collect those fees. These rules and regulations are promulgated pursuant to RIGL Chapter 23–23 Air Pollution, and Chapter 42–35, Administrative Procedures. Rhode Island's infrastructure SIP submittals also refer to its regulations implementing its operating permit program pursuant to 40 CFR part 70. Rhode Island's Title V permitting program, APCR No. 28, "Operating Permit Fees," requires major sources to pay annual operating permit fees. EPA's full approval of Rhode Island's title V program (APCR No. 28) became effective on November 30, 2001. See 66 FR 49839 (Oct. 1, 2001). To gain this approval, Rhode Island demonstrated the ability to collect sufficient fees to run the program. The fees collected from title V sources are above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i). EPA proposes that Rhode Island has met the infrastructure SIP requirements of section 110(a)(2)(L) for the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

M. Section 110(a)(2)(M)—Consultation/Participation by Affected Local Entities

Pursuant to Element M, states must consult with, and allow participation from, local political subdivisions affected by the SIP. Rhode Island's infrastructure submittals reference RIGL § 23–23–5, which provides for consultation with affected local political subdivisions and authorizes the RI DEM Director "to advise, consult, and cooperate with the cities and towns and other agencies of the state . . . and other states and interstate agencies . . . in furthering the purposes of" the state Clean Air Act (*i.e.*, RIGL chapter 23–23). EPA proposes that Rhode Island has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

N. Rhode Island Statutes for Inclusion Into the Rhode Island SIP

As noted above in the discussion of several elements, Rhode Island submitted, and EPA is proposing to approve, Sections 23–23–5, 23–23–16, 23–23.1–5, and 36–14–1 through -7 of the Rhode Island General Laws (RIGL) into the SIP.

V. What action is EPA taking?

EPA is proposing to approve the infrastructure SIPs submitted by Rhode Island for the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS, with the exception of certain aspects relating to the state's PSD program, which we are proposing to conditionally approve, and section

110(a)(2)(H), which we are proposing to disapprove. EPA is also proposing to correct an earlier approval pursuant to section 110(k)(6) with respect to section 110(a)(2)(H) for the 1997 8-hour ozone NAAQS. No further action by EPA or the state is required, however, since federal regulations are already in place that address the gap in the state's submittals with respect to element H.

The state submitted these SIPs on the following dates: 1997 PM_{2.5}—September 10, 2008; 2006 PM_{2.5}—November 6, 2009; 2008 Pb—October 13, 2011; 2008 ozone—January 2, 2013; 2010 NO₂—January 2, 2013; and 2010 SO₂—May 30, 2013. Specifically, EPA's proposed actions regarding each infrastructure SIP requirement, are contained in Table 1 below.

TABLE 1—PROPOSED ACTION ON RHODE ISLAND'S INFRASTRUCTURE SIP SUBMITTALS

Element	2008 Pb	2008 Ozone	2010 NO ₂	2010 SO ₂	1997 and 2006 PM _{2.5}
(A): Emission limits and other control measures	A	A	A	A	A
(B): Ambient air quality monitoring and data system	A	A	A	A	A
(C)1: Enforcement of SIP measures	A	A	A	A	A
(C)2: PSD program for major sources and major modifications	A*	A*	A*	A*	A*
(C)3: PSD program for minor sources and minor modifications	A	A	A	A	A
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS	A	NI	NI	NI	NS
(D)2: PSD	A*	A*	A*	A*	A*
(D)3: Visibility Protection	A	A	A	A	A
(D)4: Interstate Pollution Abatement	A	A	A	A	A
(D)5: International Pollution Abatement	A	A	A	A	A
(E): Adequate resources	A	A	A	A	A
(E): State boards	A	A	A	A	A
(E): Necessary assurances with respect to local agencies	NA	NA	NA	NA	NA
(F): Stationary source monitoring system	A	A	A	A	A
(G): Emergency power	A	A	A	A	A
(H): Future SIP revisions	D	D	D	D	D
(I): Nonattainment area plan or plan revisions under part D	+	+	+	+	+
(J)1: Consultation with government officials	A	A	A	A	A
(J)2: Public notification	A	A	A	A	A
(J)3: PSD	A*	A*	A*	A*	A*
(J)4: Visibility protection	+	+	+	+	+
(K): Air quality modeling and data	A	A	A	A	A
(L): Permitting fees	A	A	A	A	A
(M): Consultation and participation by affected local entities	A	A	A	A	A

In the above table, the key is as follows:

- A Approve.
- A* Approve but conditionally approve aspect of PSD program relating to the identification of NO_x as a precursor of ozone and the revisions required by the 2010 NSR rule.
- D Disapprove, but no further action required because federal regulations already in place.
- + Not germane to infrastructure SIPs.
- NI Not included in the January 2, 2013 (ozone and NO₂) and May 20, 2013 (SO₂) submittals which are the subject of today's action. Rhode Island later submitted SIPs to address this element on June 23, 2015 (ozone) and October 15, 2015 (NO₂ and SO₂). EPA will act at a later time on those submittals.
- NS No Submittal.
- NA Not applicable.

In addition, EPA is proposing to approve, and incorporate into the Rhode Island SIP, the following Rhode Island statutes which were included for approval in Rhode Island's infrastructure SIP submittals: Sections 23–23–5, 23–23–16, 23–23.1–5, and 36–14–1 through –7. Finally, for the reasons stated above EPA is proposing to remove 40 CFR 52.2073(a) and (b); 52.2074(a) and (b); 52.2075(a) and (b); 52.2078(a) and (b); and 52.2079 from the CFR.

As noted in Table 1, we are proposing to conditionally approve portions of Rhode Island's infrastructure SIP

submittals pertaining to the state's PSD program for the 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS. Under section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures by a date certain, but not later than 1 year from the date of approval. If EPA conditionally approves the commitment in a final rulemaking action, the State must meet its commitment to submit an update to its PSD program that fully remedies the deficiencies mentioned above under element C. If the State fails

to do so, this action will become a disapproval one year from the date of final approval. EPA will notify the State by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved Rhode Island SIP. EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If the State meets its commitment, within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new

submittal. If EPA disapproves the new submittal, the conditionally approved infrastructure SIP elements for all affected pollutants will be disapproved. In addition, a final disapproval triggers the Federal Implementation Plan requirement under section 110(c). If EPA approves the new submittal, the PSD program and relevant infrastructure SIP elements will be fully approved and replace the conditionally approved program in the SIP.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register**, or by submitting comments electronically, by mail, or through hand delivery/courier following the directions in the **ADDRESSES** section of this **Federal Register**.

VI. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference several Rhode Island statutes referenced in Section V above. EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 19, 2016.

Deborah A. Szaro,

Acting Regional Administrator, EPA New England.

[FR Doc. 2016-04405 Filed 2-26-16; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2016-0006; FRL-9942-89-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Prevention of Significant Deterioration; Fine Particulate Matter (PM_{2.5})

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia which revises Virginia's Prevention of Significant Deterioration (PSD) air quality preconstruction permitting program to be consistent with the federal PSD regulations regarding the use of the significant monitoring concentration (SMC) and significant impact levels (SILs) for fine particulate matter (PM_{2.5}) emissions. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 30, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2016-0006 at <http://www.regulations.gov>, or via email to johansen.amy@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be

accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Himanshu Vyas, (215) 814-2112, or by email at vyas.himanshu@epa.gov.

SUPPLEMENTARY INFORMATION:

For further information, please see the information provided in the direct final action, with the same title, that is located in the “Rules and Regulations” section of this **Federal Register** publication.

Dated: February 12, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

[FR Doc. 2016-04240 Filed 2-26-16; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2015-0835; FRL 9942-77-Region 7]

Approval of Air Quality Implementation Plans; Missouri State Implementation Plan for the 2008 Lead Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to grant full approval of Missouri’s attainment demonstration State Implementation Plan (SIP) for the lead National Ambient Air Quality Standard (NAAQS) for the Exide Technologies Canon Hollow facility in Forest City, Missouri, received by EPA on October 20, 2014. The applicable standard addressed in this action is the lead NAAQS promulgated by EPA in 2008. EPA believes that the SIP submitted by the state satisfies the applicable requirements of the Clean Air Act (CAA) identified in EPA’s Final Rule published on October 15, 2008 in the **Federal Register**, and will bring the violating

area into attainment of the 0.15 microgram per cubic meter (ug/m³) lead NAAQS.

DATES: Comments must be received on or before March 30, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2015-0835, to <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Publicly available docket materials are available electronically at www.regulations.gov and at EPA Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219. Please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Stephanie Doolan, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Missouri 66219 at (913) 551-7719, or by email at doolan.stephanie@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” or “our” refer to EPA.

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I. What is being addressed in this document?

In this document, EPA is addressing Missouri’s request to approve a revision to its SIP for violations of the lead NAAQS near the Exide Technologies—Canon Hollow facility in Holt County, Missouri. The applicable standard addressed in this action is the lead NAAQS promulgated by EPA in 2008. EPA believes that the SIP submitted by the state satisfies the applicable requirements of the CAA identified in EPA’s Final Rule (73 FR 66964, October 15, 2008), and will bring the area into compliance with the 0.15 microgram per cubic meter (ug/m³) lead NAAQS.

II. Have the requirements for the approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What action is EPA taking?

EPA is proposing to grant full approval of Missouri’s request for a SIP revision to bring the area near the Exide-Canon Hollow facility into compliance with the 2008 lead NAAQS. EPA is proposing this action in order to solicit comments. Final rulemaking will occur after consideration of any comments received.

IV. Background

EPA established the NAAQS for lead on October 5, 1978 (43 FR 46246). On October 15, 2008, EPA established a new lead NAAQS of 0.15 ug/m³ in air, measured as a rolling three-month average. (73 FR 66964).

The state historically conducted ambient air monitoring for lead at the Exide Canon Hollow facility (formerly known as Schuylkill Metals) under the 1978 lead NAAQS from 1990 to 2000. Ambient air monitoring data from this time period indicated that the facility violated the 1978 standard one calendar quarter in 1994.

When the 2008 lead NAAQS was promulgated, the rulemaking required states to conduct ambient air monitoring near facilities that reported lead emissions of 1.0 tons per year (tpy) or greater. On December 27, 2010, EPA promulgated the Revisions to Lead Ambient Air Monitoring Requirements

(75 FR 81126). This rulemaking lowered the standard to require states to conduct ambient air monitoring near facilities that report lead emissions greater than 0.5 tpy.

On May 19, 2011, EPA proposed revisions to the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Secondary Lead Smelters (76 FR 29031). In the supporting documentation for this proposed rulemaking, the emissions for the Exide Canon Hollow facility were estimated to be greater than 0.5 tpy. Based on this information, on March 1, 2012, the state resumed its ambient air monitoring program near the facility. Ambient air monitoring data for lead near the Exide Canon Hollow facility for the three-month rolling quarterly average ending in May 2012 indicated that the facility violated the 2008 lead NAAQS.

On November 22, 2011, EPA finalized the second round of designations for the 2008 lead NAAQS. (76 FR 72097). The ambient air monitoring data for the Exide Canon Hollow facility showing a violation of the NAAQS were not available in time for the facility to be designated as nonattainment. Thus, the state, EPA and the facility worked cooperatively to develop and implement a plan to bring the facility into compliance with the 2008 lead NAAQS.

Concurrent with the development of the state's SIP revision, the facility installed and is operating new air pollution control equipment to comply with the revised NESHAP for Secondary Lead Smelting promulgated by EPA on January 5, 2012, with a compliance date of January 6, 2014. (77 FR 556).

Although the Exide Canon Hollow facility was not designated as a nonattainment area, the provisions of sections 191(a) and 192(a) of the CAA were followed by Missouri in developing and submitting to EPA a Compliance Plan in this SIP revision that demonstrates attainment of the 2008 lead NAAQS. The regulatory requirements of section 172 of the CAA that require analysis of Reasonably Available Control Technologies (RACT), Reasonably Available Control Measures (RACM), and demonstration of Reasonable Further Progress (RFP) are not applicable because the area was not designated as a nonattainment area. However, the RACT/RACM guidance was relied upon in the development of the control technologies and work practices implemented in this Compliance Plan. RFP was also not directly applicable to this Compliance Plan because the strategy was to attain the 2008 Lead NAAQS as expeditiously as possible without a phased approach to the implementation of control

measures. The provisions of sections 172(c)(5) and 173 of the CAA regarding the issuance of permits for construction and operation of new and modified major sources located within the nonattainment area also do not apply. The Compliance Plan requires contingency measures which are enforceable by the Consent Judgment between Missouri and Exide that would take effect in the event that the facility fails to attain the 2008 Lead NAAQS.

V. Technical Review of the Compliance Plan for the 2008 Lead NAAQS

A. Facility Description

The lead-emitting source contributing to the 2008 lead NAAQS violation at the state ambient air monitor is the Exide Canon Hollow facility in Holt County, Missouri. A description of the operation of this facility is presented below.

The Exide Canon Hollow facility is a secondary lead smelter located in rural Holt County, Missouri, approximately four miles northwest of Forest City, Missouri. Lead emissions result from breaking open used batteries, smelting the lead, and refining, which includes casting and alloying. Battery breaking is accomplished by crushing or cutting used batteries in order to separate the lead from the spent acid and plastic. Once separated, the lead is smelted in the blast furnace. Molten lead is further refined in kettles to the purity needed for its intended use and cast into molds for shipment to other facilities for use in new battery manufacture.

The primary sources of lead emissions are the west wheelabrator baghouse, which filters the exhaust from the blast furnace; the east wheelabrator baghouse, which filters the exhaust from the blast furnace ventilation hoods and the refining and casting operations exhaust; the north negative pressure baghouse, which filters the ventilation from the battery breaking and storage areas, the maintenance building, and the kettle heat stacks; and the south negative pressure baghouse, which filters the exhaust from the mixing room for the materials that will be fed into the blast furnace, the storage room for the blast furnace feed materials, the slag from the blast furnace and the area where it is further processed for transport to an on-site landfill, and finished lead storage prior to shipment to customers. The facility also uses an acid demister to control the acid released when the batteries are crushed. The acid demister acts to remove both acid and lead-containing particulates released to the air from this operation.

The lead is released in particulate form and generally captured within

building structures or by air pollution control equipment, as described above; however, some lead particulates escape to the ambient air, despite facility process enclosures and the efficiency of air pollution control equipment. Controls employed by the facility for process fugitives include maintaining the process and storage buildings under negative pressure to minimize the release of particulates and local exhaust ventilation in the form of process vent hoods over certain operations that generate more lead particulate.

Fugitive lead particulates are also generated from truck traffic along the haul routes within the facility boundaries and wind-blown re-entrainment of the dust.

B. Model Selection, Meteorological and Emissions Inventory Input Data

Missouri conducted air dispersion modeling to evaluate the effectiveness of the proposed control strategy. The results of the air model demonstrate attainment of the 2008 Lead NAAQS and the results form the basis of the Compliance Plan which is the subject of this proposed SIP revision. EPA conducted an independent review of the modeling. The results of the modeling will be discussed in more detail in section V.D. of this document.

The model, AERMOD, was utilized and is EPA's preferred model for demonstrating attainment of the lead NAAQS. AERMOD estimates the combined ambient impact of sources by simulating Gaussian dispersion of emissions plumes. Emission rates, wind speed and direction, atmospheric mixing heights, terrain, plume rise from stack emissions, initial dispersion characteristics of fugitive sources, particle size and density are all factors considered by the model when estimating ambient impacts.

At the start of development of the Compliance Plan, there was no on-site meteorological data for use in the model. EPA recommends the use of five years of on-site meteorological data for the model (40 CFR part 51, appendix W, section 8.3.1.2). In the absence of on-site or nearby meteorological data, Missouri used the surface air meteorological data from the Brenner Field Airport (KFNB) near Falls City, Nebraska, about twenty two miles west of the Exide Canon Hollow facility. Exide has agreed to collect on-site, quality-assured meteorological data for use in future air dispersion modeling in a settlement agreement separate from the Consent Judgment with Missouri which is appendix C to the Compliance Plan. Upper air data for 2007 to 2011 from the Topeka, Kansas Airport Station (KTOP)

were selected for use in the model due to its proximity to both Brenner Field Airport and the facility. EPA conducted a review of the meteorological data used for the modeling and agreed with Missouri's determination that, among the various options, data from these two locations best represent meteorological conditions in the vicinity of the facility. The meteorological data were run through AERMOD's pre-processors to make the data usable by the model.

Using section 172(c)(3) of the CAA as a guideline, an emission inventory was developed for the area violating the 2008 lead NAAQS. At the Exide Canon Hollow facility, four specific point sources of lead emissions were modeled: The acid demister (AD), which includes the exhaust from the battery breaking and crushing operations; the wheelabrator air pollution control system (EP01) which includes the exhaust from the blast furnace, and refining and casting process vent hoods; negative pressure baghouse 1 (BH01) which includes the exhaust from the blast furnace and the refining and casting building fugitives captured under negative pressure; and negative pressure baghouse 2 (BH02) which captures the fugitive particulates from all other buildings required by the secondary lead NESHAP to be under negative pressure. 40 CFR part 63, subpart X.

Missouri's air dispersion modeling used a lead emission rate for the wheelabrator air pollution control system that is based on a concentration of 1 milligram per dry standard cubic meter (mg/dscm), which is the maximum allowed for any one lead source under the secondary lead NESHAP. 40 CFR 63.543(a). The modeled emission rate is higher than any previous stack test. The modeled emission rate for the acid demister and negative pressure baghouse 1 is based on 0.2 mg/dscm and the emission rate for negative pressure baghouse 2 is based on 0.17 mg/dscm lead, which is the facility-wide flow-weighted average of lead compounds in vent gases required by the secondary lead NESHAP. 40 CFR 63.543(a). The actual emission rates for the other three sources are expected to be less because the velocities used to develop the emission rates in the model assumed that all three units were operating simultaneously at 100 percent capacity. Historically, the facility has not operated in this manner.

Fugitive sources of lead at the Exide facility include process fugitives from the furnace, refining and casting that may escape through openings in the facility buildings despite the negative

pressure requirements of the secondary lead NESHAP and vehicular fugitives from truck haul routes. The fugitive emissions from buildings were modeled as volume sources. Building process fugitives were estimated with a 99 percent capture efficiency on the basis of total building enclosures with negative pressure and local exhaust ventilation (LEV).

Haul route fugitives were estimated using the Paved Roads section of chapter 13.2.1 of EPA's AP-42 guidelines¹ and modeled as area sources. The secondary lead NESHAP requires total enclosure and continuous ventilation of buildings in which processing and handling of lead bearing particulates occurs. 40 CFR 63.544(a). Negative pressure is required to be maintained in regulated buildings at measured values of at least 0.13 millimeters (mm) mercury. 40 CFR 63.544(c)(1). The secondary lead NESHAP also requires inward flow of air to be maintained at all natural draft openings, including exterior building doors for personnel and vehicular access. 40 CFR 63.544(c)(2). Missouri conducted the modeling under the operating scenario that the facility would meet the minimum standards of the secondary lead NESHAP. Building capture efficiency and the capture efficiency for local exhaust ventilation hoods were both assumed to be 95 percent.²

In accordance with 40 CFR part 51, appendix W, background concentrations must be considered when determining NAAQS compliance. Background concentrations are intended to include impacts attributable to natural sources, nearby sources (excluding the dominant source(s)), and unidentified sources. The calculated background concentration includes all sources of lead not already included in the model run script. The background concentration includes distant sources of lead or naturally occurring lead in soils that have become re-entrained in the atmosphere. These distant sources may include historic deposition from the facility.

A background value is typically calculated by averaging the monitored concentrations of lead in air from an ambient air monitor within the nonattainment area. Missouri calculated the background level from monitoring data on days when the predominant wind direction was not blowing from

the facility toward the monitor. Missouri took the additional approach of narrowing the data included in the calculation by using only ambient monitoring data when winds originated from an arc from 300 degrees to the northwest to 80 degrees northeast, with zero degrees representing true north. Narrowing the data considered in the calculation minimized the influence of re-entrained lead from state Highway 111 to the south of the facility and Canon Hollow Road in the background calculation. The model already accounts for the re-entrained lead from these two traffic routes as area sources. Using this approach, Missouri calculated a site-specific background value of 0.023 $\mu\text{g}/\text{m}^3$.³

EPA conducted an independent review of the approach Missouri used to calculate the area background value and agrees that the use of 0.023 $\mu\text{g}/\text{m}^3$ is representative for use in the modeling for attainment of the NAAQS.

C. Control Strategy

The following describes the control strategy detailed in the Compliance Plan for Exide's Canon Hollow facility to attain the 2008 lead NAAQS.

As discussed above, on May 19, 2011, EPA proposed revisions to the NESHAP for Secondary Lead Smelters (76 FR 29031). The effective date of the NESHAP is January 6, 2014. While Missouri's Compliance Plan was developed to attain the NAAQS for lead as a criteria pollutant, the NESHAP was developed to control emissions of lead as a Hazardous Air Pollutant (HAP) under section 112 of the CAA. In order to comply with the NESHAP, by January 6, 2014, the facility conducted the following:

- Full enclosure of all buildings used for lead processing, handling or storage, including product storage, and ventilation of those buildings to control devices designed to capture lead particulates;
- construction of two new baghouses, the north and south negative pressure baghouses, in order to maintain and ventilate the total enclosures continuously to ensure negative pressure values of at least 0.013 mm of mercury (0.007 inches of water);
- lowered emissions for lead to a facility-wide flow-weighted average of 0.2 mg/dscm; and
- established a fugitive dust control plan and implemented work practice standards to reduce lead emissions which is provided as appendix B to the Compliance Plan.

In addition to the controls required for compliance with the secondary lead NESHAP, two additional control

¹ AP-42, Compilation of Air Pollutant Emission Factors, Fifth Edition, <http://www.epa.gov/ttnchie1/ap42/>.

² EPA's Secondary Lead Smelting Background Information Document for Proposed Standards, EPA 1994.

measures are required to ensure NAAQS attainment, including stack emission limits and truck traffic restrictions. These additional limits are enforceable through a Consent Judgment between Missouri and Exide, which is found in appendix A of the Compliance Plan. As discussed above, the secondary lead

NESHAP established a flow-weighted average of 0.2 mg/dscm of lead for all stack emissions combined. For modeling purposes, Missouri assigned each stack emissions source an individual lead limit in pounds per hour (lb/hr). The pounds per hour limits are the maximum emissions of lead with

a margin of safety to prevent exceedance of the secondary lead NESHAP limit of 0.2 mg/dscm for all stack emissions combined. Specifically, the individual stack emission limits, contained in table 3 of the Compliance Plan and paragraph 7.E. of the Consent Judgment, are provided below.

TABLE 1—STACK EMISSION LIMITS

Emission point	Control device	Emission source/description	Emission rate (lb/hr)
AD	Acid demister	Battery break crusher room	0.024
EP01	Wheelabrator air pollution control system	Blast furnace, refinery & casting process vent hoods.	0.322
BH01	Negative pressure baghouse 1	Blast furnace, refinery & casting building negative pressure.	0.236
BH02	Negative pressure baghouse 2	Other building negative pressure	0.196

Compliance with the stack emissions rates listed above is required by both the secondary lead NESHAP and paragraph 7.E of the Consent Judgment with the following exceptions. If any stack test does not show compliance with the limits listed above, Exide must retest the noncompliant stack within 90 days after the receipt of the stack test report or results. If the subsequent test shows compliance, the prior exceedance will not be considered a violation of the Consent Judgment and compliance testing will return to the schedule required by the secondary lead NESHAP. 40 CFR part 63.543. Paragraph 7.G of the Consent Judgment requires Exide to conduct record keeping and reporting in accordance with the requirements of the secondary lead NESHAP. 40 CFR part 63.550.

To further reduce lead-containing fugitive dust emissions to achieve the 2008 Lead NAAQS, the Consent Judgment requires Exide to limit truck traffic on haul routes. The limitations are route-specific and are limited by the total number of trips per month and whether the trips are “restricted,” meaning they are trips made during the operating hours of 7 a.m. and 7 p.m., or “unrestricted,” which are trips that are made along haul routes at any time during a 24-hour period. The limitations placed on truck traffic are contained in paragraph 7.F of the Consent Judgment and table 4 of the Compliance Plan. Paragraph 7.G. of the Consent Judgment requires Exide to keep records of truck traffic in order to demonstrate compliance with the hours of operation and monthly frequency limits. The truck traffic limitations were modeled as a part of the attainment demonstration.

Exide is also required by paragraph 7.C of the Consent Judgment to further control lead-containing process fugitive

emissions by operating LEV’s in the following areas: Blast furnace charging; furnace lead and slag tapping; and refinery kettles. The use of the LEV’s within a negative pressure building increases the capture efficiency which may be assumed in the model from 95 percent to 99 percent.

The Exide-Canon Hollow facility is also subject to controls in the form of limitations on public access to areas that do not demonstrate attainment of the 2008 Lead NAAQS. Air is considered ambient even within the facility boundaries if the area is accessible to the public. The facility is bifurcated by Canon Hollow Road, which is a public roadway, and it has chosen to preclude public access to an area that is smaller than its property boundaries. Pursuant to paragraph 7.D of the Consent Judgment, Exide must maintain fencing or otherwise preclude public access to areas on both the east and west sides of Canon Hollow Road, including process areas, the facility parking lot and a hazardous waste landfill. These areas are described in appendix A of the Consent Judgment. Any change to the fenceline specified by the Consent Judgment that would allow public access to the two preclusion areas requires revised attainment demonstration modeling and a revision to the Consent Judgment and SIP.

D. Modeling Results

A summary of Missouri’s air dispersion modeling can be found in section 5 of its Compliance Plan. AERMOD input and output files have been provided as appendix F of the plan. The modeling was conducted to determine the impacts of the worst-case lead emissions of the Exide-Canon Hollow facility including the additive

impact of an area background of 0.023 µg/m³ lead.

The results of the modeling demonstrate that with the control strategy described above in paragraph V.C. above the facility will attain the 2008 Lead NAAQS. At the point of maximum impact, which is approximately 600 yards to the northwest of the lead processing buildings on Exide property, the model predicts a lead concentration of 0.1498 µg/m³, which is below the 2008 Lead NAAQS of 0.15 µg/m³. As discussed above, the air in this area is ambient even though it is still on facility property because it is outside the fenceline and therefore accessible to the public.

It is important to note that the area of maximum impact in the attainment demonstration modeling is to the northwest of the facility operations; whereas, the Missouri ambient air monitor by which NAAQS attainment is measured is to the southwest of the facility, on a levee on the south side of Highway 111. The preferred ambient air monitoring location would be near or at the location of maximum predicted impact; however, the location does not meet regulatory siting criteria specified by 40 CFR part 58. The area of maximum impact predicted by the model contains large trees that block the air flow and the transport of lead-containing particulate matter, and the terrain has a steep incline which affects air flow and dispersion as well.

Although the location of the ambient air monitor is not optimum, it has recorded violations of both the 1978 and 2008 lead NAAQS. As discussed above, the facility resumed monitoring of lead concentrations in March 1, 2012, and monitoring data for the three-month rolling quarterly average ending in May

2012 indicated that the facility violated the 2008 lead NAAQS. However, following completion of the installation and commencement of the operation of the new negative pressure baghouses, the monitor has recorded lead concentrations below the 0.15 $\mu\text{g}/\text{m}^3$ 2008 Lead NAAQS since the rolling calendar quarter ending in January 2014. The average lead concentration of all measurements at the ambient air monitor from January 5, 2014, to the present is 0.025 $\mu\text{g}/\text{m}^3$, which is less than 20 percent of the standard.

EPA reviewed and independently verified the modeling conducted by Missouri. Based on EPA's analysis of the attainment modeling and its outcomes, EPA believes that Missouri's control strategy will strengthen the SIP and bring the violating area surrounding the Exide Canon Hollow facility into attainment of the 2008 Lead NAAQS.

E. Attainment Demonstration

As discussed above in section IV, Background, the area surrounding the facility violated the 2008 lead NAAQS, but the monitoring data were not available in time to designate the area as nonattainment. Thus, the violating area is not specifically subject to the attainment dates required by the section 172(a)(2) of the CAA. However, the Compliance Plan was prepared to achieve attainment of the applicable ambient air quality standard as expeditiously as practicable rather than relying upon the regulatory schedule set forth in section 172(a)(2). The Compliance Plan meets the substantive requirements of an attainment demonstration plan set forth in section 172(c) in that it addresses:

Implementation of RACM and RACT as expeditiously as practicable and provides for the attainment of the NAAQS; provides a plan that meets RFP toward NAAQS attainment; technical analyses that locate, identify, and quantify sources of emissions that are contributing to violations of the lead NAAQS; enforceable emissions limitations with schedules for implementation; and contingency measures required to be implemented in the event that the area fails to attain and maintain the NAAQS.

The Compliance Plan addresses RACM and RACT by requiring emissions controls and work practices that meet or exceed the RACM guidance³ and the requirements of the secondary lead NESHAP. Specifically,

the stack emissions limits and limitations on truck traffic exceed the RACM guidance and secondary lead NESHAP.

The schedule contained within the Consent Judgment requires compliance with the 2008 lead NAAQS within 180 days of the effective date of Missouri's Consent Judgment. The effective date was October 10, 2014, and thus the compliance date for installation of all control measures and implementation of work practices was April 10, 2015. However, at the time Exide signed the Consent Judgment on September 24, 2014, the facility had installed all of the lead emission controls required by paragraph 6 and implemented all of the work practices and procedures required by the Standard Operating Procedures included in attachment B of the Compliance Plan. As a result, the facility has been monitoring compliance with the standard since January 2014. Provided the facility continues to monitor attainment of the NAAQS, the facility will meet the standard in February 2017.

The dispersion modeling is the attainment demonstration used to verify that the control strategies will bring the area into attainment of the 2008 Lead NAAQS. In order to determine whether the emission reduction strategies will result in continued attainment of the NAAQS, the modeled maximum lead concentration in ambient air (based on a rolling three-month average) is added to the calculated background lead concentration of 0.023 $\mu\text{g}/\text{m}^3$, then compared to the 2008 Lead NAAQS which is 0.150 $\mu\text{g}/\text{m}^3$. As discussed above in paragraph V.D, the dispersion modeling predicts the cumulative impacts of both facilities, with the addition of background lead levels, meet the 2008 Lead NAAQS. The predicted maximum three-month rolling average lead concentration is 0.1498 $\mu\text{g}/\text{m}^3$. Therefore, EPA proposes to approve Missouri's modeling as it demonstrates attainment of the standard.

F. Contingency Measures

Using the CAA section 172(c)(9) as guidance, the Compliance Plan includes contingency measures to be implemented if EPA determines that the area has failed to attain and maintain the standard beginning 180 days after Exide signed the Consent Judgment which was April 10, 2015. The contingency measures are detailed in paragraph 9 of the Consent Judgment.

The contingency measure strategy consists of two parts: The first part is a measure to be implemented immediately following a rolling calendar quarter that violates the 2008

lead NAAQS and the second part is a study to identify the likely causes contributing to the violation followed by the implementation of the most effective control measures proposed in an action plan.

Immediately after notification of a monitored violation, Exide shall increase the in-plant road cleaning to ten hours each working day. Currently, plant roadways and parking lots are cleaned with wet wash or vacuum cleaning at least twice a day between the hours of 7 a.m. and 7 p.m. per the Standard Operating Procedures in appendix B of the Compliance Plan. The implementation of this contingency measure is expected to prevent the re-entrainment of at least seven pounds of lead-containing dust into the air per year. Exide may cease or modify this increased road cleaning schedule only after a more effective replacement measure has been identified and implemented as a result of the fugitive dust control study in the second phase of the contingency strategy.

Additional contingency measures identified by the study and proposed for implementations will also be subject to EPA approval as part of the SIP. Any future changes to contingency measures would require a public hearing at the state level and EPA approval as a formal SIP revision. Until such time as EPA approves any substitute measure, the measure included in the approved SIP, increased roadway cleaning, will be the enforceable measure. These measures will help ensure compliance with the 2008 lead NAAQS as well as meet the intent of the requirements of section 172(c)(9) of the CAA.

EPA proposes to approve Missouri's recommended contingency measures as meeting the intent of section 172(c)(9) of the CAA.

G. Enforceability

As specified in section 110(a)(2)(A) of the CAA, and 57 FR 13556, all measures and other elements in the SIP must be enforceable by the state and EPA. The enforceable document included in Missouri's SIP submittal is the Consent Judgment dated October 10, 2014. The Consent Judgment contains all control and contingency measures with enforceable dates for implementation. Upon EPA approval of the SIP submission, Exide's Consent Judgment will become state and Federally enforceable, and enforceable by citizens under section 304 of the CAA.

EPA proposes to approve Missouri's SIP as meeting section 110(a)(2)(A) of the CAA, and 57 FR 13556, and meeting the intent of 172(c)(6) of the CAA.

³ "Guide to Developing Reasonably Achievable Control Measures for Controlling Lead Emissions," (EPA-457/R-12-001), March 2012, <http://www3.epa.gov/airquality/lead/pdfs/2012ImplementationGuide.pdf>.

VI. Proposed Action

EPA is proposing to grant approval of Missouri's Compliance Plan as it demonstrates attainment of the 2008 lead NAAQS in the area surrounding the Exide Canon Hollow facility in Holt County, Missouri, and strengthens Missouri's SIP. EPA believes that the Compliance Plan and Consent Judgment submitted by the state satisfies the applicable requirements of section 110 of the CAA and will result in attainment of the 0.15 ug/m³ standard in the Holt County, Missouri, area.

Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the proposed amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 2016. Filing a petition for reconsideration by the Administrator of this proposed rule does not affect the finality of this rulemaking for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such future rule or action. This proposed action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 17, 2016.

Mark Hague,

Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

- 2. Amend § 52.1320 by:
 - a. Adding entry (31) at the end of the table in paragraph (d); and
 - b. Adding entry (70) at the end of the table in paragraph (e).

The additions to read as follows:

* * * * *

§ 52.1320 Identification of Plan.

(d)* * *

EPA-APPROVED MISSOURI SOURCE-SPECIFIC PERMITS AND ORDERS

Name of source	Order/Permit No.	State effective date	EPA Approval date	Explanation
(31) Exide Technologies Canon Hollow, MO.	Consent Judgment 14HO- CC00064.	10/10/14	2/29/16 and [Insert Federal Register citation].	

(e) * * *

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Explanation
(70) Exide Technologies Compliance Plan 2008 lead NAAQS.	Forest City	10/15/14	2/29/16 and [Insert Federal Register citation].	[EPA-R07-OAR-2015- 0835; FRL 9942-77-Region 7.

[FR Doc. 2016-04083 Filed 2-26-16; 8:45 am]
BILLING CODE 6560-50-P

FEDERAL MARITIME COMMISSION

46 CFR PARTS 501 and 535

[Docket No. 16-04]

RIN 3072-AC54

Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission is seeking public comments on possible modifications to its rules governing agreements by or among ocean common carriers and/or marine terminal operators subject to the Shipping Act of 1984, and possible modifications to its rules on the delegation of authority and redelegation of authority by the Director, Bureau of Trade Analysis.

DATES: Submit comments on or before: April 4, 2016.

ADDRESSES: You may submit comments by the following methods:

- *Email:* secretary@fmc.gov. Include in the subject line: "Docket 16-04, [Commentor/Company name]." Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Only non-confidential and public versions of confidential comments should be submitted by email.

- *Mail:* Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573-0001.

Docket: For access to the docket to read background documents or comments received, go to the Commission's Electronic Reading Room at: <http://www.fmc.gov/16-04>.

Confidential Information: The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If your comments contain confidential information, you must submit the following:

- A transmittal letter requesting confidential treatment that identifies the specific information in the comments for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.
- A confidential copy of your comments, consisting of the complete filing with a cover page marked "Confidential-Restricted," and the confidential material clearly marked on each page. You should submit the confidential copy to the Commission by mail.
- A public version of your comments with the confidential information excluded. The public version must state "Public Version—confidential materials excluded" on the cover page and on each affected page, and must clearly indicate any information withheld. You may submit the public version to the Commission by email or mail.

FOR FURTHER INFORMATION CONTACT: For questions regarding submitting

comments or the treatment of confidential information, contact Karen V. Gregory, Secretary. *Phone:* (202) 523-5725. *Email:* secretary@fmc.gov. For technical questions, contact Florence A. Carr, Director, Bureau of Trade Analysis. *Phone:* (202) 523-5796. *Email:* tradeanalysis@fmc.gov. For legal questions, contact Tyler J. Wood, General Counsel. *Phone:* (202) 523-5740. *Email:* generalcounsel@fmc.gov.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission (FMC or Commission) has issued this advance notice to obtain public comments on proposed modifications to its regulations in 46 CFR part 535, *Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984*, and 46 CFR 501.27, *Delegation to and redelegation by the Director, Bureau of Trade Analysis*. The Commission has reviewed these regulations in conformity with the objectives of Executive Order 13579 (E.O. 13579 or Order), *Regulation and Independent Regulatory Agencies*, issued on July 11, 2011. Specifically, E.O. 13579 stated that independent regulatory agencies should strive to promote a regulatory system that protects public health, welfare, safety and our environment while promoting economic growth, innovation, competitiveness, and job creation. In this regard, the Order encouraged agencies to develop and release to the public a plan for the periodic review of their existing regulations to determine whether they could be modified, streamlined, expanded, or repealed so as to make their regulatory programs

more effective or less burdensome in achieving their regulatory objectives.

In response, the Commission developed and published its *Plan for the Retrospective Review of Existing Rules (Retrospective Review)* and affirmed its intention to review all of its existing regulations and programs.¹ As part of its plan, the Commission requested that the public submit comments and information on how to improve its existing regulations and programs.

Summary of Comments on Part 535

On May 18, 2012, comments² specific to part 535 were submitted by ocean carrier members of the major discussion agreements that are currently in effect under the Shipping Act.³ In their comments, the carriers raised three major issues regarding part 535.

First, on the waiting period exemption for low market share agreements in § 535.311, the carriers requested that the calculation to derive the market share of an agreement be modified from a sub-trade⁴ to an agreement-wide basis. In the alternative, the carriers requested that an agreement be allowed to qualify for the exemption using only those agreement sub-trades that account for over 20 percent of the total volume of cargo moved by the parties in the entire geographic scope of the agreement during the most recent calendar quarter.

Carriers argued that under the present regulations, agreements that should qualify for the exemption are subject to the waiting period due to one or two minor sub-trades, which in many cases are solely transshipment ports to and from other services, such as ports in Malta or nations in the Mediterranean or Caribbean islands.

¹ See *Plan for Retrospective Review of Existing Rules* (November 4, 2011) and *Update to Plan for Retrospective Review of Existing Rules* (February 13, 2013) from the Web site of the FMC at <http://www.fmc.gov/> under About the FMC/Reports, Strategies & Budgets.

² See *Comments of Ocean Common Carriers to Retrospective Review of Existing Rules*, dated May 18, 2012, on the Web site of the FMC at <http://www.fmc.gov/> under background documents to FMC Docket No. 16–04.

³ These agreements are the *Transpacific Stabilization Agreement*, *Westbound Transpacific Stabilization Agreement*, *Central America Discussion Agreement*, *West Coast South America Discussion Agreement*, *Venezuela Discussion Agreement*, *ABC Discussion Agreement*, *United States Australasia Discussion Agreement*, and *Australia New Zealand United States Discussion Agreement*.

⁴ In § 535.104(hh), sub-trade is defined to mean the scope of ocean liner cargo carried between each U.S. port range and each foreign country within the scope of the agreement. The U.S. port ranges are the U.S. ports spanning the Atlantic and Gulf coasts as a single range and the U.S. ports spanning the Pacific coast as a single range.

Second, the carriers requested that agreement modifications to reflect changes in the number or size of vessels within the range specified in an agreement should be exempt from the waiting period as non-substantive modifications under the regulation in § 535.302. Carriers argued that even though parties may adjust vessels without filing an amendment to their agreements, if they choose to amend their agreement to reflect the actual changes, the amendment is subject to the 45-day waiting and review period of the Act. 46 U.S.C. 40304(c).

Finally, the carriers requested that the Commission adopt rules and procedures to permit the electronic filing of carrier and marine terminal operator agreements, which they claimed would reduce the burden and expense of filing on the industry.

Review of Regulations by Commission

The Commission has conducted a comprehensive review of its regulations in parts 501 and 535, including review of the modifications requested in the comments submitted by the ocean carriers. Based on its review, the Commission is considering certain modifications to these regulations and seeks comments from interested parties through this advance notice on the suitability and probable impact of these proposed changes to the regulations. Following receipt and consideration of comments to this advance notice, the Commission intends to issue a Notice of Proposed Rulemaking and invite additional public comments on its proposals.

The proposed modifications under consideration include possible changes to the following regulations: (I) The definition of capacity rationalization in § 535.104(e), a new waiting period exemption for space charter agreements in § 535.308, and the waiting period exemption for low market share agreements in § 535.311; (II) the agreement filing exemption of marine terminal services agreements in § 535.309; (III) the standards governing complete and definite agreements in § 535.402 and agreement activities that may be conducted without further filing in § 535.408; (IV) the Information Form requirements in subpart E of part 535; (V) the filing of comments on agreements in § 535.603 and the request for additional information on agreements in § 535.606; (VI) the agreement reporting requirements in subpart G of part 535; (VII) the modifications requested by the ocean carriers in their comments; and (VIII) non-substantive modifications to update

and clarify the regulations in parts 501 and 535.

I. The Definition of Capacity Rationalization in § 535.104(e), a New Exemption for Space Charter Agreements in § 535.308, and the Exemption for Low Market Share Agreements in § 535.311

The Shipping Act of 1984 (Shipping Act or Act) grants immunity from the U.S. antitrust laws to permit agreements by or among ocean common carriers and/or marine terminal operators. 46 U.S.C. 40307. To receive this immunity, the Act requires that parties file a true copy of their agreement with the Commission. 46 U.S.C. 40302. Unless specifically exempted, agreements and their modifications are subject to an initial review period of 45 days before they may become effective. 46 U.S.C. 40304(c). The Act requires that agreements be reviewed, upon their initial filing, to ensure compliance with all applicable statutes and empowers the Commission to obtain information to conduct that review. 46 U.S.C. 40302(c), 40304. Further, the Act empowers the Commission to seek a legal injunction of an agreement, whether at the initial review stage or thereafter, if it determines that the agreement through a reduction in competition would likely result in unreasonable transportation cost increases and/or service decreases. 46 U.S.C. 41307(b). Where feasible, the Act provides leeway for the Commission to exempt by order or rule any class of agreements or activities of parties to agreements if it finds that the exemption will not result in a substantial reduction in competition or be detrimental to commerce. 46 U.S.C. 40103.

The exemption from the 45-day waiting period for low market share agreements in § 535.311 applies to agreements that do not contain certain types of authority, such as rate or capacity rationalization authority,⁵ and with market shares in any sub-trade of less than 30 percent (if all of the parties are members of an agreement in the same trade or sub-trade with one of the listed authorities (e.g., rate or capacity rationalization)) or 35 percent (if at least one party is not a member of such an agreement in the same trade or sub-trade). The low market share exemption and the related definition of capacity

⁵ These authorities are listed under § 535.502(b) as: (1) The discussion of, or agreement upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge; (2) the discussion of, or agreement on, capacity rationalization; (3) the establishment of a joint service; (4) the pooling or division of cargo traffic, earnings, or revenues and/or losses; or (5) the discussion of, or agreement on, any service contract matter.

rationalization in § 535.104(e) were first introduced in the Commission's preceding rulemaking of part 535 in FMC Docket No. 03–15, *Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984, Final Rule*. 69 FR 64398 (Nov. 4, 2004).

These regulatory changes originated from the Commission's Notice of Inquiry (NOI) in FMC Docket No. 99–13, *The Content of Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984*.⁶ In its NOI, the Commission requested comments on whether there were types of agreements that could be partially or completely exempted from the Shipping Act requirements.⁷

In response to the NOI, ocean carriers and shipowners' associations identified agreements with little or no competitive effect, such as operational and slot charter agreements, as being eligible for an exemption from the filing requirements of the Act.⁸ Carriers further specified that agreements that typically have little or no competitive effect (such as those that do not authorize discussion or agreement on rates, vessel operating costs, shared vessel usage, service contracts or capacity) should be completely exempted from the filing requirements of the Act.⁹

Ultimately, the Commission decided on an exemption from the 45-day waiting period for agreements with limited authority that fell below specified market share thresholds. This form of exemption was based on the principle of providing a "safety zone" for collaboration between competitors in activities that would be unlikely to have an anticompetitive impact and require investigation. The Commission's low market share exemption was modeled after the "safety zone" principle adopted by the Federal Trade Commission and the U.S. Department of Justice (FTC/DOJ or Agencies) in their *Antitrust Guidelines for Collaboration among Competitors*, April 2000, (Guidelines) and the European Commission (EC) in its regulations for consortia agreements between liner shipping companies.¹⁰

Under the FTC/DOJ Guidelines, the Agencies will not generally challenge collaborations between competitors whose combined market share is less

than 20 percent, except in cases where an agreement: (1) Is *per se* illegal,¹¹ (2) would be challenged without a detailed market analysis, or (3) would be analyzed under the merger rules. Guidelines at p. 26.

Similarly, the regulations adopted by the EC provided that consortia agreements between carriers that did not involve price-fixing were exempted from the competition laws of the European Union (EU) in cases where the combined market share of the parties was less than 30 percent (if operating within a conference), or 35 percent (if not operating within a conference).¹² Based on these policies of other competition agencies and the responses from commenters, the low market share exemption evolved through the rulemaking process into its present final form in the regulations in § 535.311.¹³

In conjunction with creating the low market share exemption in FMC Docket No. 03–15, the Commission expanded the definition of capacity management¹⁴ to the present definition of capacity rationalization, which is defined in § 535.104(e) as a concerted reduction, stabilization, withholding, or other limitation in any manner whatsoever by ocean common carriers on the size or number of vessels or available space offered collectively or individually to shippers in any trade or service.

Agreements that contain capacity rationalization authority do not qualify for an exemption from the waiting period under the low market share regulations in § 535.311. Further, such agreements are assigned specific Information Form and Monitoring Report requirements. The intent behind expanding the definition was to limit the application of the low market share

exemption and to recognize that parties to agreements with authority to discuss and agree on capacity, especially those with exclusivity provisions,¹⁵ can control the supply of vessel capacity in the marketplace and affect ocean transportation services and costs within the meaning of section 6(g) of the Act.

In applying the definition of capacity rationalization, the Commission has in practice limited it to agreements that fix the supply of capacity, such as vessel sharing and alliance arrangements, which also place exclusivity provisions on the ability of the parties to operate outside of the agreement. At the time when the last rulemaking took effect in 2005, many of the more complex vessel sharing and alliance agreements, which required monitoring, contained exclusivity clauses and even rate authority. However, as written, the breadth of the definition could conceivably include almost any form of operational agreement involving capacity.

The ambiguity of the present definition of capacity rationalization has created uncertainty as to which agreements actually meet the definition and, in turn, qualify for the low market share exemption and become effective upon filing. Since the time of the Commission's last rulemaking in 2004, carriers have been forming more complex agreements that bring into question the application of the exemption. In their present form, the application of the low market share exemption and the definition of capacity rationalization have become subject to interpretation, and this lack of clarity could cause the regulations to be applied inconsistently and unfairly. The Commission does not believe that such a dilemma was foreseen when these regulations were adopted in 2004. On the contrary, the exemption was adopted as a filing relief measure for the industry and was intended to be straightforward to apply.

Operational agreements that manage capacity have changed and their use has expanded since the last rulemaking, which further supports the need to update and modify the present regulations. Carriers have expanded their cooperation of services through larger alliance agreements spanning multiple trade lanes, and some of these agreements use service centers to manage the parties' capacity levels more effectively. These new forms of alliance agreements include the *Maersk/MSC*

¹⁵ Exclusivity provisions place conditions or restrictions on the parties' agreement participation, and/or use or offering of competing services within the geographic scope of the agreement. In effect, they are non-compete clauses.

¹¹ FTC/DOJ stipulated that the types of agreements that have been held *per se* illegal include agreements among competitors to fix prices or output, rig bids, or share or divide markets by allocating customers, suppliers, territories, or lines of commerce. The courts conclusively presume such agreements, once identified, to be illegal, without inquiring into their claimed business purposes, anticompetitive harms, procompetitive benefits, or overall competitive effects. Guidelines at p. 3.

¹² Subsequently, the EU repealed its block exemption for liner shipping conferences in 2008. However, the EC continues to provide a block exemption for liner shipping consortia agreements with a market share of 30 percent or less, Commission Regulation (EC) No. 906/2009. This exemption was extended until April 25, 2020, Commission Regulation (EU) No. 697/2014.

¹³ 69 FR 64398, 64399–64400 (Nov. 4, 2004).

¹⁴ Previously, the definition in § 535.104(e) was limited to capacity management, which was defined as an agreement between two or more ocean common carriers which authorizes withholding some part of the capacity of the parties' vessels from a specified transportation market, without reducing the real capacity of those vessels.

⁶ 64 FR 42057 (Aug. 3, 1999).

⁷ *Ibid* at 42058.

⁸ Notice of proposed rulemaking, *Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984*. 68 FR 67510, 67513 (Dec. 2, 2003).

⁹ *Ibid*.

¹⁰ *Ibid* at 67519–67520.

Vessel Sharing Agreement, FMC No. 012293; the *G6 Alliance Agreement*, FMC No. 012194; the *COSCO/KL/YMUK/HANJIN/ELJSA Slot Allocation and Sailing Agreement*, FMC No. 012300; and the *CSCL/UASC/CMA CGM Vessel Sharing and Slot Exchange Agreement*, FMC No. 012299.

Agreements, such as these alliances, authorize the parties to exchange vessel space and agree on capacity to form and operate collective services and vessel sharing agreements (VSAs) in the global liner trades. The Commission believes that agreements with such authority fall within the definition of capacity rationalization, regardless of whether exclusivity provisions are imposed on the parties. As such, agreements of this type should not be exempted under § 535.311. In particular, the Commission does not believe that the low market share exemption should apply to agreements that authorize the parties to fix capacity through shared vessels in collectively operated services, especially in the case of alliances that can involve multiple collective services on a global scale and service centers that manage and maintain set capacity levels among the parties.

Another issue with the low market share exemption regulations concerns the requirement that the market share threshold be applied on a country by country sub-trade basis. As noted in their comments to the *Retrospective Review Plan*, carriers believe that the market share threshold for the exemption should be modified from a sub-trade to an agreement-wide basis or, alternatively, be applied using only those sub-trades that account for over 20 percent of the total cargo volume moved under the geographic scope of the agreement. In FMC Docket No. 03–15, the carriers requested a similar modification to the market share threshold in their comments to the proposed rule.¹⁶ In response, the Commission rejected the request of carriers, stating:

We decline, however, to adopt the commenters' suggestion to make the exemption based upon the entire agreement trade, and find that basing the market share limit on sub-trades is a better measure for competitive concerns, as the geographic scope of an agreement may be extremely broad.

69 FR 64398, 64400.

The Commission has considered the more recent request from the carriers but tentatively concludes that the sub-trade requirement is a better approach for the same reasons cited in the prior rulemaking. A threshold based on the

entire combined geographic scope of the agreement, or even on the top sub-trades, could result in agreements taking effect upon filing without an initial review where the parties hold a competitively significant share of the market in the smaller sub-trades. Further, using an agreement-wide threshold may encourage parties to structure their agreements as broadly as possible to evade the waiting period by setting their scopes at a regional, continental, or worldwide level rather than by the applicable trade lane. The Commission does not believe that the exemption should be expanded in this manner.

The Commission recognizes, however, that the market share analysis by sub-trade may be overly complicated and burdensome and may not be necessary for certain types of simple operational agreements, such as space charter agreements. Further, the Commission believes that the application of low market share regulations should be simplified, as explained below.

From its experience in administering the present regulations and given the changes in agreements that have occurred since the last rulemaking, the Commission is considering proposing modifications to the definition of capacity rationalization and the low market share exemption regulations, and is considering adding a new exemption for certain space charter agreements. In particular, the Commission is considering modifying the definition of capacity rationalization to mean the authority in an agreement by or among ocean common carriers to discuss, or agree on, the amount of vessel capacity supplied by the parties in any service or trade within the geographic scope of the agreement.

In the Commission's opinion, this simplified definition would better reflect the types of authority contained in more recent agreements and would be easier to apply in administering the regulations. The proposed definition would apply to voluntary discussion agreements between carriers where the parties discuss and/or agree on the amount of vessel capacity supplied in a trade. On an operational level, the proposed definition would apply to all forms of vessel sharing agreements between carriers where the parties discuss and/or agree on the number, capacity, and/or allocation of vessels or vessel space to be shared in the operation of a service between the parties to the agreement. Further, to avoid confusion, the proposed definition would apply to all such identified capacity agreements regardless of whether they contain any

form of exclusivity clauses. As such, this definition would exclude all vessel sharing agreements (VSAs) from qualifying for a low market share exemption.

The Commission realizes that most forms of operational agreements relating to the liner services of carriers affect capacity to some extent. However, for purposes of administering regulatory oversight, the Commission distinguishes certain operational agreements, such as VSAs and alliances, as having the most direct impact on the supply of capacity. In this regard, the Commission recognizes that these types of carrier agreements can promote economic efficiencies and cost savings in the offering of liner services to shippers, as intended and allowed by the immunity granted under the Shipping Act. However, depending on market conditions, agreements having such a direct impact on capacity, especially in trades where their parties may discuss and agree on rates, can potentially be used to reduce competition and unreasonably affect transportation services and costs within the meaning of section 6(g), which justifies a thorough initial review of their competitive impact under the full 45-day waiting period.

The Commission believes that the proposed modification to the definition of capacity rationalization for a low market share exemption would provide the necessary clarity in the application of the regulations. While we recognize that some VSAs, such as large alliances, raise more competitive concerns than others, the Commission believes that distinguishing between VSAs in applying an exemption would continue to cause the same ambiguity and uncertainty that exists in the present regulations.

The Commission believes that an exemption from the waiting period may be better suited for agreements that have an operational urgency to become effective upon filing, such as certain space charter agreements. In many cases, space charter agreements have a more imminent need to become effective upon filing because they may be formed quickly in response to market volatility and/or operating urgency.

In contrast, carriers that join together to form VSAs have likely conducted long range plans and analyses to weigh the benefits of such cooperative ventures, and such arrangements justify a more thorough initial review by the Commission to assess their potential impact. Moreover, § 535.605 of the regulations provides a procedure whereby parties to any agreement subject to filing under the Act and part

¹⁶ 69 FR 64389, 64399.

535 may request a shortened review period for good cause, such as operational urgency.

Given the transactional nature of the slot charter market, the Commission believes that certain space charter agreements should be exempt from the waiting period and that the exemption should not be subject to a market share threshold. Accordingly, we are considering proposing a new exemption, located at § 535.308, that would apply to agreements among ocean common carriers that contain non-exclusive authority to charter or exchange vessel space between two individual carriers and does not contain any authorities identified in § 535.502(b), such as rate or capacity rationalization authority. By non-exclusive authority, the Commission means authority that contains no provisions that place conditions or restrictions on the parties' agreement participation, and/or use or offering of competing services.

The Commission believes that such agreements could become effective upon filing without resulting in any serious negative competitive effects under section 6(g) of the Act. The exemption would provide greater clarity in the application of the regulations and reduce the burden of having to justify the exemption with a market share analysis by sub-trade as required under the current low market share exemption. Moreover, the exemption would allow carriers to respond easily and quickly to market forces in the liner shipping trades.

In conjunction with the proposed modifications discussed above, the Commission believes that the present low market share regulations would benefit from simplification. We are considering proposing to eliminate the lower market share threshold of 30 percent in cases where the parties to the agreement are members of another agreement in the same trade or sub-trade containing any of the authorities identified in § 535.502(b) [*i.e.*, forms of rate, pooling, service contract or capacity rationalization authorities]. Under the proposed exemption, the market share threshold would be set at 35 percent or less regardless of whether the parties to the agreement participate in any other agreements in the same trade or sub-trade.

The Commission has tentatively concluded that the application of the tiered 30 and 35 percent threshold [based on the parties' participation in other agreements by sub-trade] is unnecessarily complicated and time consuming for the industry to analyze. The complexity of applying the tiered

threshold regulations has resulted in protracted analyses over simple operational agreements. The Commission does not believe that this complication was an intended effect of the exemption. As explained, the exemption was adopted as a relief measure intended to reduce the filing burden on the industry. The Commission believes that the proposed modification would substantially simplify the application of the regulations and reduce the time burden on the industry.

The Commission tentatively concludes that the modified low market share exemption, as proposed, would not have any adverse competitive effects. The proposed modification to the definition of capacity rationalization would make capacity agreements, such as VSAs and alliances, ineligible for the low market share exemption. Only simple operational agreements would be eligible for the exemption, such as space charter and sailing agreements,¹⁷ that would not otherwise be automatically exempted under the proposed space charter exemption in § 535.308.

Limiting the low market share exemption to simple operational agreements that do not authorize agreement on service or trade capacity reduces the competitive concerns about the parties' participation in other agreements in the same trade or sub-trade, and eliminates the need for the lower 30 percent market share threshold. The rationale for the lower 30 percent threshold was based on the concern that parties in operational agreements with overriding rate or capacity rationalization authority in the same trade or sub-trade [through their participation in a conference, rate discussion, or capacity rationalization agreement] were more anticompetitive than operational agreements without such overriding authority. This competitive concern would be mitigated under the proposed regulatory modifications to part 535, and the Commission believes that a threshold of 35 percent or less for the exemption of the waiting period would provide a sufficient "safety zone" for simple operational agreements.¹⁸

¹⁷ As discussed in part VIII of this notice, the Commission is also considering proposing to amend the definition of sailing agreement in § 535.104(bb).

¹⁸ In terms of the impact of the proposed modifications on agreement filings, the Commission estimates that the filing burden to carriers could actually be reduced. Based on new and amended agreement filings for fiscal year 2014, the Commission estimates that 15 filings that were effective on filing under the low market share exemption would be subject to the 45-day waiting period as new VSAs or amendments thereof. Conversely, 20 filings that were subject to the 45-

II. Marine Terminal Services Agreements in § 535.309

Section 535.309 provides an exemption from the filing and waiting period requirements of the Act for terminal services agreements¹⁹ between marine terminal operators (MTOs) and ocean carriers to the extent that the rates, charges, rules, and regulations of such agreements were not collectively agreed upon under a MTO conference agreement.²⁰ Parties may optionally file their terminal services agreements with the Commission. 46 CFR 535.301(b). If the parties decide not to file the agreement, however, no antitrust immunity is conferred with regard to terminal services provided under the agreement. 46 CFR 535.309(b)(2). Parties to any agreement exempted from filing by the Commission under Section 16 of the Act, 46 U.S.C. 40103, are required to retain the agreement and make it available upon request by the Bureau during the term of the agreement and for a period of three years after its termination. 46 CFR 535.301(d).

In 1992, under Section 16, the Commission exempted terminal services agreements from its MTO tariff filing regulations and the agreement filing requirements in Section 5 of the Act by final rule in FMC Docket No. 91-20, *Exemption of Certain Marine Terminal Agreements*.²¹ At the time, the Commission by regulation²² required

day waiting period would be effective on filing as new two-party space charter agreements or amendments thereof. In fiscal year 2014, there were a total of 186 agreement filings, including new and amended agreements.

¹⁹ Section 535.309(a) defines marine terminal services agreement to mean an agreement, contract, understanding, arrangement, or association, written or oral, (including any modification or appendix) between a marine terminal operator and an ocean common carrier that applies to marine terminal services that are provided to and paid for by an ocean common carrier. These services include: Checking, docking, free time, handling, heavy lift, loading and unloading, terminal storage, usage, wharfage, and wharf demurrage and including any marine terminal facilities that may be provided incidentally to such marine terminal services.

²⁰ Section 535.309(b)(1) defines a marine terminal conference agreement as an agreement between or among two or more marine terminal operators and/or ocean common carriers for the conduct or facilitation of marine terminal operations that provides for the fixing of and adherence to uniform maritime terminal rates, charges, practices and conditions of service relating to the receipt, handling, and/or delivery of passengers or cargo for all members.

²¹ 57 FR 4578 (Feb. 6, 1992).

²² By final rule in FMC Docket No. 875, *Filing of Tariffs by Terminal Operators*, 30 FR 12681 (Oct. 5, 1965), the Commission implemented tariff-filing regulations governing MTOs pursuant to its authority in Sections 17 and 21 of the 1916 Act. Section 17 required regulated persons to observe just and reasonable regulations and practices in the receiving, handling, storing, or delivery of property and authorized the Commission to prescribe and

that the rates, charges, and rules assessed by MTOs for terminal services be subject to public tariff filing at the Commission.²³ As an alternative to the tariff rates, an MTO and an ocean carrier could individually negotiate their own rates and terms for terminal service through a terminal services agreement that by statute is required to be filed with the Commission.²⁴

The rule establishing the exemption resulted from an extensive review by the Commission of the terminal services market and its jurisdiction and regulation of MTOs that began in 1986.²⁵ The primary reason for the review and eventual exemption was the practice of MTOs charging ocean carriers a flat throughput rate for combined terminal and stevedoring services in terminal services agreements but not filing these rates with the Commission. Petitions from associations of MTOs and stevedoring companies were filed with the Commission requesting exemptions from such requirements under Section 16 of the Act. Petitioners argued that the MTO filing requirements were unduly burdensome given the difficulty of distinguishing between rates for stevedoring and terminal services. Further, they believed that the negotiated throughput rates were

enforce such regulations. Section 21 authorized the Commission to require periodic or special reports from any person subject to the 1916 Act.

²³ Subsequently, the Ocean Shipping Reform Act of 1998 (OSRA) replaced the mandatory tariff filing requirements with a provision (Section 8(f) of the Act, 46 U.S.C. 40501(f)) allowing MTOs to optionally publish their own schedule of rates, rules and practices. Public Law 105-258, 106(e), 112 Stat. 1902, 1907 (1998).

²⁴ Sections 4, 5, and 6 of the Act.

²⁵ Starting in 1986, the Commission took numerous actions to obtain information and evaluate the impact the shipping statutes and regulations had on the terminal services market. In sequential order, these actions included: (1) Notice of Waiver of Penalties, Marine Terminal Service Agreements, 51 FR 23154 (June 25, 1986); (2) Supplemental Notice of Waiver of Penalties, Marine Terminal Service Agreements, 51 FR 36755 (Oct. 15, 1986); (3) Order of Investigation, Fact Finding Investigation No. 17, Rates, Charges and Services Provided at Marine Terminal Facilities, 52 FR 18743 (May 19, 1987); (4) Second Supplemental Notice of Waiver of Penalties, Marine Terminal Service Agreements, 52 FR 18744 (May 19, 1987); (5) *Report of Fact Finding Officer, Fact Finding Investigation No. 17, Rates, Charges and Services Provided at Marine Terminal Facilities*, 24 S.R.R. 1260 (1988); (6) Order to Discontinue Fact Finding Investigation No. 17, and FMC Docket No. 90-6, Notice of Inquiry, Marine Terminal Operator Regulations, 55 FR 5626 (Feb. 16, 1990); (7) Order to Discontinue FMC Docket No. 90-6, Notice of Inquiry, Marine Terminal Operator Regulations, and FMC Docket No. 91-20, Notice of Proposed Rulemaking, Exemption of Certain Marine Terminal Services Arrangements, 56 FR 22384 (May 15, 1991); and (8) FMC Docket No. 91-20, Final Rule, Exemption of Certain Marine Terminal Arrangements, 57 FR 4578 (Feb. 6, 1992).

commercially sensitive data that should be kept confidential and not subject to public filing requirements. Upon review, the Commission issued the exemption because it reasoned at the time that exempting such arrangements had the potential to be more pro-competitive than enforcing the tariff and agreement filing requirements.²⁶

As part of the current regulatory review, the Commission has reassessed this exemption and believes that there is now a need for certain terminal services agreement information to be filed with the FMC given the increased cooperation of MTOs in conference and discussion agreements. Within the past decade, MTOs at major U.S. ports have become more active in cooperating through agreements to implement new programs addressing security and safety measures, environmental standards, and port operations and congestion. While such programs may be beneficial, agreements between MTOs can also affect competition in the terminal services market and impact transportation services and costs within the meaning of Section 6(g), such as agreements on the levels of free-time, detention, and demurrage charged by MTOs to port users. It is the responsibility of the Commission to analyze and monitor the competitive impact of MTO agreements and take necessary action to seek to prevent or enjoin activities that would likely result in an unreasonable decrease in transportation service or an unreasonable increase in transportation cost.

Some notable MTO agreements that are presently in effect under the Shipping Act include the *West Coast MTO Agreement* (WCMTOA), FMC No. 201143; the *Port of NY/NJ Sustainable Services Agreement*, FMC No. 201175; the *Oakland MTO Agreement* (OAKMTOA), FMC No. 201202; and the *Pacific Ports Operational Improvement Agreement* (PPOIA), FMC No. 201227. A major program implemented by the MTO parties to WCMTOA is PierPASS, which assesses extra fees to shippers to operate container terminals at off-peak hours at the Ports of Los Angeles/Long Beach. The parties to OAKMTOA are proposing to implement a similar program, OAKPASS, at the Port of Oakland.

Terminal services agreements are relevant in analyzing the competitive impact of programs and actions of MTOs in conference and discussion agreements. Terminal services agreements provide firsthand comprehensive data and information on

the terminal services market at U.S. ports, including the services and rates MTOs make available to ocean carriers. Such information would enable the Commission to analyze and determine the competitive market structure of MTOs at U.S. ports. Under the exemption, as MTOs have increased their cooperation under agreements, no empirical data on the terminal services market has been readily available to the Commission to analyze the competitive impact of such cooperative programs and activities. The filing of terminal services agreements would provide the Commission with timely market data to analyze and monitor the competitive impact of programs and activities of MTOs in agreements. The Commission could use this information to identify and safeguard against any possible market distortions resulting from the activities of MTOs in agreements. A serious market distortion at U.S. ports due to the actions of MTOs could potentially disrupt the international supply chain of container cargo and affect U.S. commerce in contravention of the Shipping Act.

Most recently, the submission of terminal services agreements became an issue when the Commission sought specific data and information from the parties to PPOIA. PPOIA became effective under the Shipping Act on April 17, 2015. It is an agreement with significant market power because its parties include the major ocean carriers and MTOs operating on the U.S. Pacific Coast. It authorizes the parties to discuss and agree on a broad range of terminal services affecting U.S. Pacific port operations. The Commission's staff requested certain data and information from the PPOIA parties, including current copies of their terminals services agreement, to evaluate the agreement. Even though parties to exempted agreements are required to provide such information under § 535.301(d), the Commission's staff had difficulty obtaining complete information from the PPOIA parties, and the Commission found it necessary to issue an Order under Section 15 of the Act to obtain the required terminal services agreements from the ocean carrier parties to PPOIA.²⁷

Given these recent developments and the increased activities of MTOs under agreements, the Commission believes

²⁷ Section 15 Order Regarding the Pacific Ports Operational Improvements Agreement and Marine Terminal Services and Chassis-Related issues at the United States Pacific Coast Ports, Federal Maritime Commission (July 10, 2015) from the Web site of the FMC at <http://www.fmc.gov/> under View All News/ June 24, 2015/Commission Takes Action on Several Regulatory Matters.

²⁶ 56 FR at 22386.

that it is appropriate to establish, as a standard Monitoring Report requirement in part 535 of the regulations, a rule to require that all of the MTOs, participating in any conference or discussion agreement on file and in effect at the FMC, submit to the FMC all of their effective terminal services agreements and amendments thereto. Such a Monitoring Report requirement would readily provide the Commission with the necessary market data on a consistent basis to analyze and monitor MTO agreement activities, without requiring the Commission to take additional measures or actions to obtain data, which can result in lag times, gaps and incomplete information.

As a Monitoring Report requirement, the terminal services agreements would be filed and retained at the FMC as confidential information pursuant to the terms in Section 6(j) of the Act, 46 U.S.C. 40306, and the regulations in § 535.701(i). As such, the submission of terminal services agreements would not be subject to the agreement filing requirements of the Act and public disclosure, which were primary issues of contention in the Commission's previous review of the matter when it issued the exemption. However, the Commission would require that terminal services agreements filed as Monitoring Reports reflect the true and complete copy of the agreement in accordance with the regulations in § 535.402, which are applicable to agreements filed under the Act. A complete copy of a terminal services agreement would include the total throughput rate agreed to by the parties.

The Commission specifically invites public comments on its proposed Monitoring Report requirements for parties to MTO conference and discussion agreements, along with estimates of the probable reporting burden of such requirements. The Commission also invites recommendations from commenters on alternative Monitoring Report requirements for such MTO agreement parties that would sufficiently address its concerns as discussed herein.

In § 535.301, the Commission believes that it is necessary to set a definitive deadline for the submission of exempted agreements in response to requests from Commission staff. Specifically, the Commission is considering proposing a procedure by which staff would send a written request for exempted agreements and parties would have 15 days to provide the requested agreements. We request comment on this tentative proposal.

III. Complete and Definite Agreements in § 535.402, and Activities That May Be Conducted Without Further Filings in § 535.408

The Shipping Act requires that a true copy of every agreement be filed with the Commission. 46 U.S.C. 40302(a). In administering these requirements, the Commission has endeavored to provide parties to agreements with guidance and clarity on what constitutes a "true copy" of an agreement through its regulations in § 535.402, which require that an agreement filed under the Act must be clear and definite in its terms, must embody the complete, present understanding of the parties, and must set forth the specific authorities and conditions under which the parties to the agreement will conduct their operations and regulate the relationships among the agreement members.

Section 535.408 exempts from the filing requirements certain types of agreements arising from the authority of an existing, effective agreement. Specifically, agreements based on the authority of effective agreements are permitted without further filing to the extent that: (1) The effective agreement itself is exempted from filing, pursuant to subpart C of part 535, or (2) it relates to one of several technical or operational matters of the effective agreement's express enabling authority. Such matters include stevedoring, terminal, and related services. 46 CFR 535.408(b)(3).

The current language in §§ 535.402 and 535.408 was promulgated by the Commission in a 2004 final rule to clarify the filing requirements. In its rulemaking, the Commission recognized that agreement parties might be confused about the required level of detail for filed agreements and the extent to which parties could engage in further agreements without filing such further agreements with the FMC.²⁸

Despite these previous efforts, the Commission is concerned about continuing confusion among regulated entities regarding the requirement that further agreements arising from the authority of a filed agreement must generally be filed with the Commission. This confusion may stem from the absence of a clear, affirmative requirement in the regulations stating that they must be filed. Section 535.402, the general requirement to file

agreements, and § 535.408, which specifies the types of further agreements that are permitted without filing, establish such a requirement, but it may not be clear to agreement parties. To address this issue, the Commission is considering proposing to amend § 535.402 to expressly state that an agreement that arises from the authority of an effective agreement, but whose terms are not fully set forth in the effective agreement to the extent required by the current text of § 535.402, must be filed with the Commission unless exempted under § 535.408.

The Commission is also concerned that the filing exemption for further agreements addressing stevedoring, terminal, and related services is unclear and could be interpreted broadly by regulated entities.

There are many agreements between MTOs and/or ocean carriers, such as WCMTOA and PPOIA, which authorize the parties to discuss and agree on terminal and related services. Some agreement parties may interpret § 502.408(b)(3) as exempting from further filing agreements establishing joint programs related to such services, no matter how large or potentially costly such programs may be. In addition, the open-ended terminology in the regulations creates uncertainty and confusion for parties to agreements over which types of further agreements relating to terminal services need to be filed with the FMC.

As originally envisioned, the Commission intended to limit the exemptions in § 535.408(b) to routine operational and administrative matters that require day-to-day flexibility or activities that the Commission does not need information on to assess the relationship of the agreement parties.²⁹ To eliminate any ambiguity in the regulations and ensure adequate Commission review of agreements involving MTOs, the Commission is considering eliminating the current exemption and replacing it with a list of more narrowly defined, specific services that are suitable for an exemption in conformity with the limits originally intended by the Commission.

The Commission invites comments on the proposed modifications to § 535.402 and § 535.408 under consideration. In particular, the Commission is interested in comments on what specific services should be included in § 535.408(b) to replace § 535.408(b)(3). The Commission is also interested in how such exempted services should be properly defined to avoid any

²⁸ See *Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984*, 69 FR 64398 (Nov. 4, 2004); *Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984*, 68 FR 67510, 67515–19 (proposed Dec. 2, 2003).

²⁹ *Ibid* at 67518.

confusion.³⁰ In addition, the Commission requests comments on whether “the operation of tonnage centers and other joint container marshaling facilities,” as listed in § 535.408(b)(3), continues to be a relevant and suitable exempted activity relating to terminal services.

IV. The Information Form Requirements in Subpart E of Part 535

There are presently five sections of the Information Form that apply to carrier agreements subject to filing under the Act, which require certain data and information in order to analyze the potential competitive impacts of the agreement. The sections of the Information Form apply depending on the authorities contained in the agreement, which determines the extent of data and information that is required. Simple operational agreements provide the least amount of data, while agreements with rate authority provide the most data.

Section I of the Information Form applies to all carrier agreements, except those exempted from the waiting period under § 535.311, and requires the parties to state the name and purpose of the agreement, identify their participation in all other agreements within the same geographic scope, and identify the authorities contained in the proposed agreement.

The Commission is considering proposing to modify section I to specify that space charter agreements exempted under the new proposed exemption at § 535.308 would not be subject to an Information Form, and to revise or add the proposed modifications to the definitions of agreement authorities in § 535.104 to the list of authorities in Section I.

Section II of the Information Form applies to simple operational agreements, not exempted under § 535.311, and requires the parties to list the number of their port calls for the preceding 12 months for the agreement services and provide a narrative statement on any significant operational

changes to be implemented under the proposed agreement.

Section III of the Information Form applies to agreements with capacity rationalization authority and requires the parties to provide data on their vessel capacity and utilization of the agreement services for a calendar quarter, port calls, and a narrative statement on any significant operational changes to be implemented under the proposed agreement.

The Commission is considering proposing to eliminate the Information Form requirements in Section II for simple operational agreements not exempted under § 535.311. The Commission believes that the present requirements for such agreements may be overly burdensome and unnecessary. Instead, the necessary information to evaluate the parties' operations under the agreement could be obtained from the authority and content of the agreement and commercial sources of data.

The Commission is considering proposing that Section III be renumbered as Section II and modified to apply to agreements with authority to charter vessel space [unless exempted under § 535.308 or § 535.311], or with authority to discuss or agree on capacity rationalization. The Commission believes that parties to agreements with such authority should provide before and after data on their service strings, vessel deployments, port itinerary, annual capacity, and vessel space allocation for the services pertaining to the agreement. Such data would provide the Commission with a clearer understanding of any service changes and the competitive impact of those changes. Further, the Commission is considering proposing that parties to such agreements provide vessel capacity and utilization data for the services pertaining to the agreement for each month of the preceding calendar quarter, as well as a narrative statement discussing any significant operational changes³¹ to be implemented under the agreement and the impact of those changes.

Section IV of the Information Form applies to agreements with rate authority. These agreements are required to provide data on market

share by sub-trade, average revenue, revenue and cargo volume on the top ten major moving commodities, vessel capacity and utilization, port calls, and a narrative statement on any significant operational changes that are anticipated to occur in the services operated by the parties.

The Commission is considering proposing that Section IV be renumbered as Section III and that the requirements for rate agreements be reduced to data on market share by agreement-wide trade instead of sub-trade, average revenue, vessel capacity and utilization, and a narrative statement on any anticipated or planned significant operational changes and their impact. The Commission believes that market share data derived on the total geographic scope of the agreement, rather than by sub-trade, should be sufficient for its analysis and less burdensome on the parties. If the Commission needs more detailed data, it could use its subscriptions to commercial data sources to evaluate market share in greater detail.

The Commission favors eliminating data regarding the revenue and cargo volume of the top ten major moving commodities. It is our view that carriers in rate discussion agreements are focusing more of their pricing efforts on guidelines for trade-wide or regional general rate increases (GRIs) rather than specific commodities. As such, the Commission relies on total average revenue data as a more accurate gauge of pricing trends in the marketplace. Also, the Commission believes that the reporting burden to prepare revenue and cargo data by commodity exceeds the value of such data; however, in cases where specific commodity data is essential for an agreement analysis, the Commission would be able to request the data.

For similar reasons, the Commission is considering proposing to eliminate the requirement for data on the number of port calls. The Commission does not believe that the port call data is essential for such agreements. The impact of any anticipated or planned significant operational changes in the services operated by the parties could be identified and discussed in the narrative statement.

Section V of the Information Form requires contact information and a signed certification of the Form. No changes to the requirements in Section V are under consideration at this time, other than renumbering it as Section IV.

The Commission is considering proposing that the instructions to the Information Form be streamlined by removing many of the same definitions

³⁰In this regard, the regulations in § 525.1(c)(19) and § 535.309(a) define terminal services to include checking, docking, free time, handling, heavy lift, loading and unloading, terminal storage, usage, wharfage, wharf demurrage, and marine terminal facilities provided for such services. These terminal services are individually defined in § 525.1.

The Commission has traditionally viewed stevedoring as the business of hiring and furnishing longshore labor and related facilities and equipment for the transfer of cargo between a vessel and a point of rest on a marine terminal facility (the point of rest is the place at which inbound cargo is tendered for delivery to the consignee and outbound cargo is received from shippers for loading on a vessel). 56 FR at 22385.

³¹The Commission believes that the definition of significant operational changes should be standardized and applied consistently throughout the regulations to mean an increase or decrease in a party's liner service, ports of call, frequency of vessel calls at ports, and/or amount of vessel capacity deployment for a fixed, seasonally planned, or indefinite period of time. The amended definition would exclude incidental or temporary alterations or changes that have little or no operational impact.

repeated throughout each section of the Form and stating them in paragraphs at the beginning of the Form with the understanding that they apply to each section. The Commission believes that this proposed modification would improve the clarity and readability of the instructions.

V. Comments in § 535.603, and Requests for Additional Information in § 535.606

Section 535.603(a) provides that persons may file with the Secretary written comments regarding a filed agreement, and if requested, such comments and any accompanying material shall be accorded confidential treatment to the fullest extent permitted by law. However, where a determination is made to disclose all or a portion of a comment, notwithstanding a request for confidentiality, the party requesting confidentiality will be notified prior to disclosure.

Under § 535.606, during the 45-day waiting and review period of a filed agreement, the Commission may formally issue a request for additional information (RFAI) on the parties to a filed agreement for information necessary to complete the statutory review required by the Act. When the Commission issues an RFAI, the effective date of the filed agreement is suspended, and a new 45-day waiting and review period begins when the Commission receives a response to the RFAI from the agreement parties. As a matter of public notice for comment, the regulations provide that the Commission will give notice in the **Federal Register** that an RFAI of a filed agreement has been issued, but such notice will not specify what additional information is being requested.

Section 6(j) of the Act, 46 U.S.C. 40306, and the regulations in § 535.608 provide for the confidentiality of agreement-related information submitted to the Commission. Specifically, § 535.608 provides that except for an agreement filed under Section 5 of the Act, all of the information submitted to the Commission by parties to a filed agreement will be exempt from disclosure under 5 U.S.C. 552, including the Information Form, voluntary submissions of information, reasons for non-compliance, and responses to RFAIs.

It has been the general policy of the Commission that questions issued by the Commission in an RFAI and comments submitted on a filed agreement by third parties not be released for public disclosure, even though the regulations on

confidentiality in § 535.608 only explicitly identify information submitted to the FMC by the parties to a filed agreement. Under this advance notice, the Commission invites comments on its general policy of not releasing RFAI questions and third-party comments for public disclosure and whether this policy should be modified, and if so, what form of modifications to these regulations would be appropriate.

VI. Agreement Reporting Requirements in Subpart G of Part 535

Under subpart G of part 535, parties to agreements that contain certain authority are required to file periodic Monitoring Report and/or other prescribed reports. Further, parties to agreements with rate authority are required to provide minutes of their meetings.

There are currently three sections of the Monitoring Report. Sections I and II apply according to the authorities contained in the agreement. Section III applies to all agreements subject to Monitoring Reports and requires contact information and a signed certification of the Report.

Section I of the Monitoring Report applies to agreements with capacity rationalization authority and requires data on vessel capacity and utilization for the preceding calendar quarter for the liner services pertaining to the agreement. Further, parties to such agreements are required to provide an advance notice of any significant reductions in vessel capacity no later than 15 days after an agreed upon reduction but prior to its implementation. In addition, the parties are required to provide a narrative statement on any other significant operational changes implemented under the agreement during the quarter.

The Commission is considering proposing that Section I be modified to apply to agreements between or among three or more ocean common carriers that contain the authority to discuss or agree on capacity rationalization. Under this proposal, agreements subject to reporting under Section I would include vessel sharing and alliance agreements among three or more carriers regardless of whether such agreements contain exclusivity clauses. This proposed application of the Monitoring Report requirements is consistent with the proposed modification to the definition of capacity rationalization.

The Commission believes that three or more carriers agreeing on the supply of capacity in a trade or service would provide a reasonable threshold to capture and monitor the most

meaningful capacity agreements without being overly burdensome. However, there are agreements below this threshold that the Commission may need to monitor. In such cases, the Commission may decide to prescribe reporting requirements to monitor the agreement pursuant to its authority in § 535.702(d).³²

Alternatively, there may be capacity agreements between three or more carriers where the parties believe it unnecessary to file Monitoring Reports, such as where the parties may only agree on one service string in a highly competitive trade lane. In such cases, the parties may apply and the Commission shall consider an application for waiver of some or all of the Monitoring Report requirements in accordance with § 535.705.

In terms of requirements, the Commission is considering proposing to require that parties to capacity agreements subject to Section I submit quarterly Reports with data on their vessel capacity and utilization separately showing each month of the quarter for the liner services pertaining to the agreement. The proposed requirement to report capacity data on a monthly basis would be a change from the present requirement for quarterly data; however, monthly data would provide the Commission with additional data observations by which to conduct more relevant statistical analyses. The provision for advance notice of significant reductions in capacity would be retained along with the narrative statement on any other significant operational changes implemented during the quarter.

Section II of the Monitoring Report applies to carrier agreements with rate authority with a market share of 35 percent or more. Parties to these agreements are required to submit quarterly reports with data on market share by sub-trade, average revenue, revenue and cargo volume on the top ten major moving commodities, vessel capacity and utilization, and a narrative statement on any significant operational changes that occurred during the quarter in the services operated by the parties to the agreement. The Commission is considering proposing that the

³² In this regard, the Commission is also considering proposing to clarify the wording of § 535.702(d) to make clear that it applies to any agreement filed, not merely those agreements subject to the monitoring report requirements. Further, the Commission is considering proposing to move this authority from § 535.702(d) under the Monitoring Reports section to § 535.701(c) under the general requirements section for reporting requirements in subpart G of part 535. Sections 535.701(c)-(j) of the current regulations would be redesignated sequentially.

requirements for these agreements be reduced by eliminating the market share, commodity components, and the narrative statement on significant operational changes.

The market share requirement delays the Report because most of the carriers supply this information using commercial data sources, which causes a lag in the Report of 75 days after the end of the quarter. 46 CFR 535.701(f). The Commission subscribes to commercial sources of data and can run periodic data reports as needed. Without the market share requirement, the Commission is considering proposing that the filing deadline for the Report be shortened from 75 to 45 days after the end of each quarter, which would provide more timely data.

Further, the Commission is considering proposing that the reporting requirement for data by commodity be eliminated for the Monitoring Report. Carriers in rate discussion agreements generally set guidelines for GRIs to a greater extent than commodity rates. The Commission tentatively concludes that the burden associated with preparing this data is likely greater than its value. However, when essential to monitoring an agreement, the Commission could prescribe specific commodity data pursuant to its authority.

The Commission is considering proposing that parties to rate agreements no longer be required to report on the significant operational changes in their services. The Commission believes that reporting this information under VSA and alliance agreements should provide a sufficient understanding of significant operational changes in the U.S. trade lanes, especially with the broadened application of the proposed definition of capacity rationalization. When needed, the Commission could always request specific operational information from the parties.

With the elimination of these requirements, the Commission is considering proposing that parties to rate agreements with a market share of 35 percent or more submit quarterly Monitoring Reports with data on their average revenue for the quarter, and their vessel capacity and utilization for each month of the quarter for the liner services operated by the parties within the geographic scope of the agreement.

As with the Information Form, the Commission is considering proposing that the Monitoring Report instructions be streamlined by removing definitions repeated within each section and stating them in paragraphs at the beginning of the Report with the understanding that they apply to each section.

Section 535.704(b) defines the meaning of a meeting between the parties to an agreement for the purpose of the filing of meeting minutes with the Commission. The Commission is considering proposing that the definition be modified to clarify that the discussions of parties using different forms of technology (e.g., telephone, electronic device, electronic mail, file transfer protocol, electronic or video chat, video conference) still constitute discussions for the purpose of filing minutes.

VII. Modifications Requested by the Ocean Carriers in Their Comments

As discussed above, the Commission has tentatively concluded not to propose the carriers' requested modifications to the market share threshold because they might encourage parties to structure the geographic scopes of their agreements as broadly as possible to evade the waiting period requirements. Instead, the Commission believes that the regulations should be simplified as discussed by its proposed modifications to the definition of capacity rationalization, the low market share exemption regulations, and the new exemption for space charter agreements.

On the issue of exempting from the waiting period agreement amendments on changes in the number or size of vessels within the range stated in the agreement, the Commission tentatively agrees with the logic of an exemption and is considering proposing to add such agreement amendments to the list of non-substantive modifications that are effective upon filing in § 535.302(a). The Commission expects that this modification to § 535.302(a) would encourage carriers to amend their agreements accordingly with more accurate information, which would improve the clarity of the agreement.

On the issue of electronic filing, the Commission agrees with the merits of electronic filing and is presently working on the implementation of an electronic filing system for agreement filings that it plans to introduce in a separate rulemaking.

VIII. Non-Substantive Modifications To Update and Clarify the Regulations in Parts 501 and 535

In addition to the aforementioned proposals, the Commission invites comments on the following proposals under consideration to update and clarify the regulations:

1. The Commission is considering proposing that the CFR citation for the delegated authority of the Director of the Bureau of Trade Analysis to prescribe

reporting requirements in § 501.27(o) be revised from § 535.702(d) to § 535.701(c) to reflect the aforementioned proposal to move this regulation from the Monitoring Report section in 535.702 to the general requirements section in 535.701;

2. The Commission is considering proposing that the delegated authority of the Director of the Bureau of Trade Analysis in § 501.27(p) should be deleted. The authority permits the Bureau Director to require parties to agreements subject to the Monitoring Report regulations to report commodity data on a sub-trade basis. Such authority would be obsolete if the commodity data requirement is eliminated as proposed;

3. The Commission is considering proposing that the definition of sailing agreement in § 535.104(bb) should be revised to mean an agreement by or among ocean common carriers to coordinate their respective sailing or service schedules of ports, and/or the frequency of vessels calls at ports. The term does not include joint service agreements, or capacity rationalization agreements.

The Commission believes that the proposed definition is more descriptive of an actual agreement between carriers with limited sailing authority than the present definition, which includes authority to agree on the size and capacity of the vessels to be deployed by the parties.³³ The Commission believes that the present definition is more broadly descriptive of the authority of carriers in a vessel sharing agreement where the parties would conceivably rationalize capacity.

4. The Commission is considering proposing that exempt agreements optionally filed with the Commission under § 535.301(b) be exempt from the 45-day waiting period.

As previously discussed, the authority of the Commission under Section 16 of the Shipping Act, 46 U.S.C. 40103, to issue an exemption from the requirements of the statute is conditioned on the determination that the exemption would not result in a substantial reduction in competition or be detrimental to commerce. The Commission has already determined that agreements exempted under subpart C of part 535 from the filing

³³ Section 535.104(bb) presently defines a sailing agreement as an agreement between ocean common carriers to provide service by establishing a schedule of ports that each carrier will serve, the frequency of each carrier's calls at those ports, and/or the size and capacity of the vessels to be deployed by the parties. The term does not include joint service agreements, or capacity rationalization agreements.

requirements of the Shipping Act do not raise competitive concerns. As such, there is no need for a waiting period in cases where parties to an exempt agreement choose to file the agreement optionally with the Commission. An optionally filed exempt agreement should become effective upon filing;

5. The Commission is considering proposing that the CFR reference on the application for exemption procedures cited in § 535.301(c) be corrected and revised from § 502.67 to § 502.74. The reference is outdated and was not revised at the time when the exemption procedures were renumbered in a previous rulemaking;

6. The Commission is considering proposing that § 535.302(d) be revised to specify that agreement parties may seek assistance from the Director of the Bureau of Trade Analysis on whether an agreement modification would qualify for an exemption based on the types of exemptions strictly listed and identified in § 535.302, as intended, and not on a general basis as parties have mistakenly interpreted the regulation. The Commission tentatively finds the current regulation to be too open-ended and subject to misinterpretation;

7. The Commission is considering proposing that § 535.404(b) be revised to require that where parties reference port ranges or areas in the geographic scope of their agreement, the parties identify the countries included in such ranges or areas so that the Commission can accurately evaluate the agreement;

8. The Commission is considering proposing that the formatting requirements for the filing of agreement modifications in § 535.406 apply to all agreements identified in § 535.201 and subject to the filing regulations of part 535, except assessment agreements.³⁴ Currently, the regulations exempt modifications to marine terminal agreements from these requirements, which was based on an earlier exemption of certain marine terminal agreements from the waiting period statute which has since been repealed by the Commission;³⁵

9. The Commission is considering proposing that, in § 535.501(b) on the electronic submission of the Information Form, the reference to diskette or CD-

ROM be replaced with an external digital device. The use of diskettes to store information digitally has become outdated on most modern computers and replaced with more advanced technological devices;

10. The Commission is considering proposing that in § 535.502(b)(1) in reference to rate authority in an agreement that the phrase “whether on a binding basis under a common tariff or a non-binding basis” be deleted. This distinction of rate authority dates to a period when conferences were more prevalent and is no longer relevant;

11. The Commission is considering proposing that in § 535.502(c) the expansion of membership, in addition to the expansion of geographic scope as presently provided, be a modification that requires an Information Form for agreements with any authority identified in § 535.502(b), *i.e.*, rate, pooling, capacity, or service contracting. As with an expansion of geographic scope, an expansion of membership could have a competitive impact that would need to be analyzed with current Information Form data;

12. The Commission is considering proposing, for the same reasons discussed above, that in § 535.701(e) [as redesignated from the current § 535.701(d)] on the electronic submission of Monitoring Reports, the reference to diskette or CD-ROM be replaced with external digital device;

13. The Commission is considering proposing that § 535.701(f) [as redesignated from the current § 535.701(e)] be revised to state simply that the submission of reports and meeting minutes pertaining to agreements that are required by these regulations may be filed by direct secure electronic transmission in lieu of hard copy, and that detailed information on electronic transmission is available from the Commission’s Bureau of Trade Analysis.

The regulations under this section in its current state pertain to procedures that are now obsolete and should be deleted to avoid any confusion on the part of filers;

14. The Commission is considering proposing, for the reasons discussed above, that the phrase “whether on a binding basis under a common tariff or a non-binding basis” in § 535.702(a)(2)(i) be deleted in reference to rate authority;

15. The Commission is considering proposing that in § 535.702(b), rather than using market share data filed by the parties to agreements, the Bureau of Trade Analysis would notify the parties of any changes in their reporting

requirements.³⁶ As discussed above, the Commission is considering proposing that the market share requirement of the Monitoring Report regulations for agreements with rate authority be discontinued. As such, parties to rate agreements would no longer be filing market share data. Commission staff could use its own subscriptions of commercial data to determine any changes in the reporting requirements of rate agreements and notify the parties accordingly; and

16. The Commission is considering proposing that regulations on the commodity data requirements of the Monitoring Report in § 535.703(d) be deleted. As discussed, the Commission is considering proposing that the commodity data requirements be discontinued, and if adopted, this section would be obsolete.

By the Commission.

Karen V. Gregory,
Secretary.

[FR Doc. 2016–04263 Filed 2–26–16; 8:45 am]

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FEDERAL MARITIME COMMISSION

46 CFR Parts 530 and 531

[Docket No. 16–05]

RIN 3072–AC53

Service Contracts and NVOCC Service Arrangements

AGENCY: Federal Maritime Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission (FMC or Commission) is seeking comments on possible amendments to its rules governing Service Contracts and NVOCC Service Arrangements. These possible rule changes are intended to update, modernize, and reduce the regulatory burden.

DATES: Submit comments on or before: March 30, 2016.

ADDRESSES: You may submit comments by the following methods:

- *Email:* secretary@fmc.gov. Include in the subject line: “Docket 16–05, [Commentor/Company name].” Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Only non-

³⁴ Section 535.104(d) defines assessment agreements to mean an agreement, whether part of a collective bargaining agreement or negotiated separately, that provides for collectively bargained fringe benefit obligations on other than a uniform man-hour basis regardless of the cargo handled or type of vessel or equipment utilized. Section 535.401(e) requires that assessment agreements be filed and effective upon filing with the FMC.

³⁵ FMC Docket No. 09–02, *Repeal of Marine Terminal Agreement Exemption*, 74 FR 65034 (Dec. 9, 2009).

³⁶ Only parties to rate agreements with a combined market share of 35 percent or more are required to file Monitoring Reports. 46 CFR 535.702(a)(2). If the market share of a rate agreement drops below 35 percent, the Bureau would notify the parties that the agreement is no longer subject to the Monitoring Report regulations.

confidential and public versions of confidential comments should be submitted by email.

• *Mail:* Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573-0001.

Docket: For access to the docket to read background documents or comments received, go to the Commission's Electronic Reading Room at: <http://www.fmc.gov/16-05>.

Confidential Information: The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If your comments contain confidential information, you must submit the following:

- A transmittal letter requesting confidential treatment that identifies the specific information in the comments for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.

- A confidential copy of your comments, consisting of the complete filing with a cover page marked "Confidential-Restricted," and the confidential material clearly marked on each page. You should submit the confidential copy to the Commission by mail.

- A public version of your comments with the confidential information excluded. The public version must state "Public Version—confidential materials excluded" on the cover page and on each affected page, and must clearly indicate any information withheld. You may submit the public version to the Commission by email or mail.

FOR FURTHER INFORMATION CONTACT: For questions regarding submitting comments or the treatment of confidential information, contact Karen V. Gregory, Secretary, *Phone:* (202) 523-5725. *Email:* secretary@fmc.gov. For technical questions, contact Florence A. Carr, Director, Bureau of Trade Analysis. *Phone:* (202) 523-5796. *Email:* tradeanalysis@fmc.gov. For legal questions, contact Tyler J. Wood, General Counsel. *Phone:* (202) 523-5740. *Email:* generalcounsel@fmc.gov.

SUPPLEMENTARY INFORMATION:

Background

In 1984, Congress passed the Shipping Act of 1984 (the Shipping Act or the Act) 46 U.S.C. 40101 *et seq.*, which introduced the concept of contract carriage under service contracts filed in paper format with the Federal Maritime Commission (Commission or FMC). The pricing of liner services via

negotiated contracts, rather than exclusively by public tariffs, was a change that had profound effects on the liner industry. The Act also clarified the authority of conference members to offer intermodal pricing (the integration of ocean carriage with truck or rail service).

FMC regulations require all ocean freight rates, surcharges, and accessorial charges in liner trades be published in ocean common carrier tariffs or agreed to in service contracts filed with the Commission. Contemporaneous with the filing of service contracts, carriers are also required to make available to the public a concise statement of essential terms in tariff format. Initially, service contracts filed with the Commission under the Act could not be amended. In 1992, FMC regulations were revised to allow for service contracts to be amended to adjust terms and/or rates.

In 1998, Congress passed the Ocean Shipping Reform Act (OSRA), amending the Shipping Act of 1984 relating to service contracts. To facilitate compliance and minimize the filing burdens on the oceanborne commerce of the United States, service contracts and amendments effective after April 30, 1999 are required to be filed with the Commission in electronic format. The electronic filing of service contracts and amendments eliminated the regulatory burden of filing in paper format, saving ocean carriers both time and money. In addition, under OSRA, contracts between ocean common carriers and shippers can be agreed to on a confidential basis and the public no longer has access to view their contents.¹ Service contracts and amendments continue today to be filed into the Commission's electronic filing system, SERVCON.

In 2005, the Commission issued a rule exempting Non-Vessel-Operating Common Carriers (NVOCCs) from certain tariff publication requirements of the Shipping Act, pursuant to section 16 of the Shipping Act, 46 U.S.C. 40103. 69 FR 75850 (December 20, 2004) (final rule). Under the exemption, NVOCCs are relieved from certain Shipping Act tariff requirements, provided that the carriage in question is performed pursuant to an NVOCC Service Arrangement (NSA) filed with the Commission and the essential terms are

¹ Prior to OSRA, contract rates were published in the essential terms tariff publication, thereby allowing similarly situated shippers to request and obtain similar terms. In enacting OSRA, Congress limited the essential terms publication to the following terms: The origin and destination port ranges, the commodities, the minimum volume or portion, and the duration.

published in the NVOCC's tariff. 46 CFR 531.1, 351.5, and 531.9

On January 18, 2011, President Obama issued Executive Order 13563 (E.O. 13563) to emphasize the importance of public participation in adopting regulations, promote integration and innovation in regulatory actions, utilize flexible approaches in achieving regulatory objectives, and ensure the objectivity of any scientific and technological information and process in regulatory actions. E.O. 13563 requires executive agencies to develop a plan to periodically review their existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make such agencies' regulatory programs more effective and less burdensome in achieving the regulatory objectives. On July 11, 2011, Executive Order 13579 was issued to encourage independent regulatory agencies to also pursue the goals stated in E.O. 13563.

On November 4, 2011, the Commission issued its Plan for Retrospective Review of Existing Rules (Retrospective Review Plan or Plan) and invited public comment on how it might improve existing regulations.² The Plan included a review schedule for its existing regulations, which was updated on February 13, 2013. The updated Plan called for review of the existing rules for NVOCC Service Arrangements in 46 CFR part 531 from 2013 to 2014, and for review of Service Contracts regulations Part 530 in 2013.

In response to the Commission's request for public comment, the National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA) filed comments regarding Part 532, NVOCC Negotiated Rate Arrangements (NRAs), and Part 531, NVOCC Service Arrangements, on November 21, 2011. NCBFAA's comments supported the Commission's effort to review and streamline its regulations and indicated that several additional steps would significantly ease some of the obstacles that it claims have hindered utilization of Part 532, NVOCC NRAs, and Part 531, NVOCC Service Arrangements. The Commission also received the *Comments of Ocean Common Carriers*³ regarding Part 530,

² A copy of the Retrospective Review Plan and comments filed in response to the plan that are within the scope of this rulemaking have been placed in the docket.

³ The commenting carriers consisted of a total of 30 ocean carriers participating in the following agreements active at that time: The 14 members of the Transpacific Stabilization Agreement (TSA); 10 members of the Westbound Transpacific

Service Contracts on May 18, 2012. The carriers' comments largely focused on three areas that they believe changes in the service contract regulations would be beneficial, namely, introducing greater flexibility in the timing of service contract amendment filing, making adjustments to the service contract correction process, and expanding the list of commodities exempted from tariff and service contract filing. The comments are described in further detail in discussion of Parts 530 and 531 that follows.

In September 2013, the Commission initiated the present regulatory review of Part 530, Service Contracts, and Part 531, NVOCC Service Arrangements. Executive Order 13563 served as guidance for the Commission in seeking ways in which the regulations should be modified, expanded, or streamlined in order to make the regulations more effective, reduce the regulatory burden, encourage public participation, make use of technology, and consider flexible approaches, keeping in mind the FMC's mission, strategic goals, and regulatory responsibilities.

As part of its review, the Commission informally solicited views from various stakeholders in order to gather a broad range of perspectives. The discussions with stakeholders, including Vessel-Operating Common Carriers (VOCCs), several major trade associations, licensed NVOCCs, beneficial cargo owners (BCOs), and shippers associations, were held on a confidential basis to promote a candid dialogue. The Commission asked stakeholders how existing regulations impact their businesses, what regulatory changes each stakeholder would recommend, and to quantify the cost of its regulatory burden.

Below, on a section by section basis, is a discussion of issues on which the Commission is seeking public comment. Further, the public is invited to comment on any provisions contained in Parts 530 and 531.

Stabilization Agreement (WTSA); 6 members of the Central America Discussion Agreement (CADA); 11 members of the West Coast South America Discussion Agreement (WCSADA); 5 members of the Venezuela Discussion Agreement (VDA); 3 members of the ABC Discussion Agreement (ABCDA); 6 members of the United States Australasia Discussion Agreement (USADA); and, the 3 members of the Australia New Zealand United States Discussion Agreement (ANZUSDA). For comments, refer to Attachment B.

Part 530—Service Contracts

Subpart A—General Provisions

Section 530.3 Definitions

Section 530.3 Affiliate

Currently, there is no definition of affiliate in § 530.3, Service Contracts. A definition of affiliate is provided for NVOCC Service Arrangements, in § 531.3(b). In order to provide clarity and consistency, the Commission seeks comment on adding the definition of affiliate contained in § 531.3(b) to § 530.3.

Section 530.3(i) Effective Date

Presently, the Commission's regulations require that a service contract or amendment be filed on or before the date it becomes effective. The Commission is seeking comment on whether it should amend the definition of effective date with respect to service contract amendments to allow the effective date of amendments to be before the filing date of the amendment.

Section 530.5 Duty To File

In addition to converting to electronic filing in 1999, the Commission has made efforts to reduce the regulatory burden of filing service contracts and amendments into its SERVCON system. At the request of one ocean carrier, the Commission developed an automated web services process in 2006, which allows service contracts or NSAs and their amendments to be filed directly from a carrier's contract management system into SERVCON, thereby reducing the regulatory burden and error rate associated with manual processing. By "pushing" the unique data already entered in the filer's contract management systems directly to the SERVCON system, it eliminates the time and expense involved in manually logging into SERVCON to file contracts or NSAs. SERVCON then processes the filing and returns a confirmation number if the filing was successful, or an error message giving the reason it was not.

Using web services to file service contracts and amendments reduces a carrier's cost and creates efficiencies for both the carrier and the Commission. The Commission has encouraged the use of web services to carriers throughout the years. Currently, 36% of all service contracts and amendments filed use web services. It is estimated, based on current carrier projections, that approximately 92% of contracts and amendments filed by April 1, 2016 should be filed using web services. Given the Commission's past experience, transitioning to web

services can be accomplished in a relatively short period of time using carriers' in-house IT professionals.

The Commission seeks comment on amending its regulations to ensure that carriers are aware of the availability of the automated web service process for filing service contracts and amendments.

Section 530.6 Certification of Shipper Status

The provisions in this section set forth the requirement that shippers entering into service contracts certify their status and require vessel-operating common carriers (VOCCs) to obtain proof of an NVOCC's compliance with tariff and financial responsibility requirements. Carriers regularly use the FMC Web site, www.fmc.gov, to verify whether or not an NVOCC contract holder or affiliate is in good standing. Various carriers employ more rigid standards in certifying NVOCC status by requiring copies of the NVOCC's bond as well as the title page of its respective published tariffs. Further, many VOCCs include the NVOCC's 6-digit FMC Organization Number in the service contract, which indicates that the VOCC sought to ensure compliance with the requirements of § 530.6.

Carriers frequently ask about the FMC's electronic systems' capability to automatically verify whether an NVOCC party named in a service contract or amendment is in compliance with § 530.6. While the FMC's SERVCON system does not currently have this capability, the technology exists to add this functionality in the future. One possible approach to accomplish this would be for the FMC to create a new data field in SERVCON which would require a VOCC to enter the NVOCC's 6-digit FMC Organization Number when a NVOCC is a contract holder or affiliate. If multiple NVOCCs are party to a service contract, each NVOCC's respective Organization Number would be required to be listed in this field. SERVCON could be updated so that it would automatically determine at the time a contract or amendment is uploaded for filing, whether the NVOCC(s) is in good standing with the Commission. The development of such an automatic process could potentially save carriers a substantial amount of time currently spent verifying an NVOCC's status.

Another option, which would require a substantial amount of SERVCON system programming and necessitate a standard service contract format to be adopted and agreed to by carriers, would be to require "metadata" to be incorporated into service contracts that

would include the 6-digit FMC Organization Number of all NVOCC parties.⁴ For instance, with the required programming implemented this technology could be leveraged to identify during the filing process contracts or amendments which contain an NVOCC that is not in compliance with § 530.6. If an NVOCC is not compliant, an alert would be sent to the carrier filing the contract or amendment and Commission staff.

Therefore, the Commission is seeking comment regarding whether the Commission should move forward in:

(1) Requiring use of the 6-digit FMC Organization Number for NVOCCs who are a contract holder or affiliate in a service contract;

(2) adding a data field in the Commission's electronic filing system (SERVCON) in order to enter the 6-digit FMC Organization Number when an NVOCC is party to a contract, or

(3) requiring service contracts to be formatted to contain metadata that includes the 6-digit FMC Organization Number for each NVOCC that is a contract holder or affiliate in a service contract.

Subpart B—Filing Requirements

Section 530.8 Service Contracts

In the filed *Comments of Ocean Common Carriers*, a number of carriers cite the filing of service contract amendments as the largest administrative burden for both carriers and their customers. Many ocean carriers believe that the service contract effective date requirement is overly burdensome and restrictive given current commercial practices, particularly with respect to amendments to contracts. The carriers claim that the vast majority of amendments are for minor revisions to commercial terms, such as a revised rate or the addition of a new origin/destination or commodity. The carriers advise that shippers will often tender cargo to them without first formally accepting their proposal. Therefore, according to ocean common carriers' comments, the carrier and shipper often agree on a rate without memorializing that agreement in a form that can be filed as an amendment. The carriers claim that filing amendments within 30 days would enable shippers

and carriers to apply agreed-upon terms immediately and thus do business without disrupting or delaying that business.

Based on the above practices, the carriers recommend that § 530.8(a) be amended to permit the contract parties to implement a service contract amendment immediately, provided that the amendment is entered into by the parties and filed within 30 days of whichever occurs first: (1) The date agreement on the amendment is reached; or (2) the date the carrier receives the cargo to which the amendment applies. Under this proposal, the carriers note that the Commission would still receive all service contract amendments, however, not prior to implementation.

The revised regulation envisioned by the carriers would require that each filed amendment state the effective date of each change to the contract made by the amendment, so the Commission could determine the date from which any given rate or term was to apply. Carriers state that filing within 30 days would also reduce the filing burden by enabling carriers to aggregate several contract changes together in a single amendment. The carriers contend that the Commission would maintain the authority to request service contract records, including the evidence that the parties reached agreement on a particular term as of a particular date.

When Commission staff met individually with large beneficial cargo owners (BCOs) and NVOCCs, those shippers relayed that they had not experienced delays as a result of carriers' inability to process service contract amendments in a timely manner prior to movement of their cargo. It was the shippers' understanding that the carriers' requirement to file amendments with the Commission prior to acceptance of the cargo protects rate and contract commitments. Shippers advised the Commission that carriers were responsive to their rate requests and the shippers were confident that VVOCCs would honor the rates and contract commitments knowing their contracts were being filed with the Commission.

In order to minimize the filing burden, the Commission is seeking comment on whether it should allow an amendment to be filed up to 30 days after an amendment is reached by the parties. A change in the definition of effective date would only affect the filing date of the amendment, as the parties must still agree to the rates and/or contract terms prior to receipt of the cargo.

In commenting on the carriers' suggestions, consideration should also be given to the manner in which service contracts and amendments would be filed into the FMC's SERVCON system. SERVCON is designed to process the filing of the initial service contract, designated as Amendment "0," with subsequent amendments to the contract numbered sequentially, beginning with Amendment No. "1". If the definition of effective date is changed to allow amendments to be filed up to 30 days after the date on which they are agreed, and amendments are filed using the existing filing process, which requires sequential filing of amendments starting with Amendment No. 1, then no programming changes would be required in SERVCON.

In connection with the 30-day period for filing service contract amendments, the carriers also proposed aggregating several contract changes in a single amendment in what, in effect, could be a monthly filing. In a monthly filing that consolidates a number of service contract amendments, it would be necessary for carriers to specify the effective date of each amendment. In some cases, for example, the same rate may change more than once in a monthly period. Since the SERVCON system is not designed to process multiple amendments in a single filing, this would require a substantial amount of reprogramming for the system to be able to capture both the effective date and amendment number should, for example, Amendments Nos. 7 through 12 be combined into a single document. Further, based on input from the Commission's Office of Information Technology, carriers would need to manually input the effective date of each amendment into SERVCON. Therefore, absent the requisite reprogramming, this process could possibly result in more, rather than less, of a filing burden. Additionally, consolidating several service contract amendments may also prevent carriers from using the Commission's web services technology in accordance with § 530.5, thereby offsetting the advantages of web services, which do not require manual input and are intended to reduce the burden of filing.

The Commission seeks comments on whether it should revise its regulations to allow: (1) A service contract amendment to be filed individually and sequentially within 30 days of its effectiveness; or (2) any number of service contract amendments to be consolidated into a single document, but filed within 30 days of the effective date of the earliest of all amendments contained in the document. Any

⁴ "Metadata is structured information that describes, explains, locates, or otherwise makes it easier to retrieve, use, or manage an information resource. Metadata is often called data about data or information about information." National Information Standards Organization (NIST), *Understanding Metadata*, NIST Press (2004), available at: <http://www.niso.org/publications/press/UnderstandingMetadata.pdf> (last visited Jan. 17, 2016).

clarifications or refinements to the suggestions made by the commenters, given the information technology constraints, are also requested.

Section 530.10 Amendment, Correction, Cancellation, and Electronic Transmission Errors

In *Comments of Ocean Common Carriers*, the carriers noted that the current service contract correction procedures largely pre-date both service contract amendments (first permitted in 1992) and confidential individual carrier contracts introduced by OSRA, and maintain that these procedures are “ill suited” to the manner in which service contracts are employed today. The carriers identified a number of revisions to the requirements governing Service Contract Correction Requests at § 530.10(c), some of which are discussed below.

With respect to the forgoing carrier proposals, the Commission is considering stakeholder comments and staff experience regarding service contract correction requests, corrected transmissions, and the proposed “conforming amendment.” An item by item discussion follows.

30 Day Grace Period

The carriers propose that the Commission allow a 30 day grace period in which a carrier would not be required to file a service contract correction request (requesting retroactive effectiveness to correct a clerical or administrative error) or a formal amendment to the contract (effective upon filing or in the future), but rather, be permitted to submit a new type of filing, designated as a “conforming amendment” or some other special designation (in order to retroactively correct a “typographical or clerical error”).

The Commission questions whether this process would, in effect, be a substitute for the service contract correction process within the first 30 days after filing, without an affidavit and other documentation used for verification purposes that establishes the nature of the error and the parties’ intent. The Commission also has concerns that the use of the term “amendment” in the proposed special designation “conforming amendment” could be confusing, as the submission would be a corrective filing, rather than an actual sequential amendment to the contract.

There is an additional approach under which a service contract or amendment can currently be corrected that is somewhat similar to the proposed “conforming amendment,” though its

application is limited to a narrow set of circumstances, that of a Corrected Transmission. Pursuant to § 530.10(d), *Electronic transmission errors*, carriers may file a “Corrected Transmission” (CT) within forty-eight (48) hours of filing a service contract or amendment into SERVCON, however, only to correct a purely technical data transmission error or a data conversion error that occurred during uploading. A CT may not be used to make changes to rates, terms or conditions.

While the vast majority of service contracts are uploaded into the Commission’s electronic filing system, SERVCON, without encountering any problems, staff has noted that, when errors do occur, many times carriers do not discover the error until after the initial 48 hour period has passed. The vast majority of these mistakes are attributable to data entry errors on the SERVCON upload screen (e.g. the incorrect amendment or service contract number is entered, an incorrect effective date is typed, or the wrong contract or amendment is attached for uploading). Staff verifies that these are indeed purely clerical data errors that do not make changes to rates, terms, or conditions prior to accepting the CT filings.

While incorporation of web services filing would reduce the occurrence of many of the technical and data transmission errors leading to a Corrected Transmission, the Commission is seeking comments on whether the current 48-hour period in which to file a CT after filing the original contract or amendment should be extended to thirty (30) days to afford carriers with a more realistic time frame to correct purely clerical data transmission errors. The Commission notes that extending the time period for filing CTs would also facilitate ensuring that the service contract terms and conditions agreed to by the carrier and shipper are those on file with the Commission in the SERVCON system while maintaining adequate shipper protections.

Extend Filing Period for Correction Requests to 180 Days

The Commission is considering extending the time period for a service contract correction from forty-five (45) to one-hundred eighty (180) days. An error in a service contract may not be discovered until after cargo has moved, been invoiced on the bill of lading, the shipper reviews it and notes that the rate assessed is not the agreed upon rate. Given long transit times due to carriers’ global pendulum services and slow steaming, in many cases this type of

error is not discovered until well after 45 days has transpired. In other cases, shippers engage in audits of bills of lading and identify errors in the service contract that do not match the rates offered. Again, these audits may be well after the 45-day period. To provide needed flexibility in this process, the Commission is considering whether a longer time period in which to file is appropriate. The Commission seeks comment on extending the amount of time a service contract correction request can be filed from within 45 days of the contract’s filing with the Commission up to 180 days.

Extend the Service Contract Correction Procedure To Include Unfiled Contracts and Amendments

The ocean carriers provided a number of arguments in support of allowing the correction process to be utilized for unfiled service contracts and service contract amendments. Service contracts are required by law, under the Shipping Act, 46 U.S.C. 40502, to be filed with the Commission. Shippers advised that they believe that a filed contract provides them with the assurance that the rates and terms of the service contract will be adhered to by both the shipper and carrier.

Eliminate Carrier Affidavit and Significantly Reduce Filing Fee

Carriers requested that the Commission eliminate the affidavit requirement for service contract correction requests and also significantly reduce the filing fee. The Commission’s filing fee reflects time expended by Commission staff to research and verify information provided in the correction request and to conduct its analysis. The Commission could reduce the filing fee from \$315 to around \$100 or less by streamlining its internal processes, provided that the affidavit requirement is not eliminated. If the affidavit requirement were eliminated, staff time researching and verifying information would increase, and thus, the filing fee would need to be increased commensurate with the additional time required for processing and analysis. The Commission is seeking comment on these proposals.

Subpart C—Publication of Essential Terms

Section 530.12 Publication

Several stakeholders advised the Commission that essential terms publications were no longer accessed by the public or useful to stakeholders. However, other stakeholders indicated that they do rely on them for various

purposes, such as during a grievance proceeding.

Subpart D—Exceptions and Implementation

Section 530.13 Exceptions and Exemptions

§ 530.13(a) Statutory exceptions. In *Comments of Ocean Common Carriers*, the carriers recommend that the Commission, pursuant to its authority to grant exemptions from statutory requirements, expand the list of commodities which are exempt from the tariff publication and service contract filing requirements of 46 U.S.C. 40501(a)(1) and 40502(b)(1). The carriers' rationale is that the existing list of exempt commodities: bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper or paper waste, was largely adopted to provide ocean common carriers serving the U.S. trades with greater flexibility to compete with bulk and tramp carriers serving both the U.S. and neighboring countries (Canada, Mexico), which do not require carriers to adhere to published tariffs. They assert that the exemption should apply to other, similar commodities.

After the implementation of OSRA, carriers continued to offer service contracts to many shippers of exempt commodities. Many VOCCs today still offer service contracts for exempt commodities, while other carriers choose only to offer such contracts to a select group of customers. Various carriers opt to use exempt commodity tariffs instead of agreeing to offer service contracts. This may diminish a shipper's ability to conclude service terms such as free time, demurrage and detention, credit, and other terms that could be negotiated in service contracts. Further, a VOCC's standard governing rules tariff does not apply to exempt commodities and therefore, shipments of those commodities would not have the same protections under the Act and the Commission's regulations.

Section 530.14 Implementation.

If the carriers' proposal to allow up to 30 days for filing service contract amendments is later adopted, corresponding changes would be made to § 530.14.

Part 531—NVOCC Service Arrangements

Subpart A—General Provisions

Section 531.1 Purpose

In their comments on the Commission's Retrospective Review Plan, NCBFAA states that NSAs are

private, negotiated contracts between NVOCCs and their shipper customers.⁵ NCBFAA adds that the various NSAs that have been filed with the Commission provide little information that is of use to the agency.

NCBFAA indicated that, with the advent of NVOCC Negotiated Rate Arrangements (NRAs), it is less likely that NSAs will be used in the future. NCBFAA stated that it believes one of the main impediments to any significant industry use of the NSA procedure was caused by the Commission's perceived need to regulate them in the identical manner as ocean carrier service contracts. They further elaborate that, as a result, these privately- and individually-negotiated contracts between NVOCCs and their shipper customers are required to follow the same filing and essential term tariff procedures as are applicable to ocean carrier agreements with their customers.

NCBFAA also states that NVOCCs do not enjoy antitrust immunity and therefore do not contain "collectively established boilerplate terms and conditions or consider, let alone follow, 'voluntary guidelines' relating to pricing or service conditions." NCBFAA further advocates that, inasmuch as there are situations where NVOCCs and their customers would like to enter into more formal, long-term arrangements, which cannot be accomplished through NRAs, the industry would benefit by having the Commission reexamine the need for continuing the filing of NSAs and the publication of essential terms.

Section 531.3 Definitions

Section 531.3(k) Effective Date

Presently, the Commission's regulations require that an NSA or amendment be filed on or before the date it becomes effective. In response to filed VOCC comments, the Commission is considering whether to allow the filing of service contract amendments pursuant to Part 530 to be delayed up to 30 days after an amendment is agreed to by the contract parties. In order to minimize the filing burden on NVOCCs as well, the Commission is seeking comment on whether it should, similarly, allow amendments to NSAs to be filed up to 30 days after an amendment is agreed to by the parties.

⁵ NCBFAA recently filed a petition for rulemaking. Docket No. P2-15, *Petition of the National Customs Brokers and Forwarders Association of America, Inc. for Initiation of Rulemaking* (Apr. 18, 2015). The Commission is currently reviewing the petition as well as the comments filed in response to the petition, and has not made a determination on whether to initiate a rulemaking. Therefore, the proposals presented by NCBFAA in its petition will not be addressed in this ANPRM.

Section 531.5 Duty To File

The Commission is considering and seeks comment on whether to amend the regulations so NVOCCs, like VOCCs, are aware of the availability of the automated Web service process in the filing of NSAs and amendments.

Subpart B—Filing Requirements

Section 531.6 NVOCC Service Arrangements

Presently the Commission's regulations require that an NSA or amendment be filed on or before the date it becomes effective. If the Commission should later allow up to 30 days for filing NSA amendments, corresponding changes to § 531.6 would be made.

Section 531.6(d) Other Requirements

Pursuant to § 531.6(d)(4), an NVOCC may not knowingly and willfully enter into an NSA with another NVOCC that is not in compliance with the Commission's tariff and proof of financial responsibility requirements. As discussed more fully under § 530.6 above pertaining to service contracts, the industry frequently refers to the Commission's Web site, www.fmc.gov, to verify whether or not an NVOCC contract holder or affiliate is compliant with these requirements.

As noted previously, many VOCCs include all NVOCCs' 6-digit FMC Organization Number in their service contracts, and Commission staff notes this practice with respect to some NSAs as well. As VOCCs have frequently asked about the FMC's electronic systems' capability to automatically verify whether an NVOCC party named in a service contract or amendment is in compliance with FMC regulations at § 530.6, the Commission is considering whether to facilitate this in the SERVCON system in which both service contracts and NSAs are filed. Therefore, the Commission seeks comment on whether NSAs should include the 6-digit FMC Organization Number for each NVOCC party to an NSA including affiliates. If so, comment is sought on the appropriate manner to update SERVCON to allow electronic verification of NVOCC status against the FMC's database of active NVOCCs. For further discussion of the technological changes being considered were this requirement to be implemented, see the more expansive explanation in § 530.6 above.

Section 531.6(d)(5) Certification of Shipper Status

Presently, the NSA regulations do not include a requirement that the NSA

shipper certify its status, which is a requirement for shippers under current service contract regulations in Part 530. The Commission seeks comment on whether to make these requirements consistent and uniform for NVOCCs and VOCCs, as both are common carriers, and such certification assists in compliance.

Section 531.8 Amendment, Correction, Cancellation, and Electronic Transmission Errors

Under the Commission's regulations, VOCC service contracts and NVOCC service arrangements are both agreements between a common carrier and a shipper for the carriage of cargo. Given these congruencies, the Commission is considering whether changes being proposed by the VOCCs to the correction procedures for service contracts should be handled in a similar manner for NSAs. A complete discussion of the changes requested with respect to service contract amendment, correction, cancellation, and electronic transmission errors is included in § 530.10 above.

Subpart C—Publication of Essential Terms

Section 531.9 Publication

In NCBFAA's comments regarding the Commission's Retrospective Review Plan, NCBFAA requested that the Commission consider whether the essential term tariff publication requirements are necessary.

Subpart D—Exceptions and Implementation

Section 531.10 Excepted and Exempted Commodities

For consistency, the Commission is seeking comment on whether to treat VOCC service contracts and NVOCC service arrangements similarly with respect to exempted commodities. The Commission is requesting comment on whether it should add to this Part additional commodity exemptions approved by the Commission in § 530.13.

Section 531.11 Implementation

Proposed changes regarding the effective date of service contract amendments are under consideration by the Commission. If the Commission determines to make such changes to Part 530 (Service Contracts), it will consider whether to revise similar requirements for NSA amendments in Part 531 (NVOCC Service Arrangements), which would include § 531.11.

Regulatory Notices and Analysis

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires an agency to review regulations to assess their impact on small entities and prepare an initial regulatory flexibility analysis (IRFA), unless the agency head determines that the regulatory action will not have a significant impact on a substantial number of small entities. The

Commission does not believe the proposed changes in this ANPRM would have a significant impact on a substantial number of small entities, but invites comments to facilitate the assessment of the potential impact of a rule implementing any of the proposals in this ANPRM.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. There is no information collection requirement associated with this ANPRM.

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at: <http://www.reginfo.gov/public/do/eAgendaMain>.

By the Commission.

Karen V. Gregory,
Secretary.

[FR Doc. 2016-04264 Filed 2-26-16; 8:45 am]

BILLING CODE P

Notices

Federal Register

Vol. 81, No. 39

Monday, February 29, 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

Agricultural Marketing Service

[Doc. No. AMS-LPS-16-0007]

Notice of Request for Revision to and Extension of a Currently Approved Information Collection for Commodities Covered by the Livestock Mandatory Reporting Act of 1999

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget (OMB), for an extension of and revision to the currently approved information collection used to compile and generate cattle, swine, lamb, and boxed beef market news reports under the Livestock Mandatory Reporting Act of 1999 (1999 Act) (OMB 0581-0186). One new form is introduced in this collection.

DATES: Comments received by April 29, 2016 will be considered.

Additional Information or Comments: Interested persons are invited to submit comments concerning this information collection document. Comments should be submitted online at www.regulations.gov or sent to Julie Hartley, Assistant to the Director; Livestock, Poultry, and Grain Market News Division; Livestock, Poultry, and Seed Program; Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 2619-S, STOP 0252; Washington, DC 20250-0252; telephone (202) 720-7316; fax (202) 690-3732; or email Julie.Hartley@ams.usda.gov. All comments should reference the docket

number (AMS-LPS-16-0007), the date and page number of this issue of the **Federal Register**. All comments received will be posted without change, including any personal information provided, online at www.regulations.gov and will be made available for public inspection at the above physical address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Julie Hartley at the above physical address, by telephone (202) 720-7316, or by email at Julie.Hartley@ams.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Livestock Mandatory Reporting Act of 1999.

OMB Number: 0581-0186.

Expiration Date of Approval: 09-30-2016.

Type of Request: Request for extension of and revision to a currently approved information collection, the addition of one new form, and the revision of three forms.

Abstract: The 1999 Act was enacted into law on October 22, 1999, [Pub. L. 106-78; 113 Stat. 1188; 7 U.S.C. 1635-1636(i)] as an amendment to the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*). On April 2, 2001, the Agricultural Marketing Service (AMS); Livestock, Poultry, and Seed Program (LPS); Livestock, Poultry, and Grain Market News Division (LPGMN) implemented the Livestock Mandatory Reporting (LMR) program as required by the 1999 Act. The purpose was to establish a program of easily understood information regarding the marketing of cattle, swine, lambs, and livestock products; improve the price and supply reporting services of the United States Department of Agriculture (USDA); and encourage competition in the marketplace for livestock and livestock products. The LMR regulations (7 CFR part 59) set the requirements for certain packers or importers to submit purchase and sales information of livestock and livestock products to meet this purpose.

The statutory authority for the program lapsed on September 30, 2005. In October 2006, Congress passed the Livestock Mandatory Reporting Reauthorization Act (2006 Reauthorization Act) [Pub. L. 109-296]. The 2006 Reauthorization Act re-established the regulatory authority for the continued operation of LMR through September 30, 2010, and separated the reporting requirements for sows and

boars from barrows and gilts, among other changes. On July 15, 2008, the LMR final rule became effective (73 FR 28606, May 16, 2008).

On September 28, 2010, Congress passed the Mandatory Price Reporting Act of 2010 (2010 Reauthorization Act) [Pub. L. 111-239]. The 2010 Reauthorization Act reauthorized LMR for an additional 5 years through September 30, 2015, and required the addition of wholesale pork through negotiated rulemaking. On January 7, 2013, the LMR final rule became effective (77 FR 50561, August 22, 2012).

The Agriculture Reauthorizations Act of 2015 (2015 Reauthorization Act) [Pub. L. 114-54], enacted on September 30, 2015, reauthorized the LMR program for an additional 5 years through September 30, 2020, and amended certain lamb and swine reporting requirements. Furthermore, AMS received a separate request from the lamb industry to make additional amendments to the lamb reporting requirements. AMS is currently undergoing rulemaking actions to include the following amendments concerning the 2015 Reauthorization Act and lamb industry requests: (1) Add two definitions and amend three definitions affecting lamb packers, processors and importers, (2) add lamb pelts as a reporting requirement, (3) add one definition affecting swine packers and processors, and (4) add reporting requirements for swine purchase types and late afternoon swine purchases.

The reports generated by the 1999 Act are used by other Government agencies to evaluate market conditions and calculate price levels, including USDA's Economic Research Service and World Agricultural Outlook Board. Economists at most major agricultural colleges and universities use the reports to make short and long-term market projections. Also, the Government is a large purchaser of livestock related products. A system to monitor the collection and reporting of data therefore is needed.

In order to comply with the 1999 Act's goal of encouraging competition in the marketplace for livestock and livestock products, Section 251 of the Act directs USDA to make available to the public information and statistics obtained from, or submitted by, respondents covered by the Act in a manner that ensures that the

confidentiality of the reporting entities is preserved. AMS is in the best position to provide this service.

Estimate of Burden: Public reporting burden for this collection, including the additional form, and the three revised forms, is estimated to average 0.175 hours per response.

Respondents: Business or other for-profit entities, individuals or households, farms, and the Federal Government.

Estimated Number of Respondents: 560 respondents.

Estimated Number of Responses: 137,592 responses.

Estimated Number of Responses per Respondent: 246 responses.

Estimated Total Annual Burden on Respondents: 24,006 hours.

The following is a new form to be added to this information collection: Form LS-133, Lamb Pelts Weekly Report.

Title: Lamb Pelts Weekly Report (LS-133)

The new lamb reporting requirements under § 59.302 would require lamb packers to report weekly on the price, volume, and classification descriptors for all lamb pelts from lambs purchased on a negotiated purchase, formula marketing arrangement, or forward contract basis. Form LS-133 is completed by lamb packers. The data collected with this form is necessary to facilitate the reporting of information on lamb pelts, which provides lamb producers more accurate information on the total value of lambs marketed for slaughter.

Estimate of Burden: Public reporting burden for collection of information is estimated to be 0.25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live lamb purchases to the Secretary.

Estimated Number of Respondents: 6 plants.

Estimated Number of Responses: 312 responses.

Estimated Number of Responses per Respondent: 52.

Estimated Total Annual Burden on Respondents: 78 hours.

The following are three forms to be revised in this information collection: Form LS-123, Live Lamb Weekly Report; Form LS-118, Swine Prior Day Report; and Form LS-119, Swine Daily Report.

Title: Live Lamb Weekly Report (Form LS-123)

Form LS-123 is revised to include the volume and delivery period information for reporting lambs committed for

delivery. Form LS-123 is completed by lamb packers. The information collected on this revised form will provide industry supply and demand information to market participants; improving transparency in the marketplace and enabling them to be more informed on specific types of lamb market data not available through other USDA agencies.

Estimate of Burden: Public reporting burden for collection of information is estimated to be 0.25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live lamb purchases to the Secretary.

Estimated Number of Respondents: 7 plants.

Estimated Number of Responses: 364 responses.

Estimated Number of Responses per Respondent: 52.

Estimated Total Annual Burden on Respondents: 91 hours.

Title: Swine Prior Day Report (Form LS-118)

Form LS-118 is revised to include an additional purchase type for negotiated formula purchases of swine. Form LS-118 is completed by swine packers. The information collected on this revised form will provide market participants with more specific information about the various purchase methods used in the daily marketing of swine and with a better understanding of the marketplace concerning formulated prices and spot negotiated prices.

Estimate of Burden: Public reporting burden for collection of information is estimated to be 0.25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live swine purchases to the Secretary.

Estimated Number of Respondents: 47 plants.

Estimated Number of Responses: 12,220 responses.

Estimated Number of Responses per Respondent: 260.

Estimated Total Annual Burden on Respondents: 3,055 hours.

Title: Swine Daily Report (Form LS-119)

Form LS-119 is revised to include an additional purchase type for negotiated formula purchases of swine. Form LS-119 is completed by swine packers. The information collected on this revised form will provide market participants with more specific information about the various purchase methods used in the daily marketing of swine and a better understanding of the marketplace concerning formulated prices and spot negotiated prices.

Estimate of Burden: Public reporting burden for collection of information is estimated to be 0.17 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live swine purchases to the Secretary.

Estimated Number of Respondents: 39 plants.

Estimated Number of Responses: 20,280 responses.

Estimated Number of Responses per Respondent: 520.

Estimated Total Annual Burden on Respondents: 3,447 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this document will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: February 22, 2016.

Elanor Starmer,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2016-04045 Filed 2-26-16; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2016-0014]

Notice of Request for Extension of Approval of an Information Collection; Horse Protection Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the Horse Protection Program.

DATES: We will consider all comments that we receive on or before April 29, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/>

#!docketDetail;D=APHIS-2016-0014.

- Postal Mail/Commercial Delivery:

Send your comment to Docket No. APHIS-2016-0014, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/>

#!docketDetail;D=APHIS-2016-0014 or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 7797039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on regulations for the Horse Protection Program, contact Dr. Rachel Cezar, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737; (301) 851-3746. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

SUPPLEMENTARY INFORMATION:

Title: Horse Protection Regulations.

OMB Control Number: 0579-0056.

Type of Request: Extension of approval of an information collection.

Abstract: In 1970, Congress passed the Horse Protection Act (15 U.S.C. 1821 *et seq.*), referred to below as the Act, that prohibits the showing, sale, auction, exhibition, or transport of horses subjected to a cruel and inhumane practice referred to as "soring." This practice causes a horse to suffer pain in any of its limbs for the purpose of affecting the horse's performance in competition. All breeds of horses are covered under the Act, although enforcement emphasis has historically been placed on Tennessee Walking horses and other gaited breeds due to the prevalence of soring documented in that industry.

To carry out the Act, the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) administers and enforces regulations at 9 CFR part 11. The regulations prohibit devices and methods that might sore horses. They

also contain provisions under which show management may, to avoid liability for any sore horses that are shown, hire private individuals trained to conduct preshow inspections. These individuals are referred to as designated qualified persons (DQPs). DQPs must be trained and licensed under USDA-certified and monitored programs that are sponsored by horse industry organizations (HIOs).

Enforcement of the Act and its regulations relies on horse inspections conducted by APHIS veterinarians and by DQPs. To ensure that DQP enforcement and USDA-certified DQP programs are effective, APHIS requires DQPs, HIOs, and horse show management to maintain or submit to APHIS records related to these inspections, their DQP programs, and the horse events. No official government form is necessary for the reporting and recordkeeping required.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

- (1) Evaluate 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) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and

- (4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.6282 hours per response.

Respondents: DQPs, HIOs, horse industry organizations, and horse show management.

Estimated annual number of respondents: 1,510.

Estimated annual number of responses per respondent: 2.39.

Estimated annual number of responses: 3,610.

Estimated total annual burden on respondents: 2,268 hours. (Due to averaging, the total annual burden hours

may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 24th day of February 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016-04377 Filed 2-26-16; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Submission for OMB Review; Comment Request

February 23, 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 requested 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 30, 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), 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.

Food and Nutrition Service

Title: Quality Control Review Schedule.

OMB Control Number: 0584–0299.

Summary of Collection: States agencies are required to perform Quality Control (QC) review for the Supplemental Nutrition Assistance Program (SNAP). The FNS–380–1, Quality Control Review Schedule is for State use to collect both QC data and case characteristics for SNAP and to serve as the comprehensive data entry form for SNAP QC reviews. The legislative basis for the operation of the QC system is provided by Section 16 of the Food and Nutrition Act of 2008.

Need and Use of the Information: The Food and Nutrition Service (FNS) will collect information to monitor and reduce errors, develop policy strategies, and analyze household characteristic data. In addition, FNS will use the data to determine sanctions and bonus payments based on error rate performance, and to estimate the impact of some program changes to SNAP participation and costs by analyzing the available household characteristic data.

Description of Respondents: State, Local and Tribal Government.

Number of Respondents: 53.

Frequency of Responses: Recordkeeping; Reporting: Monthly; Weekly.

Estimated Total Burden Hours: 59,450.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–04270 Filed 2–26–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Submission for OMB Review; Comment Request

February 23, 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 requested 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 April 4, 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), *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.

Title: National School Lunch Program.

OMB Control Number: 0584–0006.

Summary of Collection: Section 10 of the Child Nutrition Act of 1966 (42 U.S.C. 1779) requires the Secretary of Agriculture to prescribe such regulations as deemed necessary to carry out this Act and the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1751 *et seq.*). Pursuant to that provision, the Secretary has issued 7 CFR part 210, which sets forth policies and procedures for the administration and operation of the NSLP. The Program is administered at the State and school food authority (SFA) levels and operations include the submission of applications and agreements, submission of the number of meals served and payment of claims, submission of data from required monitoring reviews conducted by the State agency, and maintenance of records. State and local operators of the NSLP are required to meet Federal reporting and accountability requirements and are also required to maintain records that include school food service accounts of revenues and expenditures.

Need and Use of the Information: This information is required to administer and operate this program in accordance with the NSLA. The

Program is administered at the State and school food authority (SFA) levels and States, SFAs, and schools under this Act are required to keep accounts and records as may be necessary to enable FNS to determine whether the program is in compliance with this Act and the regulations.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 121,210.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Monthly.

Total Burden Hours: 9,871,395.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–04269 Filed 2–26–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

El Dorado County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The El Dorado County Resource Advisory Committee (RAC) will meet in Placerville, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. RAC information can be found at the following Web site: www.fs.usda.gov/eldorado.

DATES: The meeting will be held at 6:00 p.m. on March 28, 2016.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the El Dorado Center of Folsom Lake College, Community Room, 6699 Campus Drive, Placerville, California.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Eldorado National

Forest (NF) Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Jennifer Chapman, RAC Coordinator, by phone at 530-621-5280 or via email at jenniferachapman@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 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Continue the review and discussion of project proposals; and
2. If time allows, the RAC will also prioritize and vote on its final recommendations for funding.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing at least 7 days in advance of the meeting date to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Jennifer Chapman, RAC Coordinator, Eldorado NF Supervisor's Office, 100 Forni Road, Placerville, California 95667; by email to jenniferachapman@fs.fed.us, or via facsimile to 530-621-5297.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: February 18, 2016.

Laurence Crabtree,
Forest Supervisor.

[FR Doc. 2016-04009 Filed 2-26-16; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Idaho Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Idaho Resource Advisory Committee (RAC) will meet in Emmett, Idaho. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: <http://www.idahorac.org/>.

DATES: The meeting will be held March 29, 2016, from 9:00 a.m. to 5:00 p.m. All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at Emmett Ranger District, 1805 Highway 16, Emmett, Idaho. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Emmett Ranger District.

FOR FURTHER INFORMATION CONTACT: Richard Newton, Designated Federal Officer (DFO), by phone at 208-365-7001 or via email at renewton@fs.jed.us.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Outline meeting objectives;
2. Review the Agenda;
3. Allow project presentations if requested and needed for proposal clarification;
4. Review and continue discussion of project proposals (if needed); and
5. Summarize RAC recommendations.

The meeting is open to the public. The agenda will include time for presentations to clarify project proposals; the RAC will notify proponents of the need for clarification. Individuals requested to present clarifying material should contact the DFO by March 25, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the DFO before or after the meeting. Written comments and requests for time to make oral comments

must be sent to Richard Newton, District Ranger/DFO, Emmett Ranger District, 1805 Highway 16, Room 5, Emmett, ID 83617; by email to renewton@fs.fed.us, or via facsimile to 208-365-703 7.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: February 16, 2016.

Cecilia R. Seesholtz,
Forest Supervisor.

[FR Doc. 2016-03564 Filed 2-26-16; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee (LTFAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee (Committee) will meet in South Lake Tahoe, California. The Committee is established consistent with the Federal Advisory Committee Act of 1972. Additional information concerning the Committee, including meeting summary/minutes, can be found by visiting the Committee's Web site at: <http://www.fs.usda.gov/goto/lbmu/LTFAC>. The summary/minutes of the meetings will be posted within 21 days of the meeting.

DATES: There will be a meeting held on March 10, 2016, from 2:00 to 4:00 p.m.

All meetings are subject to cancellation. For updated status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Forest Service, Lake Tahoe Basin Management Unit, Emerald Bay Conference Room, 35 College Drive, South Lake Tahoe, California. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses, when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Forest Service, 35 College Drive, South Lake Tahoe, California 96150. Please call

ahead at 530-543-2774 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT:

Karen Kuentz, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, California 96150, or by phone at 530-543-2774, or by email at kkuentz@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 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to provide:

- (1) Review of Committee Charter
- (2) Election of Committee Chair
- (3) Current status of the Lake Tahoe Restoration Act and Southern Nevada Public Land Management Act
- (4) Review of Southern Nevada Public Land Management Act Secondary Project List (if approved by the Secretary of Interior)
- (5) Review of SNPLMA 2013 Report
- (6) Review of Environmental Improvement Plan
- (7) Committee's future implementation strategy discussion
- (8) Develop 2016 schedule of meetings

The meeting is open to the public. Anyone who would like to bring related matters to the attention of the Committee may file written statements with the Committee staff before the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by March 4, 2016, to be scheduled on the agenda for the March 11 meeting. Written comments and time requests for oral comments must be sent to Karen Kuentz, Forest Service, Lake Tahoe Basin Management Unit, 35 College Drive, South Lake Tahoe, California 96150, or by email at kkuentz@fs.fed.us, or via facsimile to 530-543-2693.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: February 11, 2016.

Jeff Marsolais,

Forest Supervisor.

[FR Doc. 2016-03842 Filed 2-26-16; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Idaho Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Southwest Idaho Resource Advisory Committee (RAC) will meet in Emmett, Idaho. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: <http://www.idahorac.org/>.

DATES: The meeting will be held March 22, 2016, from 9:00 a.m. to 5:00 p.m. All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Emmett Ranger District, 1805 Highway 16, Emmett, Idaho. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Emmett Ranger District.

FOR FURTHER INFORMATION CONTACT: Richard Newton, Designated Federal Officer (DFO), by phone at 208-365-7001 or via email at renewton@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 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Outline meeting objectives,
2. Review the Agenda;
3. Review and discuss project proposals for funding; and

4. Summarize RAC recommendations.

The meeting is open to the public. No public statements or presentations will be planned for at this meeting unless the RAC determines it will hear comments to clarify proposals. Project presentations, if needed by the committee, will be conducted during the second meeting on March 29, 2016. Anyone who would like to bring related matters to the attention of the committee may file written statements with the DFO before or after the meeting. Written comments and requests for time to make oral comments must be sent to Richard Newton, District Ranger/DFO, Emmett Ranger District, 1805 Highway 16, Room 5, Emmett, Idaho 83617; by email to renewton@fs.fed.us, or via facsimile to 208-365-7037 by March 4, 2016.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: February 16, 2016.

Cecila R. Seesholtz,

Forest Supervisor.

[FR Doc. 2016-03563 Filed 2-26-16; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

Forest Service

El Dorado County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The El Dorado County Resource Advisory Committee (RAC) will meet in Placerville, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110-343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. RAC information can be found at the following Web site: www.fs.usda.gov/eldorado.

DATES: The meeting will be held at 6:00 p.m. on March 14, 2016.

All RAC meetings are subject to cancellation. For status of meeting prior

to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the El Dorado Center of Folsom Lake College, Community Room, 6699 Campus Drive, Placerville, California.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Eldorado National Forest (NF) Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Jennifer Chapman, RAC Coordinator, by phone at 530-621-5280 or via email at jenniferachapman@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 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Continue the review and discussion of project proposals; and
2. If time allows, the RAC will also prioritize and vote on its final recommendations for funding.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing at least 7 days in advance of the meeting date to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Jennifer Chapman, RAC Coordinator, Eldorado NF Supervisor's Office, 100 Forni Road, Placerville, California 95667; by email to jenniferachapman@fs.fed.us, or via facsimile to 530-621-5297.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For

access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: February 18 2016.

Laurence Crabtree,
Forest Supervisor.

[FR Doc. 2016-04010 Filed 2-26-16; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Notice of Intent To Revise a Currently Approved Information Collection

AGENCY: National Institute of Food and Agriculture.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44977, August 29, 1995), this notice announces the National Institute of Food and Agriculture's (NIFA) intention to revise a currently approved information collection entitled, "Research, Education, and Extension project online reporting tool (REEport)."

DATES: Written comments on this notice must be received by May 4, 2016, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments may be submitted by any of the following methods: Email: rmartin@nifa.usda.gov; Fax: 202-720-0857; Mail: Office of Information Technology (OIT), NIFA, USDA, STOP 2216, 1400 Independence Avenue SW., Washington, DC 20250-2216.

FOR FURTHER INFORMATION CONTACT: Robert Martin, Records Officer; email: rmartin@nifa.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Reporting Requirements for Research, Education, and Extension project online reporting tool (REEport).

OMB Number: 0524-0048.

Expiration Date of Current Approval: January 30, 2018.

Type of Request: Revision of a currently approved information collection.

Abstract: The United States Department of Agriculture (USDA), NIFA administers several competitive, peer-reviewed research, education, and extension programs, under which awards of a high-priority are made. These programs are authorized pursuant to the authorities contained in the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101 *et seq.*); the Smith-Lever Act (7 U.S.C. 341 *et seq.*); and other legislative authorities. NIFA also administers several capacity funded research programs. The programs are authorized pursuant to the authorities contained in the McIntire-Stennis Cooperative Forestry Research Act of October 10, 1962 (16 U.S.C. 582a-1-582a-7); the Hatch Act of 1887, as amended (7 U.S.C. 4361a-361i); Section 1445 of Public Law 95-113, the Food and Agriculture Act of 1977, as amended (7 U.S.C. 3222); and Section 1433 of Subtitle E (Sections 1429-1439), Title XIV of Public Law 95-113, as amended (7 U.S.C. 3191-3201). Each capacity funded program is subject to a set of administrative requirements. The purpose of this revision is to collect new pieces of information from grantees funded by NIFA which are needed to complete reports by NIFA and its stakeholders. NIFA proposes to require reporting on the following data in addition to the data already approved in the Research Performance Progress Report (RPPR).

Add to Participants' Page

Of the faculty and non-student FTEs in the table below how many FTEs are new staff?

Role	Faculty and non-students
Scientist	X.X
Professional	X.X
Technical	X.X
Administrative	X.X
Other	X.X
Computed Total	(X.X)

Volunteer Number and Hours

Indicate the number of volunteers and number of hours volunteered for persons who worked in this grant project/program.

Type of volunteer	Number	Number of hours
Adults	XXXXXX	XXXXX.X
Youth	XXXXXX	XXXXX.X
Computed Total	(XXXXXX)	(XXXXX.X)

Add to Target Audience Page

Provide information on the type and number of participants who directly benefited from this grant program.

Participant type	Number
Youth	XXXXXXXX
Adults	XXXXXXXX
Farmers	XXXXXXXX
Faculty	XXXXXXXX

Provide the following demographic information for participants who benefited directly from your grant project/program.

Provide the gender of participants:

Gender	Number
Male
Female
Do not Wish to Provide (or Unknown)

Ethnicity of participants:

Ethnicity	Number
Hispanic or Latino
Not-Hispanic or Not-Latino
Do not Wish to Provide (or Unknown)

Number of participants of the following race categories:

Race	Adult	Youth
American Indian or Alaska Native	XXXXXXXX	XXXXXXXX
Asian	XXXXXXXX	XXXXXXXX
Black or African American	XXXXXXXX	XXXXXXXX
Native Hawaiian or Other Pacific Islander	XXXXXXXX	XXXXXXXX
White	XXXXXXXX	XXXXXXXX
Do not Wish to Provide (or Unknown)	XXXXXXXX	XXXXXXXX

Number of participants with disabilities:

Disability status	Number
Yes	XXXXXXXX
No	XXXXXXXX
Do not Wish to Provide (or Unknown)	XXXXXXXX

Type of activity	Number
Symposia, Workshops, and Trainings	XXXXXXXX

- Decision Support Tools
- Business Start-ups

Please indicate the number of Web site Hits: XXXXXXXX.

Add to Activities Page

Indicate the type and number of activities carried out as part of this grant project/program.

Type of activity	Number
Experiments	XXXXXXXX
Teaching	XXXXXXXX
Mentoring	XXXXXXXX
Surveys	XXXXXXXX
Domestic Conferences	XXXXXXXX
International Conferences ...	XXXXXXXX
Demonstrations	XXXXXXXX

Add to Products Page

Addition to Patent(s) and Plant Variety Protection(s) (PVP) Product Line

Drop down list indicating the following:

- Invention.
- License.
- Patent Awarded.
- Patent Application.
- PVP Awarded.
- PVP Application.

Date Issued (For Patent, XX/XX/XXXX License, or PVP):

Add to Other Products Page

Add the following to the drop down list

Add to Outcomes Page

Enter number of dollars generated for products sold as a result of this grant annually, and one-time sale of inventions, technology, technique, etc.

Type	Dollars
Annual for Products Sold	XXXXXXXXXXXX
One-time sale of Inventions, Etc	XXXXXXXXXXXX

Enter the number of domestic and international students engaged in experiential learning (includes internships).

Type of student	Number domestic	Number international
Secondary School	XXXXXXXX	XXXXXXXX
Undergraduate	XXXXXXXX	XXXXXXXX
Graduate	XXXXXXXX	XXXXXXXX
Post-Doctoral	XXXXXXXX	XXXXXXXX
Computed Total	(XXXXXXXX)	(XXXXXXXX)

Enter the number of domestic and international students receiving direct

benefits (fellowships, scholarships, assistantships).

Type of student	Number domestic	Number international
Secondary school	XXXXXXXX	XXXXXXXX
Undergraduate	XXXXXXXX	XXXXXXXX
Graduate	XXXXXXXX	XXXXXXXX
Post-Doctoral	XXXXXXXX	XXXXXXXX

Type of student	Number domestic	Number international
Computed Total	(XXXXXXX)	(XXXXXXX)

Number of participants who report new leadership role in the community: XXXXXXXX.

Childhood Obesity Prevention Challenge Area

Enter the number of people who have adopted effective behavioral, social, and environmental interventions to prevent childhood obesity: XXXXXXXX.

Enter the number of children who increased intake of fruit and vegetables: XXXXXXXX.

Enter the number of dollars saved in food costs by participants: \$XXXXXXXXXX.

Climate Variability and Change Challenge Area

Enter the number of participants who have adopted mitigation strategies for agro-ecosystems and natural resource systems: XXXXXXXXXX.

Enter the number of prototypes that demonstrate new or improved processes, systems, models, or technologies to reduce agriculture's environmental footprint: XXXXXXXXXX.

Food Safety Challenge Area

Enter the number of participants adopting safer food handling practices at home: XXXXXXXXXX.

Enter the number of new food safety management practices developed: XXXXXXXXXX.

Enter the number of prototypes that demonstrate new or improved processes, systems, models, or technologies to reduce the presence of contaminants in our food systems: XXXXXXXXXX.

Food Security Challenge Area

Enter the number of technologies and practices adopted to enhance food security: XXXXXXXXXX.

Enter the number of traits developed with the capability to predict phenotype from genotype (sequence) on a large scale: XXXXXXXXXX.

Enter the number of new high density SNP or genome sequences to allow capture of genetic diversity and to accurately determine the genotype-phenotype relationships to improve production: XXXXXXXXXX.

Enter the number of germplasm with new traits, breeding lines/varieties released for crops, fruits, and vegetable production: XXXXXXXXXX.

Sustainable Bioenergy Challenge Area

Enter the number of sustainable strategies adopted for regional systems that materially deliver liquid transportation biofuels: XXXXXXXX.

Enter the number of prototypes that demonstrate new or improved processes, systems, models, or technologies for bioenergy, bioprocessing, or waste utilization technologies to help the U.S. move toward energy independence: XXXXXXXX.

Water Challenge Area

Enter the number of management practices, technologies, and tools adopted by farmers, ranchers, forest owners and managers: XXXXXXXX.

Enter the number of prototypes that demonstrate new or improved processes, systems, models, or technologies to reduce the consumption of water in agriculture or promote the conservation of water: XXXXXXXX.

Consumer and Industry Outreach, Policy, Markets and Trade

Enter the number of research findings that demonstrate a benefit of combine bio-physical and social science research: XXXXXXXX.

Enter the number of strategies and models of coexistence of multiple crop technologies throughout the supply chain: XXXXXXXX.

Partnerships Developed

Enter the number of partnerships and new partnerships attributed to the grant project/program:

Type	Number
New Partnerships	XXXXXX
Total Partnerships	XXXXXX

Estimate of the Burden: The total reporting and record keeping requirements for the submission of the new participation, products and outcome data is estimated to average 1 additional hour per response. This estimate is based on a percentage 40 percent of the burden for a full Progress Report as previously approved by the Office of Management and Budget.

Estimated Number of Responses: 8,700.

Estimated Burden per Response: 1 hours.

Estimated Total Annual Burden on Respondents: 8,700 hours.

Frequency of Responses: Annually.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will 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 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the address stated in the preamble.

All responses to this notice will be summarized and included in the request for OMB approval. All comments also will become a matter of public record.

Done at Washington, DC, this 29 day of January 2016.

Catherine E. Woteki,

Under Secretary, Research, Education, and Economics.

[FR Doc. 2016-04188 Filed 2-26-16; 8:45 am]

BILLING CODE 3410-22-P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of National Advisory Council on Innovation and Entrepreneurship Meeting

AGENCY: Economic Development Administration.

ACTION: Notice of an open meeting. (Amended).

SUMMARY: The National Advisory Council on Innovation and Entrepreneurship (NACIE) will hold a public meeting on Thursday, March 3, 2016, 2:00—2:45 p.m. Central Standard Time (CST) and Friday, March 4, 2016, 8:45 a.m.—12:00 p.m. CST. During this time, members will continue to work on various Council initiatives which include: Innovation, entrepreneurship and workforce talent.

DATES:

Thursday, March 3, 2016, Time: 2:00 p.m.—2:45 p.m. CST.

Friday, March 4, 2016, Time: 8:45 a.m.—12:00 p.m. CST.

ADDRESSES: Nashville Entrepreneur Center, 41 Peabody St, Nashville, TN 37210.

Teleconference

March 3–4, 2016
Dial-In: 1–800–593–8978
Passcode: 5807298.

SUPPLEMENTARY INFORMATION: The Council was chartered on November 10, 2009 to advise the Secretary of Commerce on related to innovation and entrepreneurship in the United States. NACIE's overarching focus is recommending transformational policies to the Secretary that will help U.S. communities, businesses, and the workforce become more globally competitive. The Council operates as an independent entity within the Office of Innovation and Entrepreneurship (OIE), which is housed within the U.S. Commerce Department's Economic Development Administration. NACIE members are a diverse and dynamic group of successful entrepreneurs, innovators, and investors, as well as leaders from nonprofit organizations and academia.

The purpose of this meeting is to discuss the Council's planned work initiatives in three focus areas: Workforce/talent, entrepreneurship, and innovation. The final agenda will be posted on the NACIE Web site at <http://www.eda.gov/oie/nacie/> prior to the meeting. Any member of the public may submit pertinent questions and comments concerning the Council's affairs at any time before or after the meeting. Comments may be submitted to the Office of Innovation and Entrepreneurship at the contact information below. Those unable to attend the meetings in person but wishing to listen to the proceedings can do so through a conference call line 1–800–593–8978, passcode: 5807298. Copies of the meeting minutes will be available by request within 90 days of the meeting date.

FOR FURTHER INFORMATION CONTACT: Julie Lenzer, Office of Innovation and Entrepreneurship, Room 78018, 1401 Constitution Avenue NW., Washington, DC 20230; email: NACIE@doc.gov; telephone: 202–482–8001; fax: 202–273–4781. Please reference "NACIE February 18th Meeting" in the subject line of your correspondence.

Dated: February 23, 2016.

Julie Lenzer,

Director, Office of Innovation and Entrepreneurship.

[FR Doc. 2016–04302 Filed 2–26–16; 8:45 am]

BILLING CODE 3510-WH-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Offsets in Military Exports

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 29, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at Jjessup@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Mark Crace, BIS ICB Liaison, (202) 482–8093, mark.crace@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is required by the Defense Production Act (DPA). The DPA requires U.S. firms to furnish information to the Department of Commerce regarding offset agreements exceeding \$5,000,000 in value associated with sales of weapon systems or defense-related items to foreign countries or foreign firms. Offsets are industrial or commercial compensation practices required as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services as defined by the Arms Export Control Act and the International Traffic in Arms Regulations. Such offsets are required by most major trading partners when purchasing U.S. military equipment or defense related items.

II. Method of Collection

Submitted electronically or on paper.

III. Data

OMB Control Number: 0694–0084.
Form Number(s): N/A.

Type of Review: Regular submission extension.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 30.

Estimated Time per Response: 12 hours.

Estimated Total Annual Burden Hours: 360 hours.

Estimated Total Annual Cost to Public: \$0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 23, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–04258 Filed 2–26–16; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Title of Collection License Exemptions and Exclusions

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 29, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at Jjessup@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Mark Crace, BIS ICB Liaison, (202) 482-8093, mark.crace@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Over the years, BIS has worked with other Government agencies and the affected public to identify areas where export licensing requirements may be relaxed without jeopardizing U.S. national security or foreign policy. Many of these relaxations have taken the form of licensing exceptions and exclusions. Some of these license exceptions and exclusions have a reporting or recordkeeping requirement to enable the Government to continue to monitor exports of these items. Exporters may choose to utilize the license exception and accept the reporting or recordkeeping burden in lieu of submitting a license application. These exceptions and exclusions have resulted in a large reduction of licensing burden in OMB Control No. 0694-0088 and allow exporters to ship items quickly, without having to wait for license approval. This has also created ten small collections involving these license exceptions and exclusions.

These collections are designed to reduce export licensing burden. It is up to the individual company to decide whether it is most advantageous to continue to submit license applications or to comply with the reporting or recordkeeping requirements and take advantage of the licensing exception or exclusion.

II. Method of Collection

Electronic.

III. Data

OMB Control Number: 0694-0137.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Non-profit institutions; State, local, or tribal government; business or other for-profit organizations.

Estimated Number of Respondents: 19,738.

Estimated Time per Response: 1.52 hours.

Estimated Total Annual Burden Hours: 29,998.

Estimated Total Annual Cost to Public: \$0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 23, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016-04257 Filed 2-26-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Title of Collection Simple Network Application Process and Multipurpose Application Form

AGENCY: Bureau of Industry and Security

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 29, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at Jjessup@doc.gov).

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument and instructions should be directed to Mark Crace, BIS ICB Liaison, (202) 482-8093, mark.crace@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Over the years, BIS has worked with other Government agencies and the affected public to identify areas where export licensing requirements may be relaxed without jeopardizing U.S. national security or foreign policy. Many of these relaxations have taken the form of licensing exceptions and exclusions. Some of these license exceptions and exclusions have a reporting or recordkeeping requirement to enable the Government to continue to monitor exports of these items. Exporters may choose to utilize the license exception and accept the reporting or recordkeeping burden in lieu of submitting a license application. These exceptions and exclusions have resulted in a large reduction of licensing burden in OMB Control No. 0694-0088 and allow exporters to ship items quickly, without having to wait for license approval. This has also created ten small collections involving these license exceptions and exclusions.

These collections are designed to reduce export licensing burden. It is up to the individual company to decide whether it is most advantageous to continue to submit license applications or to comply with the reporting or recordkeeping requirements and take advantage of the licensing exception or exclusion.

II. Method of Collection

Electronic.

III. Data

OMB Control Number: 0694-0088.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Non-profit institutions; State, local, or tribal government; business or other for-profit organizations.

Estimated Number of Respondents: 64,612.

Estimated Time per Response: 0.49 hours.

Estimated Total Annual Burden Hours: 31,833.

Estimated Total Annual Cost to Public: \$0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 23, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016-04259 Filed 2-26-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Herring Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, March 16, 2016, at 9 a.m.

ADDRESSES: The meeting will be held at the DoubleTree by Hilton, 50 Ferncroft Road, Danvers, MA 01950; phone: (978) 777-2500; fax: (978) 750-7911.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Committee plans to review/discuss herring coverage target alternatives in the Industry Funded Monitoring (IFM) Amendment. The committee will also review/discuss economic and biological impacts of herring coverage target alternatives. They will develop recommendations for preliminary preferred alternatives for the herring fishery in the IFM Amendment. They will receive a brief update on Amendment 8 to the Herring FMP. The Committee will also have a closed door session to review Advisory Panel applications. Other business will be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date.

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

Dated: February 24, 2016.

Jeffrey N. Lonergan,

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

[FR Doc. 2016-04317 Filed 2-26-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Ecosystem and Ocean Planning Committee will hold a public meeting.

DATES: The meeting will be held on Friday, March 18, 2016, from 9 a.m. to 4 p.m. For agenda details, see SUPPLEMENTARY INFORMATION.

ADDRESSES: The meeting will be held at the Double Tree by Hilton Baltimore-BWI Airport, 890 Elkridge Landing Road, Linthicum, Maryland, 21090; telephone: (410) 859-8400.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674-2331; Web site: www.mafmc.org.

FOR FURTHER INFORMATION CONTACT:

Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526-5255.

SUPPLEMENTARY INFORMATION: The MAFMC's Ecosystem and Ocean Planning Committee will meet to discuss the Council's Unmanaged Forage Omnibus Amendment. This amendment will prohibit the development of new, or expansion of existing, directed fisheries on unmanaged forage species in Mid-Atlantic Federal waters until adequate scientific information is available to promote ecosystem sustainability. The Committee will develop recommendations for the full Council to consider at their April 2016 meeting. The Committee will consider advice from the Unmanaged Forage Fishery Management Action Team and recommendations from the Ecosystem and Ocean Planning Advisory Panel before developing recommendations related to management alternatives and other aspects of the amendment. A detailed agenda and any relevant background documents will be posted to the Council's Web site prior to the meeting: www.mamfc.org.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526-5251, at least 5 days prior to the meeting date.

Dated: February 24, 2016.

Jeffrey N. Lonergan,

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

[FR Doc. 2016-04327 Filed 2-26-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting**

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Ecosystem and Ocean Planning Advisory Panel (AP) will hold a public meeting.

DATES: The meeting will be held on Thursday, March 17, 2016, from 9 a.m. to 3 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held at the Double Tree by Hilton Baltimore-BWI Airport, 890 Elkridge Landing Road, Linthicum, Maryland, 21090; telephone: (410) 859-8400.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674-2331 or on their Web site at www.mafmc.org.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526-5255.

SUPPLEMENTARY INFORMATION: The MAFMC's Ecosystem and Ocean Planning Advisory Panel (AP) will meet to provide input on the development of the Council's Unmanaged Forage Omnibus Amendment. This amendment will prohibit the development of new, or expansion of existing, directed fisheries on unmanaged forage species in Mid-Atlantic Federal waters until adequate scientific information is available to promote ecosystem sustainability. The AP meeting will include a discussion of development of the amendment to date. The AP will provide input on management alternatives and other aspects of the amendment. A more detailed agenda and any relevant background documents will be posted to the Council's Web site prior to the meeting: www.mafmc.org.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526-5251, at least 5 days prior to the meeting date.

Dated: February 24, 2016.

Jeffrey N. Lonergan,

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

[FR Doc. 2016-04326 Filed 2-26-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****Gulf of Mexico Fishery Management Council; Public Meeting**

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a meeting of its Law Enforcement Technical Committee (LETC), formerly known as Law Enforcement Advisory Panel (LEAP), in conjunction with the Gulf States Marine Fisheries Commission's Law Enforcement Committee (LEC).

DATES: The meeting will convene on Wednesday, March 16, 2016; starting 8:30 a.m. and will adjourn at 5 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn San Antonio Riverwalk hotel, located at 217 North St. Mary's Street, San Antonio, TX 78205; telephone: (210) 224-2500.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348-1630.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; steven.atran@gulfcouncil.org, telephone: (813) 348-1630, and Mr. Steve Vanderkooy, Inter-jurisdictional Fisheries Coordinator, Gulf States Marine Fisheries Commission; svanderkooy@gsmfc.org, telephone: (228) 875-5912.

SUPPLEMENTARY INFORMATION: The items of discussion on the agenda are as follows:

Joint Gulf Council's Law Enforcement Technical Committee and Gulf States Marine Fisheries Commission's Law Enforcement Committee Meeting Agenda, Wednesday, March 16, 2016, 8:30 a.m. until 5 p.m.

1. Adoption of Agenda
2. Approval of Minutes Actions
 - a. November 4, 2015 Joint ASMFC LEC/GSMFC LEC meeting
 - b. December 4, 2015 LETC webinar

3. Enforcement Implications of Louisiana, Mississippi, Alabama 9-mile Reef Fish Boundary
4. Enforcement Implications of Offshore Aquaculture FMP
5. Protocol for Background Checks of AP Candidates for Violations in State Waters
6. Draft Reef Fish Amendment 36A—Red Snapper IFQ Modifications
7. Draft Reef Fish Amendment 43—Hogfish Stock Definition, Status Determination Criteria, and Annual Catch Limit
8. Framework Action Addressing Circle Hook Requirement When Fishing for Yellowtail Snapper
9. Draft Shrimp Amendment 17B—Optimum Yield, Number of Permits, Permit Pool, and Transit Provisions
10. Review of Coral Habitats of Particular Concern Proposals
11. Draft Coastal Migratory Pelagics Amendment 26—Reallocation of King Mackerel
12. Selection of Candidates for Officer of the Year Award
13. Interjurisdictional Program Activity
 - a. Tripletail
 - b. Atlantic Croaker
14. Schedule of GSMFC Publications
 - a. Officer's Pocket Guide
 - b. Law Summary
 - c. Licenses and Fees
 - d. Strategic Plan 2017-20
 - e. Operations Plan 2017-20
15. State Report Highlights
 - a. Florida
 - b. Alabama
 - c. Mississippi
 - d. Louisiana
 - e. Texas
 - f. U.S. Coast Guard
 - g. NOAA Office of Law Enforcement
 - h. U.S. Fish and Wildlife Service
16. Other Business
—Meeting Adjourns—

The Agenda is subject to change. The latest version of the agenda along with other meeting materials will be posted on the Council's file server, which can be accessed by going to the Council Web site at <http://www.gulfcouncil.org> and clicking on File Server under Quick Links. For meeting materials see folder "LEAP Meeting—2016-03" on Gulf Council file server. The username and password are both "gulfguest".

The Law Enforcement Technical Committee consists of principal law enforcement officers in each of the Gulf States, as well as the NOAA Law Enforcement, U.S. Fish and Wildlife Service, the U.S. Coast Guard, and the NOAA General Counsel for Law Enforcement.

Although other non-emergency issues not on the agenda may come before this

group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting.

Actions will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Gulf Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Dated: February 24, 2016.

Jeffrey N. Lonergan,

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

[FR Doc. 2016-04316 Filed 2-26-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE466

International Affairs; U.S. Fishing Opportunities in the Northwest Atlantic Fisheries Organization Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of U.S. fishing opportunities.

SUMMARY: We are announcing 2016 fishing opportunities in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area. This action is necessary to make fishing privileges available on an equitable basis. The intended effect of this notice is to alert U.S. fishing vessels of the NAFO fishing opportunities, to relay the available quotas available to U.S. participants, and to outline the process and requirements for vessels to apply to participate in the 2016 NAFO fishery.

DATES: Effective January 1, 2016, through December 31, 2016. Expressions of interest regarding fishing opportunities in NAFO will be accepted through March 15, 2016.

ADDRESSES: Expressions of interest regarding U.S. fishing opportunities in NAFO should be made in writing to John K. Bullard, U.S. Commissioner to NAFO, NMFS Greater Atlantic Regional Fisheries Office at 55 Great Republic Drive, Gloucester, MA 01930 (phone: 978-281-9315, email: John.Bullard@noaa.gov).

Information relating to chartering vessels of another NAFO Contracting Party, transferring NAFO fishing opportunities to or from another NAFO Contracting Party, or U.S. participation in NAFO is available from Patrick E. Moran in the NMFS Office of International Affairs and Seafood Inspection at 1315 East-West Highway, Silver Spring, MD 20910 (phone: 301-427-8370, fax: 301-713-2313, email: Pat.Moran@noaa.gov).

Additional information about NAFO fishing opportunities, NAFO

Conservation and Enforcement Measures (CEM), and the High Seas Fishing Compliance Act (HSFCA) Permit required for NAFO participation is available from Michael Ruccio, in the NMFS Greater Atlantic Regional Fisheries Office at 55 Great Republic Drive, Gloucester, MA 01930 (phone: 978-281-9104, fax: 978-281-9135, email: Michael.Ruccio@noaa.gov) and online from NAFO at <http://www.nafo.int>.

FOR FURTHER INFORMATION CONTACT: Michael Ruccio, (978) 281-9104.

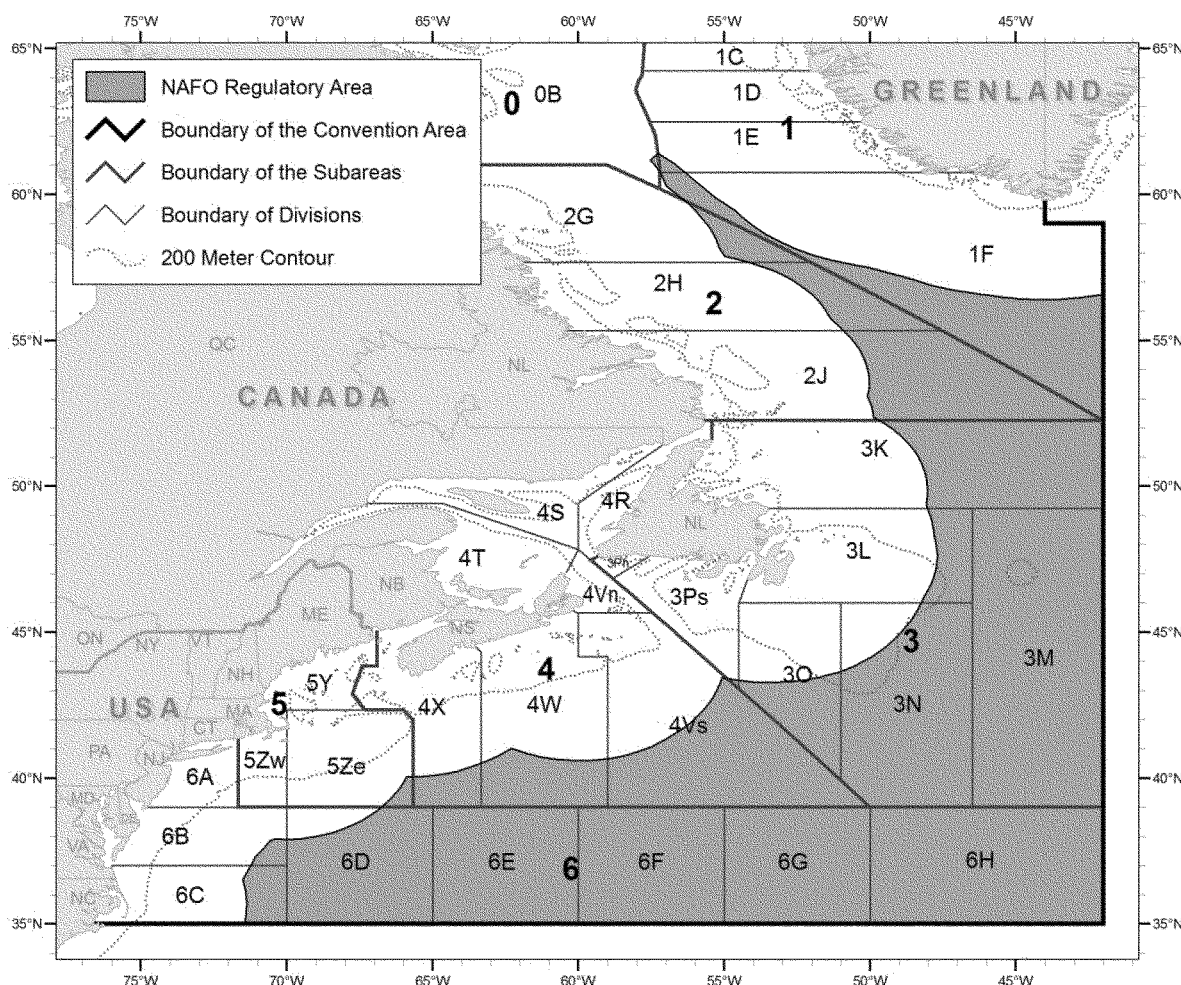
SUPPLEMENTARY INFORMATION:

General NAFO Background

The United States is a Contracting Party to the Northwest Atlantic Fisheries Organization or NAFO. NAFO is an intergovernmental fisheries science and management body whose convention on Northwest Atlantic Fisheries applies to most fishery resources in international waters of the Northwest Atlantic except salmon, tunas/marlins, whales, and sedentary species such as shellfish. Currently, NAFO has 12 Members from North America, Europe, Asia and the Caribbean. In addition to the United States, the remaining three coastal states bordering the Convention Area are members: Canada, France (in respect of St. Pierre et Miquelon), and Denmark (in respect of Faroe Islands and Greenland). NAFO's Fisheries Commission is responsible for the management and conservation of the fishery resources of the Regulatory Area (waters outside the Exclusive Economic Zones (EEZs). Figure 1 shows the NAFO Regulatory Area.

BILLING CODE 3510-22-C

Figure 1. NAFO Convention Area including Statistical Subareas, Divisions, and Subdivisions.



BILLING CODE 3510-22-C

As a Contracting Party within NAFO, the United States may be allocated specific catch quotas or effort allocations for certain species in specific areas within the NAFO Regulatory Area and may participate in fisheries for other species for which we have not received a specific quota. Stocks for which the United States does not receive an allocation, known as the “Others” allocation under the Convention, are shared access between all NAFO Contracting Parties.

Additional information on NAFO can be found online at: <http://www.nafo.int/about/frames/about.html>. The 2016 NAFO Conservation and Enforcement Measures (CEM) that outline the fishery regulations, Total Allowable Catches (TACs or “quotas”) and other information about the fishery program are available online at: <http://www.nafo.int/fisheries/frames/fishery.html>.

www.nafo.int/fisheries/frames/fishery.html.

This notice is intended to announce the specific 2016 stocks for which the United States has an allocation under NAFO, describe the fishing opportunities under the ‘other’ NAFO allocation available for U.S. vessels, and to outline the application process and other requirements for U.S. vessels that wish to participate in the 2016 NAFO fisheries.

What NAFO fishing opportunities are available to U.S. fishing vessels?

The principal species managed by NAFO are Atlantic cod, yellowtail and witch flounders, Acadian redfish, American plaice, Greenland halibut, white hake, capelin, shrimp, skates, and *Illex* squid. NAFO maintains conservation measures for fisheries on these species occurring in its Regulatory

Area, including TACs for these managed species that are allocated among NAFO Contracting Parties. The United States received quota allocations at the 2015 NAFO Annual Meeting for two stocks to be fished during 2016. The species, location by NAFO subarea, and allocation (in metric tons (mt)) of these 2016 U.S. fishing opportunities are as follows:

Redfish	Division 3M	69 mt.
Squid (<i>Illex</i>)	Subareas 3 & 4	453 mt.

In addition, the United States has been transferred 1,000 mt of NAFO Division 3LNO yellowtail flounder from Canada’s 2016 quota allocation consistent with a bilateral arrangement between the two countries.

The TACs which may be available to U.S. vessels for stocks where the United States has not been allocated quota (*i.e.*,

the “Others” allocation in Annex I.A of the CEM) are as follows:

TABLE 1—2016 NAFO “OTHERS” ALLOCATION TACS

Species	NAFO Division	TAC (mt)
Cod	3L	56
Redfish	3LN	63
	3M	124
	3O	100
Yellowtail Flounder.	3LNO	85
Witch Flounder.	3NO	22
White Hake	3NO	59
Skates	3LNO	258

TABLE 1—2016 NAFO “OTHERS” ALLOCATION TACS—Continued

Species	NAFO Division	TAC (mt)
<i>Illex squid</i>	Squid 3, 4 (Sub-Areas 3+4).	794.

Note that the United States shares these allocations with other NAFO Contracting Parties, and access is on a first-come, first-served basis. Directed fishing is stopped by NAFO when the “Others” TAC for a particular stock has been fully harvested.

Additional directed quota for these and other stocks managed within the

NAFO Regulatory Area could be made available to U.S. vessels through industry-initiated chartering arrangements or transfers of quota from other NAFO Contracting Parties.

U.S. vessels participating in NAFO may also retain bycatch of NAFO managed species to the following maximum amounts as outlined in Article 6 of the 2016 CEM. The percentage, by weight, is calculated as a percent for each stock of the total catch of species listed in Annex I.A (*i.e.*, the NAFO managed stocks previously listed) retained onboard from the applicable division at the time of inspection, on the basis of logbook information:

Cod	Division 3M	1,250 kg or 5 percent, whichever is more.
Witch Flounder	Division 3M	1,250 kg or 5 percent, whichever is more.
Redfish	Division 3LN	1,250 kg or 5 percent, whichever is more.
Cod	Division 3NO	1,000 kg or 4 percent, whichever is more.

For all other Annex I.A stocks where the U.S. has no specific quota the bycatch limit is, 2,500 kg or 10 percent unless a ban on fishing applies or the quota for the stock has been fully utilized. If the fishery for the stock is closed or a retention ban applies, the permitted bycatch limit is 1,250 kg or 5 percent.

For the directed yellowtail flounder fishery in Divisions 3LNO (where the United States has a 1,000 mt yellowtail flounder allocation in 2016) vessels may retain 15 percent of American plaice.

Opportunities to fish for species not listed above (*i.e.*, species listed in Annex I.A of the 2016 NAFO CEM) but occurring within the NAFO Regulatory Area may also be available. U.S. fishermen interested in fishing for these other species should contact the NMFS Greater Atlantic Regional Fisheries Office (see **ADDRESSES**) for additional information. Authorization to fish for such species will include permit-related conditions or restrictions, including but not limited to, minimum size requirements, bycatch-related measures, and catch limits. Any such conditions or restrictions will be designed to ensure the optimum utilization, long-term sustainability, and rational management and conservation of fishery resources in the NAFO Regulatory Area, consistent with the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, as well as the Amendment to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, which has been adopted by all NAFO Contracting Parties.

Who can apply for these fishing opportunities?

Expressions of interest to fish for any or all of the 2016 U.S. fishing opportunities in NAFO described above will be considered from all U.S. fishing interests (*e.g.*, vessel owners, processors, agents, others). Applicants are urged to carefully review and thoroughly address the application requirements and selection criteria as detailed below. Expressions of interest should be directed in writing to Regional Administrator John Bullard (see **ADDRESSES**).

What information is required in an application letter?

Expressions of interest should include a detailed description of anticipated fishing operations in 2016. Descriptions should include, at a minimum:

- Intended target species;
- Proposed dates of fishing operations;
- Vessels to be used to harvest fish, including the name, registration, and home port of the intended harvesting vessel(s);
- The number of fishing personnel and their nationality involved in vessel operations;
- Intended landing port or ports; including for ports outside of the United States, whether or not the product will be shipped to the United States for processing;
- Processing facilities to be used;
- Target market for harvested fish; and
- Evidence demonstrating the ability of the applicant to successfully prosecute fishing operations in the

NAFO Regulatory Area. This may include descriptions of previously successful NAFO or domestic fisheries participation.

Note that applicant U.S. vessels must possess or be eligible to receive a valid HSFCA permit. HSFCA permits are available from the NMFS Greater Atlantic Regional Fisheries Office. Information regarding other requirements for fishing in the NAFO Regulatory Area is detailed below and is also available from the NMFS Greater Atlantic Regional Fisheries Office (see **ADDRESSES**).

U.S. applicants wishing to harvest U.S. allocations using a vessel from another NAFO Contracting Party, or hoping to enter a chartering arrangement with a vessel from another NAFO Contracting Party, should see below for details on U.S. and NAFO requirements for such activities. If you have further questions regarding what information is required in an expression of interest, please contact Patrick Moran (see **ADDRESSES**).

What criteria will be used in identifying successful applicants?

Applicants demonstrating the greatest benefits to the United States through their intended operations will be most successful. Such benefits may include:

- The use of U.S vessels to harvest fish in the NAFO Regulatory Area;
- Detailed, positive impacts on U.S. employment as a result of the fishing, transport, or processing operations;
- Use of U.S. processing facilities;
- Transport, marketing, and sales of product within the United States;

- Other ancillary, demonstrable benefits to U.S. businesses as a result of the fishing operation; and

- Documentation of the physical characteristics and economics of the fishery for future use by the U.S. fishing industry.

Other factors we may consider include but are not limited to: A documented history of successful fishing operations in NAFO or other similar fisheries, the previous compliance of the vessel with the NAFO CEM or other regulatory requirements, and for those applicants without NAFO or other international fishery history, a description of demonstrated harvest, processing, marketing, and regulatory compliance within domestic fisheries.

To ensure equitable access by U.S. fishing interests, we may provide additional guidance or procedures, or may issue regulations designed to allocate fishing interests to one or more U.S. applicants from among qualified applicants. After reviewing all requests for allocations submitted, we may also decide not to grant any allocations if it is determined that no requests adequately meet the criteria described in this notice.

How will I be notified if I am selected to participate in the 2016 NAFO fisheries?

We will provide written responses to all applicants notifying them of their application status and, as needed for successful applicants, allocation awards will be made as quickly as possible so that we may notify NAFO and take other necessary actions to facilitate operations in the regulatory area by U.S. fishing interests. Successful applicants will receive additional information from us on permit conditions and applicable regulations before starting 2016 fishing operations.

What if I want to charter a vessel to fish available U.S. allocations?

Under the bilateral arrangement with Canada, the United States may enter into a chartering (or other) arrangement with a Canadian vessel to harvest the transferred yellowtail flounder. For other NAFO-regulated species listed in Annexes I.A and I.B, the United States may enter into a chartering arrangement with a vessel from any other NAFO Contracting Party. Additionally, any U.S. vessel or fishing operation may enter into a chartering arrangement with any other NAFO Contracting Party. The United States and the other Contracting Party involved in a chartering arrangement must agree to the charter, and the NAFO Executive Secretary must be advised of the chartering

arrangement before the commencement of any charter fishing operations. Any U.S. vessel or fishing operation interested in making use of the chartering provisions of NAFO must provide at least the following information:

- The name and registration number of the U.S. vessel;
- A copy of the charter agreement;
- A detailed fishing plan;
- A written letter of consent from the applicable NAFO Contracting Party;
- The date from which the vessel is authorized to commence fishing; and
- The duration of the charter (not to exceed six months).

Expressions of interest using another NAFO Contracting Party vessel under charter should be accompanied by a detailed description of anticipated benefits to the United States, as described above. Additional detail on chartering arrangements can be found in Article 26 of the 2016 CEM (<http://www.nafo.int/fisheries/frames/cem.html>).

Any vessel from another Contracting Party wishing to enter into a chartering arrangement with the United States must be in full current compliance with the requirements outlined in the NAFO Convention and CEM. These requirements include, but are not limited to, submission of the following reports to the NAFO Executive Secretary:

- Notification that the vessel is authorized by its flag state to fish within the NAFO Regulatory Area during 2016;
- Provisional monthly catch reports for all vessels of that NAFO Contracting Party operating in the NAFO Regulatory Area;
- Daily catch reports for each day fished by the subject vessel within the Regulatory Area;
- Observer reports within 30 days following the completion of a fishing trip; and
- An annual statement of actions taken by its flag state to comply with the NAFO Convention.

The United States may also consider the vessel's previous compliance with NAFO bycatch, reporting and other provisions, as outlined in the NAFO CEM, before authorizing the chartering arrangement. More details on NAFO requirements for chartering operations are available from Patrick Moran (see **ADDRESSES**).

What if I want to arrange for a transfer of U.S. quota allocations to another NAFO party?

Under NAFO rules in effect for 2016, the United States may transfer fishing opportunities by mutual agreement with

another NAFO Contracting Party and with prior notification to the NAFO Executive Secretary. An applicant may request to arrange for any of the previously described U.S. opportunities to be transferred to another NAFO party, although such applications will likely be given lesser priority than those that involve more direct harvesting or processing by U.S. entities. Applications to arrange for a transfer of U.S. fishing opportunities should contain a letter of consent from the receiving NAFO Contracting Party, and should also be accompanied by a detailed description of anticipated benefits to the United States. As in the case of chartering operations, the United States may also consider a NAFO Contracting Party's previous compliance with NAFO bycatch, reporting, and other provisions, as outlined in the NAFO CEM, before entering agreeing to a transfer. More details on NAFO requirements for transferring NAFO allocations are available from Patrick Moran (see **ADDRESSES**).

What if I want to arrange to receive a transfer of NAFO quota allocations from another NAFO party?

Under NAFO rules in effect for 2016, the United States may receive transfers of additional fishing opportunities from other NAFO Contracting Parties. We are required to provide a letter consenting to such a transfer and must provide notice to the NAFO Executive Secretary. In the event that an applicant is able to arrange for the transfer of additional fishing opportunities from another NAFO Contracting Party to the United States, the U.S. may agree to facilitate such a transfer. However, there is no guarantee that if an applicant has facilitated the transfer of quota from another Contracting Party to the United States, such applicant will receive authorization to fish for such quota. If quota is transferred to the United States, we may need to solicit new applications for the use of such quota. All applicable NAFO requirements for transfers must be met. As in the case of chartering operations, the United States may also consider a NAFO Contracting Party's previous compliance with NAFO bycatch, reporting, and other provisions, as outlined in the NAFO CEM, before agreeing to accept a transfer. Any fishing quota or other harvesting opportunities received via this type of transfer are subject to all U.S. and NAFO rules as detailed below. For more details on NAFO requirements for transferring NAFO allocations, contact Patrick Moran (see **ADDRESSES**).

What rules must I follow while fishing in the NAFO regulatory area?

U.S. applicant vessels must be in possession of, or obtain, a valid HSFCA permit, which is available from the NMFS Greater Atlantic Regional Fisheries Office. All permitted vessels must comply with all applicable provisions of the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries and the CEM. We reserve the right to impose additional permit conditions that ensure compliance with the NAFO Convention and the CEM, the Magnuson-Stevens Fishery Conservation and Management Act and any other applicable law.

The CEM provisions include, but are not limited to:

- Maintaining a fishing logbook with NAFO-designated entries (Annex II.A and Article 28);
- Adhere to NAFO hail system requirements (Annexes II.D and II.F; Article 28; Article 30 part B)
- Carry an approved on-board observer consistent with requirements of Article 30 part A;
- Maintain and use a functioning, autonomous vessel monitoring system authorized by issuance of the HSFCA permit as required by Articles 29 and 30;

• All relevant NAFO CEM requirements including minimum fish sizes, gear, bycatch retention and per-tow move on provisions for exceeding bycatch limits in any one haul/set.

Further details regarding U.S. and NAFO requirements are available from the NMFS Greater Atlantic Regional Fisheries Office, and can also be found in the 2016 NAFO CEM on the Internet (<http://www.nafo.int/fisheries/frames/cem.html>).

Note that vessels issued valid HSFCA permits under 50 CFR part 300 are exempt from certain domestic fisheries regulations governing fisheries in the Northeast United States found in 50 CFR part 648: Northeast multispecies and monkfish permit, mesh size, effort-control, and possession limit restrictions (§§ 648.4, 648.80, 648.82, 648.86, 648.87, 648.91, 648.92, and 648.94) while transiting the U.S. exclusive economic zone (EEZ) with multispecies and/or monkfish on board the vessel, or landing multispecies and/or monkfish in U.S. ports that were caught while fishing in the NAFO Regulatory Area, provided:

1. The vessel operator has a letter of authorization issued by the Regional Administrator on board the vessel;
2. For the duration of the trip, the vessel fishes, except for transiting purposes, exclusively in the NAFO

Regulatory Area and does not harvest fish in, or possess fish harvested in, or from, the U.S. EEZ;

3. When transiting the U.S. EEZ, all gear is properly stowed and not available for immediate use as defined under § 648.2; and

4. The vessel operator complies with the provisions, conditions, and restrictions specified on the HSFCA permit and all NAFO CEM while fishing in the NAFO Regulatory Area.

Dated: February 24, 2016.

John H. Henderschedt,

Director, NOAA Fisheries Office of International, Affairs and Seafood Inspection.

[FR Doc. 2016-04341 Filed 2-26-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Scientific Advisory Board Notice of Meeting

AGENCY: Department of the Air Force, Air Force Scientific Advisory Board.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.150, the Department of Defense announces that the United States Air Force (USAF) Scientific Advisory Board (SAB) Spring Board meeting will take place on 19 April 2016 at the 612th Air Operations Center, located at 2915 S Twelfth AF Drive, Davis-Monthan AFB, AZ, 85707-4100. The meeting will occur from 7:30 a.m.–12:00 p.m. on Tuesday, 19 April 2016. The session open to the *general public* will be held from 7:30 a.m. to 8:00 a.m. on 19 April 2016. The purpose of this Air Force Scientific Advisory Board quarterly meeting is to conduct a midterm review of FY16 SAB studies, which consist of: (1) Directed Energy Maturity for Airborne Self-Defense Applications, (2) Data Analytics to Support Operational Decision Making, (3) Responding to Uncertain or Adaptive Threats in Electronic Warfare, and (4) Airspace Surveillance to Support A2/AD Operations. In accordance with 5 U.S.C. 552b, as amended, and 41 CFR 102-3.155, a number of sessions of the USAF SAB Spring Board meeting will be closed to the public because they will discuss classified information and matters covered by Section 552b of Title 5, United States Code, subsection (c), subparagraph (1).

Any member of the public that wishes to attend this meeting or provide input to the USAF SAB must contact the USAF SAB meeting organizer at the phone number or email address listed below at least ten working days prior to the meeting date. Please ensure that you submit your written statement in accordance with 41 CFR 102-3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act. Statements being submitted in response to the agenda mentioned in this notice must be received by the USAF SAB meeting organizer at the address listed below at least five calendar days prior to the meeting commencement date. The USAF SAB meeting organizer will review all timely submissions and respond to them prior to the start of the meeting identified in this notice. Written statements received after this date may not be considered by the USAF SAB until the next scheduled meeting.

FOR FURTHER INFORMATION CONTACT: The USAF SAB meeting organizer, Major Mike Rigoni at, michael.j.rigoni.mil@mail.mil or 240-612-5504, United States Air Force Scientific Advisory Board, 1500 West Perimeter Road, Ste. #3300, Joint Base Andrews, MD 20762.

Henry Williams,

Civ, DAF, Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2016-04305 Filed 2-26-16; 8:45 am]

BILLING CODE 5001-10-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD-2015-HA-0132]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by March 30, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571-372-0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: DD Form 2876, TRICARE Prime Enrollment, Disenrollment, and Primary Care Manager (PCM) Change Form, OMB Control Number 0720-0008.

Type of Request: Revision.

Number of Respondents: 148,033.

Responses per Respondent: 1.

Annual Responses: 148,033.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 37,008.

Needs and Uses: The information collection requirement is necessary to obtain the TRICARE beneficiary's personal information needed to: (1) Complete his/her enrollment into TRICARE Prime health plan, (2) change the beneficiary's enrollment (new Primary Care Manager, enrolled region, add/drop a dependent, etc.), or (3) disenroll the beneficiary. All TRICARE beneficiaries have the option of enrolling, changing their enrollment or disenrolling using the DD Form 2876, the Beneficiary Web Enrollment (BWE) portal, or by calling their regional Managed Care Support Contractor (MCSC). Although the telephonic enrollment/change is the preferred method by the large majority of beneficiaries, many beneficiaries prefer using the form to document their enrollment date and preferences.

Affected Public: Individuals and households.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Stephanie Tatham.

Comments and recommendations on the proposed information collection should be emailed to Ms. Stephanie Tatham, DoD Desk Officer, at Oira_submission@omb.eop.gov. Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID 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.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350-3100.

Dated: February 24, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016-04328 Filed 2-26-16; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF EDUCATION

Applications for New Awards; Educational Technology, Media, and Materials for Individuals with Disabilities—Stepping-up Technology Implementation

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

ACTION: Notice.

Overview Information:

Educational Technology, Media, and Materials for Individuals with Disabilities—Stepping-up Technology Implementation

Notice inviting applications for new awards for fiscal year (FY) 2016.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327S.

DATES: Applications Available: February 29, 2016.

Deadline for Transmittal of Applications: April 14, 2016.

Deadline for Intergovernmental Review: June 13, 2016.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of the Educational Technology, Media, and Materials for Individuals with Disabilities Program are to: (1) improve results for students with disabilities by promoting the development, demonstration, and use of technology; (2) support educational activities designed to be of educational value in the classroom for students with disabilities; (3) provide support for captioning and video description that is appropriate for use in the classroom; and (4) provide accessible educational materials to students with disabilities in a timely manner.

Priorities: This competition has one absolute priority and one competitive preference priority. In accordance with 34 CFR 75.105(b)(2)(v), the absolute priority is from allowable activities specified in the statute (see sections 674 and 681(d) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et seq.*)). In accordance with 34 CFR 75.105(b)(2)(ii), the competitive preference priority is from 34 CFR 75.226.

Absolute Priority: For FY 2016 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Educational Technology, Media, and Materials for Individuals with Disabilities—Stepping-up Technology Implementation.

Background:

The purpose of this priority is to fund cooperative agreements to: (a) Identify strategies needed to effectively implement evidence-based technology tools¹ that benefit students with disabilities; and (b) develop and disseminate products² that will help a broad range of schools and early intervention programs to effectively implement these technology tools. As Congress recognized in IDEA, “almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by . . . supporting the development and use of technology, including assistive technology devices and assistive technology services, to maximize accessibility for children with disabilities” (section 601(c)(5)(H) of IDEA).

The use of technology, including assistive technology devices and assistive technology services, enhances instruction and access to the general education curriculum. Technology can be the great equalizer in a classroom for students with disabilities. Educators often face major obstacles when it comes to engaging and motivating students who struggle with the general education curriculum. Innovative technology tools, programs, and software can be used to promote engagement and enhance the learning experience (Brunvand & Byrd, 2011). Additionally, the development of newer technologies for, and their presence in, early childhood education settings is rapidly increasing. When media-rich content is integrated into the curriculum and supported with adult guidance,

¹ For the purposes of this priority, “technology tools” may include, but are not limited to, digital math text readers for students with visual impairment, reading software to improve literacy and communication development, text-to-speech software to improve reading performance, infant stimulation tools, and other technology tools. These tools must assist or otherwise benefit students with disabilities.

² For the purposes of this priority, “products” may include, but are not limited to, instruction manuals, lesson plans, demonstration videos, ancillary instructional materials, and professional development modules such as collaborative groups, coaching, mentoring, or online supports.

technology experiences for young children are associated with better language, literacy, and mathematics outcomes. Additionally, technology integration in early childhood settings has been linked to increased social awareness and collaborative behaviors, improved abstract reasoning and problem solving abilities, and enhanced visual-motor coordination (McManis & Gunnewig, 2012).

Technologies can also offer opportunities to support State educational agencies' (SEAs') and local educational agencies' (LEAs') Elementary and Secondary Education Act (ESEA) flexibility plans by: (a) improving student learning and engagement; (b) accommodating the special needs of students; (c) facilitating student and teacher access to digital content and resources;³ and (d) improving the quality of instruction through personalized learning and data (Duffey & Fox, 2012; Fletcher, Schaffhauser, & Levi, 2012; U.S. Department of Education, 2010).

Notwithstanding the potential benefits in using technology to improve learning outcomes, research suggests that implementation can be a significant challenge. For example, data from a survey of more than 1,000 kindergarten through grade 12 (K–12) teachers, principals, and assistant principals indicated that simply providing teachers with technology does not ensure that it will be used (Grunwald & Associates, 2010). Additionally, Perlman and Redding (2011) found that in order to be used most effectively, technology must be implemented in ways that align with curricular and teacher goals and must offer students opportunities to use these tools in their learning. Even as schools have started to deliver coursework online, and the number of students involved in online learning has grown, many of these online learning technologies have not been designed to be accessible to students with disabilities (Center on Online Learning and Students with Disabilities, 2012). These findings demonstrate a need for products and resources that can ensure technology tools for students with disabilities are implemented effectively.

Since 1998, the Office of Special Education Programs (OSEP) has supported technology and media service projects through the Steppingstones of Technology Innovation for Children with Disabilities (Steppingstones) program. The projects funded under the

Steppingstones program developed and evaluated numerous innovative technology tools designed to improve results for children with disabilities in areas such as Web-based learning and assessment materials, instructional software, assistive technology devices, methods for using off-the-shelf hardware and software to improve learning, and methods for integrating technology into instruction. The Stepping-up Technology Implementation program is building on the technology development efforts under the Steppingstones program by identifying, developing, and disseminating products and resources that promote the effective implementation⁴ of evidence-based instructional and assistive technology tools in early childhood or K–12 settings.⁵

Priority:

The purpose of this priority is to fund cooperative agreements to: (a) Identify strategies needed to effectively implement evidence-based technology tools that benefit students with disabilities; and (b) develop and disseminate products (e.g., instruction manuals, lesson plans, demonstration videos, ancillary instructional materials) that will help early childhood or K–12 settings to effectively implement these technology tools.

To be considered for funding under this absolute priority, applicants must meet the application requirements. Any project funded under this priority must also meet the programmatic and administrative requirements specified in the priority.

Application Requirements: An applicant must include in its application—

- (a) A project design supported by strong theory (as defined in this notice);
- (b) A logic model (as defined in this notice) or conceptual framework that depicts at a minimum, the goals, activities, outputs, and outcomes of the proposed project;

Note: The following Web sites provide more information on logic models: www.researchutilization.org/matrix/

⁴In this context, “effective implementation” means “making better use of research findings in typical service settings through the use of processes and activities (such as accountable implementation teams) that are purposeful and described in sufficient detail such that independent observers can detect the presence and strength of these processes and activities” (Fixsen, Naoom, Blase, Friedman, & Wallace, 2005).

⁵For the purposes of this priority, “settings” include any place where instruction or intervention occurs, such as general education classrooms, special education classrooms, early childhood settings, or natural environments for infants and toddlers.

logicmodel_resource3c.html and www.osepideasthatwork.org/logicModel/index.asp.

(c) A plan to implement the activities described in the *Project Activities* section of this priority;

(d) A plan, linked to the proposed project's logic model, for a formative evaluation of the proposed project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the proposed project, including objective measures of progress in implementing the project and ensuring the quality of products and services;

(e) Documentation that the technology tool is evidence-based (as defined in this notice) and that it can be implemented to improve early childhood outcomes, academic achievement, and college- and career-readiness.

(f) A plan for recruiting and selecting⁶ the following:

- (1) Three development schools. Development schools are the sites in which iterative development⁷ of the implementation of evidence-based technology tools and products will occur. The project must start implementing the technology tool with one development school in year one of the project period and two additional development schools in year two.
- (2) Four pilot schools. Pilot schools are the sites in which try-out, formative evaluation, and refinement of technology tools and products will occur. The project must work with the four pilot schools during years three and four of the project period.

(3) Ten dissemination schools. Dissemination schools will be selected if the project is extended for a fifth year. Dissemination schools will be used to conduct the final test of the effectiveness of the products and the final opportunity for the project to refine the tools and products for use by teachers, but will receive less technical assistance (TA) from the project than the development or pilot schools. Also, at this stage, dissemination schools will extend the benefits of the technology tool to additional students. To be

⁶For more information on recruiting and selecting sites, refer to Assessing Sites for Model Demonstration: Lessons Learned from OSEP Grantees at http://mdcc.sri.com/documents/reports/MDCC_Site_Assessment_Brief_09-30-11.pdf.

⁷For the purposes of this priority, “iterative development” refers to a process of testing, systematically securing feedback, and then revising the educational intervention that leads to revisions in the intervention to increase the likelihood that it will be implemented with fidelity (Diamond & Powell, 2011).

³For the purposes of this priority, “resources” include, but are not limited to, school leadership support, professional development support to school staff, and a plan for integrating technology into the classroom curriculum.

selected as a dissemination school, eligible schools and LEAs must commit to working with the project to implement the evidence-based technology tools and products. A school may not serve in more than one category (*i.e.*, development, pilot, dissemination).

(g) School site information (*e.g.*, early childhood setting; elementary, middle, or high school; persistently lowest-achieving school (as defined in this notice); high-needs school (as defined in this notice)) about the diversity of the development, pilot, and dissemination schools; student demographics (*e.g.*, race or ethnicity, percentage of students eligible for free or reduced-price lunch); and other pertinent data.

(h) A budget for attendance at the following:

(1) A one and one-half day kick-off meeting to be held in Washington, DC, after receipt of the award, and an annual planning meeting held in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative.

(2) A three-day project directors' conference in Washington, DC, during each year of the project period.

(3) Two two-day trips annually to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP.

Project Activities. To meet the requirements of this priority, the project, at a minimum, must conduct the following activities:

(a) Recruit a minimum of three development schools in one LEA and four pilot schools across at least two LEAs in accordance with the plan proposed under paragraph (f) of the *Application Requirements* section of this notice.

Note: Final site selection will be determined in consultation with the OSEP project officer following the kick-off meeting.

(b) Identify resources and develop products to support sustained implementation of the selected technology tool. Development of the products must be an iterative process beginning in a single development school and continuing through repeated cycles of development and refinement in the other development schools, followed by a formative evaluation and further refinement in the pilot schools. The products must include, at a minimum, the following components to support implementation of the technology tool:

(1) An instrument or method for assessing the (i) need for the technology tool, and (ii) readiness to implement it. Instruments and methods may include resource inventory checklists, school self-study guides, surveys of teacher interest, detailed descriptions of the technology tool for review by school staff, and similar approaches used singly or in combination.

(2) Methods and manuals to support the implementation of the technology tool.

(3) Professional development activities necessary for teachers to implement the technology tool with fidelity and integrate it into the curriculum.

(c) Collect and analyze data on the effect of the technology tool on early childhood development, academic achievement, or college- and career-readiness.

(d) Collect formative and summative evaluation data from the development schools and pilot schools to refine and evaluate the products.

(e) If the project is extended to a fifth year, provide the products and the technology tool to no fewer than 10 dissemination schools that are not the same schools used as development and pilot schools.

(f) Collect summative data about the success of the products in supporting implementation of the technology tool in the dissemination schools; and

(g) By the end of the project period, projects must provide information on:

(1) The products and resources that will enable other schools or programs to implement and sustain implementation of the technology tool.

(2) How the technology tool has improved early childhood development, academic achievement, or college- and career-readiness for children with disabilities.

(3) A strategy for disseminating the technology tool and accompanying products beyond the schools directly involved in the project.

Cohort Collaboration and Support. OSEP Project Officer(s) will provide coordination support among the projects. Each project funded under this priority must—

(a) Participate in monthly conference call discussions to share and collaborate around implementation and specific project issues; and

(b) Provide information bi-annually using a template that captures descriptive data on project site selection, processes for installation of technology, and the use of technology and sustainability (*i.e.*, the process of technology implementation).

Note: The following Web site provides more information about implementation research: <http://nirn.fpg.unc.edu/learn-implementation>.

Fifth Year of the Project:

The Secretary may extend a project one year beyond 48 months to work with dissemination schools if the grantee is achieving the intended outcomes and making a positive contribution to the implementation of an evidence-based technology tool in the development and pilot schools. Each applicant must include in its application a plan for the full 60-month award. In deciding whether to continue funding the project for the fifth year, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of the OSEP project officer and other experts selected by the Secretary. This review will be held during the last half of the third year of the project period;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) Evidence of the degree to which the project's activities have contributed to changed practices and improved early childhood outcomes, academic achievement, or college- and career-readiness for students with disabilities.

Competitive Preference Priority—Evidence of Promise (2 Points).

Projects based upon supporting evidence of effectiveness that meets the conditions set out in the definition of "evidence of promise" (as defined in this notice).

Note: An applicant addressing this competitive preference priority must identify no more than two study citations that meet this standard.

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Definitions:

These definitions are from 34 CFR 77.1 and the Department's notice of final supplemental priorities and definitions for discretionary grant programs (Supplemental Priorities), published in the **Federal Register** on December 10, 2014 (79 FR 73425), as marked.

The following definitions are from 34 CFR 77.1:

Evidence of promise means there is empirical evidence to support the theoretical linkage(s) between at least one critical component and at least one relevant outcome presented in the logic model for the proposed process, product, strategy, or practice. Specifically, evidence of promise means the conditions in both paragraphs (i) and (ii) of this definition are met:

(i) There is at least one study that is a—

(A) Correlational study with statistical controls for selection bias;

(B) Quasi-experimental design study that meets the What Works Clearinghouse Evidence Standards with reservations; or

(C) Randomized controlled trial that meets the What Works Clearinghouse Evidence Standards with or without reservations.

(ii) The study referenced in paragraph (i) of this definition found a statistically significant or substantively important (defined as a difference of 0.25 standard deviations or larger) favorable association between at least one critical component and one relevant outcome presented in the logic model for the proposed process, product, strategy, or practice.

High-needs school means a Title I school that has a subgroup or subgroups with low achievement or, at the high school level, low graduation rates (“low-achieving subgroup” high-needs school).

Logic model (also referred to as theory of action) means a well-specified conceptual framework that identifies key components of the proposed process, product, strategy, or practice (*i.e.*, the active “ingredients” that are hypothesized to be critical to achieving the relevant outcomes) and describes the relationships among the key components and outcomes, theoretically and operationally.

Quasi-experimental design study means a study using a design that attempts to approximate an experimental design by identifying a comparison group that is similar to the treatment group in important respects. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards with reservations (but not What Works Clearinghouse Evidence Standards without reservations).

Randomized controlled trial means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to receive the intervention being evaluated (the treatment group) or not to receive the intervention (the control group). The estimated effectiveness of the intervention is the difference between the average outcomes for the treatment group and for the control group. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards without reservations.

Relevant outcome means the student outcome(s) (or the ultimate outcome if not related to students) that the proposed process, product, strategy, or practice is designed to improve; consistent with the specific goals of a program.

Strong theory means a rationale for the proposed process, product, strategy, or practice that includes a logic model.

What Works Clearinghouse Evidence Standards means the standards set forth in the What Works Clearinghouse Procedures and Standards Handbook (Version 3.0, March 2014), which can be found at the following link: <http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19>.

The following definitions are from the Supplemental Priorities:

Persistently lowest-achieving school means, as determined by the State—

(a)(1) Any Title I school that has been identified for improvement, corrective action, or restructuring under section 1116 of the Elementary and Secondary Education Act of 1965, as amended (ESEA) and that—

(i) Is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or

(ii) Is a high school that has had a graduation rate, as defined in 34 CFR 200.19(b), that is less than 60 percent over a number of years; and

(2) Any secondary school that is eligible for, but does not receive, Title I funds that—

(i) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or

(ii) Is a high school that has had a graduation rate, as defined in 34 CFR 200.19(b), that is less than 60 percent over a number of years.

(b) To identify the lowest-achieving schools, a State must take into account both—

(i) The academic achievement of the “all students” group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), in reading/language arts and mathematics combined; and

(ii) The school's lack of progress on those assessments over a number of years in the “all students” group.

Priority schools means schools that, based on the most recent data available, have been identified as among the lowest-performing schools in the State. The total number of priority schools in a State must be at least five percent of the Title I schools in the State. A priority school is—

(a) A school among the lowest five percent of Title I schools in the State based on the achievement of the “all students” group in terms of proficiency

on the statewide assessments that are part of the SEA's differentiated recognition, accountability, and support system, combined, and has demonstrated a lack of progress on those assessments over a number of years in the "all students" group;

(b) A Title I-participating or Title I-eligible high school with a graduation rate that is less than 60 percent over a number of years; or

(c) A Tier I or Tier II school under the School Improvement Grant (SIG) program that is using SIG funds to implement a school intervention model.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priorities in this notice.

Program Authority: 20 U.S.C. 1474 and 1481.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative agreements.

Estimated Available Funds: \$1,414,056.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2017 from the list of unfunded applications from this competition.

Estimated Range of Awards: \$450,000 to \$500,000 per year.

Estimated Average Size of Awards: \$471,352 per year.

Maximum Award: We will reject any application that proposes a budget exceeding \$500,000 for a single budget period of 12 months.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months with an optional additional 12 months based on performance. Applications must include plans for both the 48-month award and the 12-month extension.

III. Eligibility Information

1. **Eligible Applicants:** SEAs; LEAs, including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. **Cost Sharing or Matching:** This program does not require cost sharing or matching.

3. **Other General Requirements:**

(a) Recipients of funding under this program must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Each applicant for, and recipient of, funding under this competition must involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. **Address to Request Application Package:** You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: www.ed.gov/fund/grant/apply/grantapps/index.html. To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1-877-433-7827. FAX: (703) 605-6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1-877-576-7734.

You can contact ED Pubs at its Web site, also: www.EDPubs.gov or at its email address: edpubs@inet.ed.gov.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.327S.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. **Content and Form of Application Submission:** Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to no more than 50 pages, using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.

- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit and double-spacing requirements do not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the page limit and double-spacing requirements do apply to all of Part III, the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

We will reject your application if you exceed the page limit in the application narrative section or if you apply standards other than those specified in this notice and the application package.

3. **Submission Dates and Times:**

Applications Available: February 29, 2016.

Deadline for Transmittal of Applications: April 14, 2016.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to *Other Submission Requirements* in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information Contact* in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: June 13, 2016.

4. *Intergovernmental Review*: This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions*: We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management*: To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: <http://fedgov.dnb.com/webform>. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks,

depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at www.SAM.gov. To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: <http://www2.ed.gov/fund/grant/apply/sam-faqs.html>.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: www.grants.gov/web/grants/register.html.

7. *Other Submission Requirements*: Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications*.

Applications for grants under the Stepping-up Technology Implementation competition, CFDA number 84.327S, must be submitted electronically using the Governmentwide Grants.gov Apply site at www.Grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before

the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the Stepping-up Technology Implementation competition at www.Grants.gov. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.327, not 84.327S).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date.

Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at www.G5.gov. In addition, for specific guidance and

procedures for submitting an application through Grants.gov, please refer to the Grants.gov Web site at: www.grants.gov/web/grants/applicants/apply-for-grants.html.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

- You must upload any narrative sections and all other attachments to your application as files in a read-only, non-modifiable Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF (e.g., Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the project narrative—is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF. Additional, detailed information on how to attach files is in the application instructions.

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. This notification indicates receipt by Grants.gov only, not receipt by the Department. Grants.gov will also notify you automatically by email if your application met all of the Grants.gov validation requirements or there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by Grants.gov, the Department will retrieve your application from Grants.gov and send you a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by Grants.gov, it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1-800-518-4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability

of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or

- You do not have the capacity to upload large documents to the Grants.gov system;

and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Terry Jackson, U.S. Department of Education, 400 Maryland Avenue SW., Room 5158, Potomac Center Plaza, Washington, DC 20202-5076. FAX: (202) 245-7590.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327S) LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202-4260.

You must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327S), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the

Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

4. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not

fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to www.ed.gov/fund/grant/apply/appforms/appforms.html.

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary established a data collection period.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Educational Technology, Media, and

Materials for Individuals with Disabilities program. These measures are included in the application package and focus on the extent to which projects are of high quality, are relevant to improving outcomes of children with disabilities, contribute to improving outcomes for children with disabilities, and generate evidence of validity and availability to appropriate populations. Projects funded under this competition are required to submit data on these measures as directed by OSEP:

Program Performance Measure #1: The percentage of educational technology, media, and materials projects judged to be of high quality.

Program Performance Measure #2: The percentage of educational technology, media, and materials projects judged to be of high relevance to improving outcomes of infants, toddlers, children, and youth with disabilities.

Program Performance Measure #3: The percentage of educational technology, media, and materials projects that produce findings, products, and other services that contribute to improving results for infants, toddlers, children, and youth with disabilities.

Program Performance Measure #4: The percentage of educational technology, media, and materials projects that validate their products and services.

Program Performance Measure #5: The percentage of educational technology, media, and materials projects that make validated technologies available for widespread use.

Grantees will be required to report information on their project's performance in annual performance reports and additional performance data to the Department (34 CFR 75.590 and 75.591).

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance

from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT:

Terry Jackson, U.S. Department of Education, 400 Maryland Avenue SW., Room 5158, Potomac Center Plaza, Washington, DC 20202-5076. Telephone: (202) 245-6039.

If you use a TDD or a TTY, call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5037, Potomac Center Plaza, Washington, DC 20202-2550. Telephone: (202) 245-7363. If you use a TDD or a TTY, call the FRS, toll free, at 1-800-877-8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: February 23, 2016.

Michael K. Yudin,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2016-04338 Filed 2-26-16; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2016-ICCD-0023]

Agency Information Collection Activities; Comment Request; Part 601 Preferred Lender Arrangements

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 an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before April 29, 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-0023. 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 Beth Grebeldinger, 202-377-4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note

that written comments received in response to this notice will be considered public records.

Title of Collection: Part 601 Preferred Lender Arrangements.

OMB Control Number: 1845–0101.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector; Individuals or Households.

Total Estimated Number of Annual Responses: 17,405,090.

Total Estimated Number of Annual Burden Hours: 3,553,281.

Abstract: Part 601—Institution and Lender Requirements Relating to Education Loans is a section of the regulations governing private education loans offered at covered institutions. These regulations assure the Secretary that the integrity of the program is protected from fraud and misuse of program funds and places requirements on institutions and lenders to ensure that borrowers receive additional disclosures about Title IV, HEA program assistance prior to obtaining a private education loan. The Department is submitting the unchanged Private Education Loan Applicant Self-Certification for OMB's continued approval. While information about the applicant's cost of attendance and estimated financial assistance must be provided to the student, if available, the student will provide the data to the private loan lender who must collect and maintain the self-certification form prior to disbursement of a Private Education Loan. The Department will not receive the Private Education Loan Applicant Self-Certification form and therefore will not be collecting and maintaining the form or its data.

Dated: February 24, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–04323 Filed 2–26–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Indian Education Discretionary Grants Programs—Demonstration Grants for Indian Children Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

Overview Information Indian Education Discretionary Grants Programs—Demonstration Grants for

Indian Children Program Notice inviting applications for new awards for fiscal year (FY) 2016.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.299A.

Dates: Applications Available: February 29, 2016.

Deadline for Notice of Intent to Apply: April 29, 2016.

Deadline for Transmittal of Applications: May 31, 2016.

Deadline for Intergovernmental Review: July 28, 2016.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Demonstration Grants for Indian Children program is to provide financial assistance to projects that develop, test, and demonstrate the effectiveness of services and programs to improve the educational opportunities and achievement of preschool, elementary, and secondary Indian students.

Background: For FY 2016, the Department will continue to use the priority for Native Youth Community Projects (NYCP) first used in FY 2015 to support community-led, comprehensive projects to help American Indian/Alaska Native (AI/AN) children become college- and career-ready. NYCP funding is one of many efforts across the Federal government to coordinate, measure progress, and make investments in Native youth programs as part of the Generation Indigenous Initiative. These efforts aim to address educational outcomes, access to the internet, the availability of teacher housing, Indian Child Welfare Act implementation, tribal criminal justice, and the suicide rate. The Department intends to award several NYCP grants for communities to improve educational outcomes, specifically college- and career-readiness, through strategies tailored to address the specific challenges and build upon the specific opportunities and culture within a community. Due to increased funding for FY 2016, the Department expects to support more comprehensive projects that implement multiple strategies. Given the interconnectedness of in-school and out-of-school factors that relate to student achievement and positive youth development, grants will support a community-led approach to providing academic, social-emotional, cultural, and other support services for AI/AN students and students' family members. Recognizing the importance of tribes to the education of Native youth, NYCP projects are based on a partnership that includes at least one tribe and one school district or BIE-

funded school. We expect that this partnership will facilitate capacity building within the community, generating positive results and practices for student college- and career-readiness beyond the period of Federal financial assistance. The requirement of a written partnership agreement helps to ensure that all relevant partners needed to achieve the project goals are included from the outset. Finally, grantees' project evaluations should help inform future practices that effectively improve outcomes for AI/AN youth.

Priorities: This competition contains one absolute priority and three competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(ii), the absolute priority is from the regulations at 34 CFR 263.21(c)(1) and 263.20. In accordance with 34 CFR 75.105(b)(2)(ii), competitive preference priority one is from § 263.21(c)(5) of the regulations, competitive preference priority two is from § 263.21(b) of the regulations, and competitive preference priority three paragraph (b) is from § 263.21(c)(2) of the regulations. Competitive preference priority three paragraph (a) (relating to Promise Zones) is from the notice of final priority published in the **Federal Register** on March 27, 2014 (79 FR 17035).

Absolute Priority: For FY 2016 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Native Youth Community Projects. A native youth community project is—

(1) Focused on a defined local geographic area to be served by the project;

(2) Centered on the goal of ensuring that Indian students are prepared for college and careers;

(3) Informed by evidence, which could be either a needs assessment conducted within the last three years or other data analysis, on—

(i) The greatest barriers, both in and out of school, to the readiness of local Indian students for college and careers;

(ii) Opportunities in the local community to support Indian students; and

(iii) Existing local policies, programs, practices, service providers, and funding sources;

(4) Focused on one or more barriers or opportunities with a community-based strategy or strategies and measurable objectives;

(5) Designed and implemented through a partnership of various entities, which—

(i) Must include—

(A) One or more tribes or their tribal education agencies; and

(B) One or more Department of the Interior Bureau of Indian Education (BIE)-funded schools, one or more local educational agencies (LEAs), or both; and

(ii) May include other optional entities, including community-based organizations, national nonprofit organizations, and Alaska regional corporations; and

(6) Led by an entity that—

(i) Is eligible for a grant under the Demonstration Grants for Indian Children program; and

(ii) Demonstrates, or partners with an entity that demonstrates, the capacity to improve outcomes that are relevant to the project focus through experience with programs funded through other sources.

Competitive Preference Priorities: For FY 2016 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on how well the application meets one or more of these priorities.

These priorities are:

Competitive Preference Priority One.

We award two points to an application proposing to serve a rural local community. To meet this priority, a project must include an LEA that is eligible under the Small Rural School Achievement (SRSA) or Rural and Low-Income School (RLIS) program, or a BIE-funded school that is located in an area designated by the U.S. Census Bureau with a locale code of 42 or 43.

Competitive Preference Priority Two.

Although all NYCP grantees are required to have an eligible Indian tribe or its tribal education agency (TEA) as a partner, we award four points to an application in which the lead partner is an eligible Indian tribe or its TEA, an Indian organization, or an Indian Institution of Higher Education (IHE). See the definition of Indian IHE listed under *Eligibility Information* in section III of this notice.

Competitive Preference Priority Three.

We award four points to an application that meets one of the following criteria—

(a) Designed to serve a local community within a federally designated Promise Zone; or

(b) Submitted by a partnership or consortium in which the lead applicant or one of its partners has received a grant in the last four years under one or more of the following grant or enhancement programs:

(1) State Tribal Education Partnership (title VII, part A, subpart 3).

(2) Sovereignty in Indian Education Enhancements (Department of the Interior).

(3) Alaska Native Education Program (title VII, part C).

(4) Promise Neighborhoods.

(5) Tribal Education Department Grants (Department of the Interior).

Note: As a participant in the Administration's Promise Zone Initiative, the Department is cooperating with the Departments of Housing and Urban Development (HUD) and, the Department of Agriculture (USDA) and nine other Federal agencies to support comprehensive revitalization efforts in 20 high-poverty urban, rural, and tribal communities across the country. Each application for NYCP funds that is accompanied by a Certification of Consistency with Promise Zone Goals and Implementation (HUD Form 50153) signed by an authorized representative of the lead organization of a Promise Zone designated by HUD or USDA supporting the application will receive four points, under Competitive Preference Priority 3(a). An application for NYCP grant funds that is not accompanied by a signed certification (HUD Form 50153) will not receive points under Competitive Preference Priority 3(a), but may still be eligible to receive points under Competitive Preference Priority 3(b) if it received one of the grants listed. To view the list of designated Promise Zones and lead organizations please go to www.hud.gov/promisezones. The certification form is available at [//portal.hud.gov/hudportal/documents/huddoc?id=HUD_Form_50153.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=HUD_Form_50153.pdf).

Note: An application will not receive points for both (a) and (b).

Application Requirements: The following requirements apply to all applications submitted under this competition and are from 34 CFR 263.20, 263.21, and 263.22. An applicant must include in its application:

(a) A description of the defined geographic area to be served by the project.

(b) Evidence, based on either a needs assessment conducted within the last three years or other data analysis, of—

(1) The greatest barriers, both in and out of school, to the readiness of local Indian students for college and careers;

(2) Opportunities in the local community to support Indian students; and

(3) Existing local policies, programs, practices, service providers, and funding sources.

(c) A project design and management plan that—

(1) Addresses one or more barriers or opportunities towards the goal of ensuring that Indian students are prepared for college and careers, as identified in the local needs assessment or other data analysis; and

(2) Uses a community-based strategy (or strategies), and measurable objectives for that strategy (or strategies) that can be used to measure progress toward the goal.

(d) A copy of an agreement signed by the partners in the proposed project, identifying the responsibilities of each partner in the project. Signatories to the agreement must include at least one tribe or its TEA and at least one LEA or BIE-funded school, as described in the absolute priority above. Letters of support do not meet the requirement for a signed agreement.

(e) Evidence that the applicant or one of its partners has demonstrated the capacity to improve outcomes that are relevant to the project focus through experience with programs funded through other sources.

(f) A description of how Indian tribes and parents of Indian children have been, and will be, involved in developing and implementing the proposed activities.

(g) Information demonstrating that the proposed project is based on scientific research, where applicable, or an existing program that has been modified to be culturally appropriate for Indian students.

(h) A description of how the applicant will continue the proposed activities once the grant period is over.

Statutory Hiring Preference: (a) Awards that are primarily for the benefit of Indians are subject to the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638). That section requires that, to the greatest extent feasible, a grantee—

(1) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(2) Give to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant.

(b) For purposes of this section, an Indian is a member of any federally recognized Indian tribe.

Program Authority: 20 U.S.C. 7441.

Applicable Regulations: (a) The Education Department General

Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 263.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.
Estimated Available Funds: 17,400,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2017 from the list of unfunded applicants from this competition.

Estimated Range of Awards: \$500,000–1,000,000.

Estimated Average Size of Awards: \$900,000.

Estimated Number of Awards: 19.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Eligible applicants for this program are State educational agencies; LEAs, including charter schools that are considered LEAs under State law; Indian tribes; Indian organizations; BIE-funded schools; Indian institutions (including Indian IHEs); or a consortium of any of these entities.

The absolute priority for NYCP requires that an applicant be a member of a partnership that includes at least one tribe or its TEA and at least one LEA or BIE-funded school. Applications will be rejected that do not include at least these two types of partners.

Note: Including as a partner an Indian organization or Indian IHE does not satisfy the requirement, under the absolute priority, of including the tribe itself as one of the partners. A tribe may designate another entity to apply on its behalf only if the entity submits as part of its application a tribal resolution authorizing the designation for the purpose of applying for and administering this Demonstration grant.

Applicants applying as an Indian organization must demonstrate that the entity meets the definition of “Indian organization” in 34 CFR 263.20.

The term “Indian institution of higher education” means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*), and Dine College (formerly Navajo Community College) authorized in the Navajo Community College Assistance Act of 1978 (25 U.S.C. 640a *et seq.*).

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs).

To obtain a copy via the Internet, use the following address: www.ed.gov/gund/grant/apply/grantapps/index.html.

To obtain a copy from ED Pubs, write, fax, or call: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: www.EDPubs.gov or at its email address: edpubs@inet.ed.gov.

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.299A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. a. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Notice of Intent to Apply: The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, the Assistant Secretary strongly encourages each potential applicant to notify us of their intent to

submit an application for funding. To do so, please email John.Cheek@ed.gov with the subject line “Intent to Apply,” and include the following information:

1. Applicant’s name, mailing address, and phone number;
2. Contact person’s name and email address;
3. The defined local geographic area to be served by the project;
4. Name(s) of partnering LEA(s) or BIE-funded school(s);
5. Names of partnering tribe(s) or TEA(s); and
6. If appropriate, names of other partnering organizations.

Applicants that do not submit a notice of intent to apply may still apply for funding; applicants that do submit a notice of intent to apply are not bound to apply or bound by the information provided. Pre-Application Webinar: The Department intends to hold a pre-application Webinar designed to provide technical assistance to interested applicants. Information about Webinar times and instructions for registering are on the Department Web site at <http://www2.ed.gov/programs/indiandemo/applicant.html>.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. The suggested page limit for the application narrative is 35 pages. The suggested standards for the narrative include:

- A page is 8.5” x 11”, on one side only, with 1” margins at the top, bottom, and both sides.
- Double space all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is 12 point or larger but no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The suggested page limit does not apply to the cover sheet; the budget section, including the budget narrative justification; the consortium agreement or partnership agreement; the assurances and certifications; or the abstract, the resumes, the bibliography, or other required attachments.

b. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the Demonstration Grants for Indian Children, an application may include business information that the applicant considers proprietary. The Department’s regulations define “business information” in 34 CFR 5.11.

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you feel is exempt from disclosure under Exemption 4 of the Freedom of Information Act. In the appropriate Appendix section of your application, under "Other Attachment Form," please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. Submission Dates and Times:

Applications Available: February 29, 2016.

Deadline for Notice of Intent to Apply: April 4, 2016.

Deadline for Transmittal of Applications: May 31, 2016.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to 7. Other Submission Requirements in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: July 28, 2016.

4. *Intergovernmental Review*: This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions*: We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award*

Management: To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: <http://fedgov.dnb.com/webform>. A DUNS number can be created within one-to-two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at www.SAM.gov. To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: <http://www2.ed.gov/fund/grant/apply/sam-faqs.html>.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: www.grants.gov/web/grants/register.html.

7. *Other Submission Requirements*: Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications*. Applications for grants under the Indian Education— Demonstration Grants for Indian Children program, CFDA number 84.299A, must be submitted electronically using the Governmentwide Grants.gov Apply site at www.Grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the Indian Education— Demonstration Grants for Indian Children program at www.Grants.gov. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.299, not 84.299A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date.

Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at www.G5.gov. In addition, for specific guidance and procedures for submitting an application through Grants.gov, please refer to the Grants.gov Web site at: www.grants.gov/web/grants/applicants/apply-for-grants.html.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

- You must upload any narrative sections and all other attachments to your application as files in a read-only, non-modifiable Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF (e.g., Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that

this could result in your application not being considered for funding because the material in question—for example, the project narrative—is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF.

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. This notification indicates receipt by Grants.gov only, not receipt by the Department. Grants.gov will also notify you automatically by email if your application met all the Grants.gov validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by Grants.gov, the Department will retrieve your application from Grants.gov and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by Grants.gov, it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1-800-518-4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after we determine whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or

- You do not have the capacity to upload large documents to the Grants.gov system; and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the

Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: John Cheek, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W215, Washington, DC 20202–6335. FAX: (202) 401–0606.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail.

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.299A) LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark.
- (2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. Submission of Paper Applications by Hand Delivery.

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.299A), 550 12th

Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition include general selection criteria from 34 CFR 75.210 and selection criteria based on regulatory requirements in 34 CFR part 263, in accordance with 34 CFR 75.209(a). We will award up to 100 points to an application under the selection criteria; the total possible points for each selection criterion are noted in parentheses.

a. *Need for project* (Maximum 15 points). The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factor:

The extent to which the project is informed by evidence, which could be either a needs assessment conducted within the last three years or other data analysis, of:

- (i) The greatest barriers both in and out of school to the readiness of local Indian students for college and careers;
- (ii) Opportunities in the local community to support Indian students; and
- (iii) Existing local policies, programs, practices, service providers, and funding sources.

b. *Quality of the project design* (Maximum 30 points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

- (i) (Up to 3 points) The extent to which the project is focused on a defined local geographic area.
- (ii) (Up to 3 points) The extent to which the proposed project is based on scientific research, where applicable, or

an existing program that has been modified to be culturally appropriate for Indian students.

(iii) (Up to 7 points) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(iv) (Up to 10 points) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(v) (Up to 7 points) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

c. *Quality of project personnel* (Maximum 10 points). The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The extent to which the applicant, or one of its partners, demonstrates capacity to improve outcomes that are relevant to the project focus through experience with programs funded through other sources.

Note: Please note that section 7(b) of the Indian Self-Determination and Education Assistance Act requires that to the greatest extent feasible, a grantee must give to Indians preference and opportunities in connection with the administration of the grant, and give Indian organizations and Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant.

d. *Adequacy of resources* (Maximum 10 points). The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(ii) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

e. *Quality of the management plan* (Maximum 30 points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) (Up to 14 points) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) (Up to 3 points) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(iii) (Up to 10 points) The extent to which Indian tribes and parents of Indian children have been, and will be, involved in developing and implementing the proposed activities.

(iv) (Up to 3 points) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

f. *Quality of the project evaluation* (Maximum 5 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factor:

The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to www.ed.gov/fund/grant/apply/appforms/appforms.html.

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has developed the following performance measures for measuring the overall effectiveness of the Demonstration Grants for Indian Children program:

(1) The percentage of the annual measurable objectives, as described in the application, that are met by grantees; and

(2) The percentage of grantees that report a significant increase in community collaborative efforts that promote college and career readiness of Indian children.

These measures constitute the Department's indicators of success for this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to these measures in developing the proposed project and identifying the method of evaluation. Each grantee will be required to provide, in its annual performance and final reports, data about its progress in meeting these measures.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: John Cheek, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W215, Washington, DC 20202. Telephone: (202) 401-0274 or by email: john.cheek@ed.gov.

If you use a TDD or a TTY, call the FRS, toll free, at 1-800-877-8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: February 23, 2016.

Ann Whalen,

Delegated the authority to perform the functions and duties of Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2016-04260 Filed 2-26-16; 8:45 am]

BILLING CODE 4000-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2011-0506; FRL-9942-82-OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Small Municipal Waste Combustors (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NSPS for Small Municipal Waste Combustors (40 CFR part 60, subpart AAAA) (Renewal)" (EPA ICR No. 1900.06, OMB Control No. 2060-0423), 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 30, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-HQ-OECA-2011-0506, 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 small municipal waste combustors are required to comply with reporting and record keeping requirements for the general provisions of 40 CFR part 60, subpart A, as well as for the applicable standards in 40 CFR part 60, subpart AAAA. This includes submitting initial

notification reports, 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: Small municipal waste combustors (MWCs).

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart AAAA).

Estimated number of respondents: 4 (total).

Frequency of response: Initially, annually, and semiannually.

Total estimated burden: 15,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$1,700,000 (per year), which includes \$188,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is an overall increase in respondent burden from the most recently approved ICR due to an increase of one new source subject to the regulation (*i.e.* respondent universe). The growth in respondent universe results in an increase in the labor hours, labor costs, number of responses, and O&M costs for the private sector. However, there is a small adjustment decrease in labor hours and O&M cost for the public sector due to refinement in the Agency's estimates and rounding. In this ICR, we have rounded all estimated hours and costs to three significant digits.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2016-04242 Filed 2-26-16; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2012-0524; FRL-9942-88-OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Stationary Combustion Turbines (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NSPS for

Stationary Combustion Turbines (40 CFR part 60, subpart KKKK) (Renewal)” (EPA ICR No. 2177.06, OMB Control No. 2060–0582), 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 30, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0524 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 oir_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 for the specific requirements at 40 CFR part 60, subpart KKKK. This includes submitting initial notification reports, 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: Stationary combustion turbines.

Respondent’s obligation to respond: Mandatory (40 CFR part 60, subpart KKKK).

Estimated number of respondents: 589 (total).

Frequency of response: Initially and semiannually.

Total estimated burden: 59,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$5,930,000 (per year). There are no annualized capital/startup or operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in burden hours and costs for both the respondents and the Agency as currently identified in the OMB Inventory of Approved Burdens. It should be noted that the increase is not due to any program changes. The increase is due to an adjustment in labor rates and in the number of new or modified sources. This ICR uses updated labor rates from the Bureau of Labor Statistics to calculate burden costs. Additionally, this ICR assumes the respondent universe subject to the regulation has continued to grow at a constant rate since the last ICR renewal.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2016–04243 Filed 2–26–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9942–41–ORD]

Regional Monitoring Networks (RMNs) To Detect Changing Baselines in Freshwater Wadeable Streams

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Environmental Protection Agency (EPA) is announcing the availability of a document titled, “Regional Monitoring Networks (RMNs) to Detect Changing Baselines in Freshwater Wadeable Streams” (EPA/600/R–15/280). The document was prepared by the National Center for Environmental Assessment (NCEA) within EPA’s Office of Research and Development. The document describes the development of the current regional monitoring networks (RMNs) for riffle-dominated, freshwater wadeable streams.

The final document is available via the Internet on the NCEA home page under the Recent Additions and the Data and Publications menus at <http://www.epa.gov/risk/ecological-risk-assessment-products-and-publications>.

DATES: The document will be available on or around February 29, 2016.

ADDRESSES: The final report, “Regional Monitoring Networks (RMNs) to Detect Changing Baselines,” is available primarily via the Internet on the Ecological Risk Assessment Products and Publications Web page at <http://www.epa.gov/risk/ecological-risk-assessment-products-and-publications>. A limited number of paper copies are available from the Information Management Team, NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Britta Bierwagen, NCEA; telephone: 703–347–8613; facsimile: 703–347–8694; or email: bierwagen.britta@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Information About the Project/Document

The United States Environmental Protection Agency is working with its regional offices, states, tribes, river basin commissions, and other entities to establish Regional Monitoring Networks (RMNs) for freshwater wadeable streams. RMNs have been established in the Northeast, Mid Atlantic, and Southeast, and efforts are expanding into other regions. Long term biological, thermal, hydrologic, physical habitat, and water chemistry data are being collected at RMN sites to document current conditions and detect long term changes. Consistent methods are being used to increase the comparability of data, minimize biases and variability, and ensure that the data meet data quality objectives. RMN surveys build

on existing state and tribal bioassessment efforts, with the goal of collecting comparable data at a limited number of sites that can be pooled at a regional level. Pooling data enables more robust regional analyses and improves the ability to detect trends over shorter time periods. This document describes the development and implementation of the RMNs. It includes information on selection of sites, expectations for data collection, the rationale for collecting these data, data infrastructure, and provides examples of how the RMN data will be used and analyzed. The report concludes with a discussion on the status of monitoring activities and next steps.

Dated: February 19, 2016.

Mary A. Ross,

Deputy Director, National Center for Environmental Assessment.

[FR Doc. 2016-04087 Filed 2-26-16; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2011-0239; FRL-9942-71-OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Grain Elevators (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NSPS for Grain Elevators (40 CFR part 60, subpart DD) (Renewal)" (EPA ICR No. 1130.11, OMB Control No. 2060-0082), 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 32120) 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 30, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-HQ-OECA-2011-0239, 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: The New Source Performance Standards (NSPS) apply to each affected facility at any grain terminal elevator or any grain storage elevator. The facilities are each truck unloading station, truck loading station, barge and ship loading station, railcar loading station, railcar unloading station, grain dryer and all grain handling operations that commenced construction, modification or reconstruction after August 3, 1978. Owners or operators of the affected facilities must make a one-time-only report of the date of construction or reconstruction, notification of the actual date of startup, notification of any physical or operational change to existing facility that may increase the rate of emission of the regulated pollutant, notification of initial

performance test; and results of initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction, or any period during which the monitoring system is inoperative.

Form Numbers: None.

Respondents/affected entities: Grain elevator operations.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart DD).

Estimated number of respondents: 200 (total).

Frequency of response: Initially.

Total estimated burden: 460 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$46,000 (per year). There are no annualized capital/startup or O&M costs.

Changes in the Estimates: There is a decrease in the respondent and Agency burden in this ICR compared to the previous ICR. This is not due to program changes. The burden and cost decrease because we corrected the burden estimates by removing the annual summary report line item to more accurately reflect the Subpart DD regulatory requirements. The current Subpart DD NSPS does not impose any ongoing monitoring or reporting requirement.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2016-04241 Filed 2-26-16; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 16-41; FCC 16-19]

Promoting the Availability of Diverse and Independent Sources of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: In this document, the Commission seeks comment on the principal issues that independent video programmers confront in gaining carriage in the current marketplace and possible actions the Commission or others might take to address those issues. The goal of this proceeding is to begin a conversation on the state of independent and diverse programming, and to assess how the Commission or others could foster greater consumer choice and enhance diversity in the evolving video marketplace by

eliminating or reducing any barriers faced by independent programmers in reaching viewers. The Commission seeks to explore ways to alleviate such barriers, as well as its legal authority to do so.

DATES: Comments are due on or before March 30, 2016; reply comments are due on or before April 19, 2016.

ADDRESSES: You may submit comments, identified by MB Docket No. 16–41, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Federal Communications Commission's Web site: <http://fjallfoss.fcc.gov/ecfs/>. Follow the instructions for submitting comments.

- Mail: Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Calisha Myers or Raelynn Remy of the Policy Division, Media Bureau at (202) 418–2120 or Calisha.Myers@fcc.gov; Raelynn.Remy@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Inquiry*, FCC 16–19, adopted and released on February 18, 2016. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at <http://fjallfoss.fcc.gov/ecfs/>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to fcc504@fcc.gov or

calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

I. Introduction

1. Over the last quarter century, we have seen significant changes in the media landscape that have fundamentally altered the way in which Americans access and consume video programming. When Congress passed the 1992 Cable Act, the majority of American households had access to only one pay television service, and alternatives to that service were in their incipient stages. By contrast, consumers today can access video programming over multiple competing platforms, and the dominance of incumbent pay TV distributors has eroded. However, incumbent operators retain a very important position in the video programming marketplace. Although competition among video distributors has grown, traditional multichannel video programming distributor (MVPD) carriage is still important for the growth of many emerging programmers. Some independent video programmers¹ have expressed concern that certain carriage practices of cable operators and other MVPDs may limit their ability to reach viewers.

2. A central objective of multichannel video programming regulation is to foster a diverse, robust, and competitive marketplace for the delivery of multichannel video programming.² As the agency charged by statute with implementing this objective, we seek to start a fact-finding exercise on the current state of programming diversity. Through this *NOI*, we seek comment on the principal issues that independent video programmers confront in gaining carriage in the current marketplace and possible actions the Commission or others might take to address those issues. Our goal in this proceeding is to begin a conversation on the state of independent and diverse programming, and to assess how the Commission or others could foster greater consumer choice and enhance diversity in the evolving video marketplace by eliminating or reducing any barriers faced by independent programmers in

reaching viewers. For purposes of this *NOI*, we are particularly interested in starting a dialogue on barriers experienced by all types of independent programmers, including small programmers and new entrants. We seek to explore ways that the Commission can alleviate such barriers, as well as its legal authority to do so. Similar to the Commission's exploratory efforts in other proceedings, we also seek to be better informed to make any potential recommendations to other agencies, Congress, or the private sector, if we find that solutions to barriers exist that are beyond the authority of this agency. We also are interested in addressing challenges faced by a specific type of independent programmer—namely, public, educational, and governmental (PEG) channels—with respect to MVPD carriage.

II. Discussion

A. State of the Marketplace for Independent Programming

3. The Commission seeks information on the current state of the marketplace for independent programming and the availability of such programming to consumers. Has the number of independent programmers grown or decreased? Has the diversity of programming available to consumers expanded or contracted? What percentage of non-broadcast networks are independent programmers? We also seek input on the manner in which independent programmers are carried by distributors and whether the answers to the following questions differ for independent programmers and vertically integrated programmers. To what extent are independent programmers carried by traditional MVPDs and to what extent are they carried by over-the-top (OTT) providers? How many of the independent networks distributed by MVPDs are also available on OTT platforms? Is it more difficult for independent programmers to gain carriage on certain MVPDs than others (e.g., cable vs. non-cable MVPDs, or smaller vs. larger MVPDs)? Does the size of the MVPD matter? Is there a disparity in the amount of independent programming on smaller versus larger MVPDs? Do large MVPDs have market power that has an effect on the ability of independent programmers to obtain carriage? Conversely, to what extent does the size of the independent programmer matter? Do large independent programmers have an easier time getting carried than smaller ones? Are there characteristics of independent programmers that enable some to gain MVPD carriage but not

¹ For purposes of this proceeding, we define an "independent video programmer" or "independent programmer" as one that is not vertically integrated with a MVPD.

² See, e.g., Telecommunications Act of 1996, Pub. L. 104–104, § 257(b), 110 Stat. 56, 77, (codified at 47 U.S.C. 257(b)); 47 U.S.C. 521; 47 U.S.C. 532(a); 47 U.S.C. 533(f)(2). See also 47 U.S.C. 521(a)(4), (b)(1) through (5); H.R. No. 102–862, at 2, 1992 U.S.C.A.N. 1231, 1232.

others? To what extent does the level of competition among MVPDs impact the bargaining leverage of independent programmers in negotiations for carriage deals? With regard to the foregoing questions, commenters should provide examples of and relevant information regarding specific independent program networks.

B. Principal Marketplace Obstacles Faced by Independent Programmers

4. Independent programmers and others have alleged in various proceedings that cable operators and other MVPDs engage in program carriage practices that hamper the ability of programmers with limited bargaining leverage to obtain distribution of their content. They claim that these practices deprive consumers of the benefits of competition, including greater choice and diversity in programming content. We seek input below on several practices that independent programmers allege have an adverse impact on them.³

1. Insistence on Contract Provisions That Constrain the Ability of Independent Programmers To Compete

5. Independent programmers and others have asserted that certain MVPDs often demand that carriage agreements include certain contractual provisions, such as most favored nation (MFN) and alternative distribution method (ADM) clauses, that hinder programming competition, innovation, and diversity.

6. *Most Favored Nation Provisions.* In general, MFN provisions entitle the contracting video programming distributor to modify a programming agreement to incorporate more favorable rates, contract terms, or conditions that the contracting programmer later agrees to with another distributor.⁴ These

³ Pursuant to section 103(c) of the STELA Reauthorization Act of 2014, the Commission recently issued a *Notice of Proposed Rulemaking* to review the totality of the circumstances test for evaluating whether broadcast stations and MVPDs are negotiating for retransmission consent in good faith. See *Implementation of section 103 of the STELA Reauthorization Act of 2014, Totality of the Circumstances Test*, MB Docket No. 15–216, *Notice of Proposed Rulemaking*, 80 FR 59706 (2015) (*Totality of the Circumstances NPRM*). Some of the issues raised in this *NOI* regarding negotiations between MVPDs and programmers in general are similar to issues raised in the *Totality of the Circumstances NPRM*. However, we direct parties wishing to comment on issues relating to retransmission consent negotiations between broadcasters and MVPDs to file any comments on those issues in the *Totality of the Circumstances NPRM* docket.

⁴ MFN rights can be conditional or unconditional. A conditional MFN provision entitles a distributor to certain contractual rights that the programmer has granted to another distributor, as long as the distributor also accepts equivalent or related terms and conditions contained in that other distributor's

provisions are the result of contractual agreements between programmers and distributors. MFN clauses historically were used to protect favorable carriage rates obtained by MVPDs that brought a large subscriber base to the programmer, but can be misused to anticompetitive means in some cases.⁵ Independent programmers claim that some MVPDs increasingly have insisted on MFN treatment without regard to the concessions or commitments made by the programmer to secure those terms from another MVPD and without requiring the MVPD to deliver commensurate value to the programmer.

7. Some parties claim that MVPDs' insistence on MFN provisions precludes an independent programmer from making unique or innovative arrangements designed to achieve initial carriage of new programming, because those same unique terms could then be required to be extended to all MVPDs. They further argue that, given the proliferation of MFN provisions, an independent programmer that achieves some carriage is likely to have numerous MFN obligations, and that this can initiate a "domino effect" when a single term in an agreement with one MVPD or OTT service triggers the MFN obligations in a programmer's agreements with other MVPDs. In particular, the prospect of having to make the same concessions to all of the MVPDs with which an independent programmer has MFN obligations may impede the ability of independent programmers to negotiate carriage agreements with new-entrant distributors that have smaller subscriber bases, such as new OTT distributors. As a result, programmers and some advocacy groups claim, some MVPDs are able to demand MFN concessions from independent programmers that make OTT distribution economically infeasible, which deters independent programmers from developing new and innovative types of video programming, inhibits new distribution models, and limits the diversity of programming available to consumers. On the other hand, some antitrust analyses have noted that in some situations MFN provisions may yield benefits, such as

agreement. An unconditional MFN provision, by contrast, contains no such requirement that the distributor entitled to MFN rights accept equivalent or related terms and conditions; it can elect to incorporate in its agreement any of the terms of the other distributor's agreement that it wants to incorporate.

⁵ See *United States v. Apple*, 791 F.3d 290, 319 (2d Cir. 2015), citing *Blue Cross & Blue Shield United of Wisconsin v. Marshfield Clinic*, 65 F.3d 1406, 141 (7th Cir. 1995).

lower prices, reduced transaction costs, or the development of new products.⁶

8. We seek comment on the prevalence and scope of MFNs today in contracts for carriage of non-broadcast video programming. Are MFN provisions included in carriage contracts between independent programmers and OTT distributors, or do they tend to be included only in MVPD carriage contracts? Are MFN provisions more often included in carriage contracts involving independent programmers than those involving vertically integrated programmers? Does the size of the MVPD or independent programmer affect whether MFN provisions are included in carriage contracts? Do MFN provisions in carriage agreements between MVPDs and independent programmers cover the terms of both other MVPD agreements and OTT agreements? If so, how often do such MFN provisions extend to OTT agreements? Do both cable and non-cable MVPDs require MFN provisions? Do MFN provisions allow MVPDs to "cherry pick," *i.e.*, to take advantage of the lower price available in a separate carriage agreement without a reciprocal obligation? If so, how often? Will MVPDs accept some reciprocal obligations while refusing other reciprocal obligations?

9. We also seek comment on the costs and benefits of these provisions. Are there specific types of MFN provisions that particularly hinder the creation and distribution of new or niche programming? If so, how do those provisions have this effect? How do distributors enforce MFN provisions? Are there specific means of enforcement that are more common or more onerous to independent programmers than others? ⁷ What benefits are associated with MFN provisions, and are there contexts in which the benefits outweigh any harmful effects of such provisions? Do MFNs result in lower prices for consumers? Do they enhance the likelihood that a start-up independent programmer will be able to gain carriage on MVPDs? Do they reduce transaction costs between MVPDs and independent programmers? Do independent programmers receive any consideration, economic or non-economic, from

⁶ See Steven C. Salop & Fiona Scott Morton, *Developing an Administrable MFN Enforcement Policy*, 27 *Antitrust* 15, 15 (2013); Jonathan B. Baker & Judith A. Chevalier, *The Competitive Consequences of Most-Favored-Nation Provisions*, 27 *Antitrust* 20, 21–22 (2013).

⁷ For example, some means of enforcement may include "self-policing" by the programmer, an inquiry initiated by the MVPD, or contractual rights that permit an MVPD to periodically audit the programmer.

MVPDs in exchange for agreeing to MFN provisions?

10. *Alternative Distribution Method Provisions.* An ADM provision restricts a programmer's ability to distribute its programming via an alternate platform, often explicitly prohibiting specific non-MVPD distribution methods (such as online platforms) and often for a specified period of time (commonly referred to as a "window") following the programming's original airing on a traditional distribution channel.⁸ ADMs may take a variety of less-than-absolute forms. For example, some provisions may ban the distribution of content on a platform that carries fewer than a prescribed minimum number of channels. This type of restriction may have the effect of preventing a programmer from taking advantage of a desired distribution opportunity, such as OTT distribution. According to some industry observers, in some cases, a programmer that wishes to distribute its content online faces the risk that MVPDs will refuse to carry its network. Independent video programmers argue that limitations on the sharing or licensing of an independent network's content online reduce the network's ability to advertise and promote its content, as well as to share original reporting and newsgathering with other outlets. On the other hand, an ADM provision might encourage an MVPD to provide an independent programmer with distribution that it otherwise would not receive if it decided to also make its content available on alternative platforms.

11. We seek comment on the prevalence and scope of ADMs in contracts for carriage of non-broadcast video programming as well as the costs and benefits associated with such provisions. We request input on the extent to which ADM provisions vary, the consideration offered in exchange for such provisions, and the ways in which distributors enforce ADM provisions. Are ADM provisions included in carriage contracts between independent programmers and OTT distributors, or are they included only in MVPD carriage contracts? Are ADM provisions included only in carriage contracts involving independent programmers or are they included in contracts involving vertically integrated programmers as well? Do both cable and non-cable MVPDs require such provisions? Are there specific provisions or means of enforcement of ADM provisions that are more common

to independent programmers than others, or that have a different effect on independent programmers? Is there an industry standard for the windowing restrictions included in ADM provisions? Are certain window requirements more harmful to independent programmers than others, and if so, how prevalent are such requirements? In addition to carriage, do independent programmers receive any consideration, economic or non-economic, from MVPDs in exchange for agreeing to ADM provisions? By providing MVPDs with incentives to carry new or under-exposed content, can ADM provisions actually enable independent programmers to gain MVPD carriage and thereby increase the exposure of their programming? Are there other benefits associated with these provisions?

12. We also seek comment on the impact of MFN and ADM provisions on the video marketplace and on the availability of independent programming. Do such provisions thwart competition, diversity, or innovation? Or do they increase MVPD's willingness to contract with independent programmers? Do these types of provisions reflect a proper balance between an MVPD's legitimate interest in being the exclusive distributor of programming content for a set period of time and a programmer's legitimate interest in providing its programming to diverse distributors and platforms? We seek comment on whether MFN and ADM provisions may be used to limit the ability of independent programmers to experiment with new or unique distribution models or to tailor deals with smaller MVPDs or online distributors. In particular, how might MFNs or ADMs limit the ability of a programmer to license or distribute its programming over-the-top or via its own platforms, including as part of a direct-to-consumer Web site or application that offers linear or on-demand content? Are there specific types of provisions (e.g., unconditional MFNs or ADMs restricting paid distribution) that are aimed more at restricting new means of distribution than at facilitating efficient negotiations or protecting an MVPD's investment in programming? Are there specific types of MFN or ADM provisions that are pro-competitive and enhance independent programmers' ability to gain MVPD carriage?

13. *Other Contractual Provisions and OTT Carriage.* We also seek comment on whether there are other types of contractual provisions besides MFN and ADM provisions that are used today that impact, in a negative or positive way,

the ability of independent programmers to distribute their programming. Are there circumstances under which these limits actually end up enabling MVPD distribution of program content that might not otherwise be carried? Aside from contractual issues, are there are other aspects of MVPD carriage that are preventing the creation and distribution of diverse, independent programming? Ensuring diverse and novel programming requires a viable, profitable business model, for both MVPDs and programmers. Is it possible to sustain a business model based upon carriage by a collection of small MVPDs, or is it necessary to obtain carriage by a larger MVPD in order to attract carriage by additional MVPDs? Is there a threshold level of MVPD carriage that is necessary to sustain a viable business model?

14. In addition, we request input on the costs and benefits to independent programmers of forgoing MVPD carriage to pursue OTT carriage. While OTT distribution has lower barriers to entry, it is still a nascent service in some respects. Is the OTT platform a viable business model? Is it a viable alternative to MVPD carriage? If not, what must happen before it can be considered a viable business model? Does the OTT platform provide an easier path to marketplace success? What benefits of carriage (e.g., level of viewership or advertising revenue) on OTT platforms are necessary for an independent programmer to remain viable? What are the difficulties new and emerging programmers face in negotiating for these benefits? How do the benefits of carriage on OTT platforms compare with the benefits of carriage on MVPD platforms? Do MVPDs offer favorable carriage terms that OTT platforms are unable to offer? If so, what are these terms and to what extent are these terms necessary to remain viable in today's marketplace? Can a successful OTT experience lead to future MVPD carriage and/or vice versa? To the extent possible, we request that commenters provide examples of independent programmers that have been able to launch and grow on OTT platforms. Despite such launch and growth, are there additional challenges that independent programmers face in gaining carriage and growing their viewership on OTT platforms? If so, what are they and what effect do they have? Are any of these challenges particular to diverse and niche programmers?

2. Program Bundling

15. MVPDs claim that some large media entities with multiple program

⁸ A traditional distribution channel typically offers linear programming—programming prescheduled by the programming provider.

offerings, including vertically-integrated programmers, are able to force MVPDs to carry less desirable content through bundling arrangements. In particular, these parties assert that such entities often leverage their marquee programming (e.g., premium channels or regional sports programming) to force MVPDs to carry additional channels that have little or no consumer demand. Some parties maintain that the proliferation of bundling arrangements limits programming choices and raises costs for consumers by forcing MVPDs to accept less desirable programming that may displace independent and diverse programming. Independent programmers argue that bundling arrangements drain the resources and monopolize the channel capacity of MVPDs to the detriment of independent programming. MVPDs that desire to cut costs then may drop independent programming from their lineups, refuse to carry new programming, or offer carriage only on terms less favorable to independent programmers. Other independent programmers argue that forced bundling is merely a pretext used by MVPDs in order to justify continued denial of carriage for independent programming. Along similar lines, some parties have claimed that programmers impose an extra charge on MVPDs for subscriber access to their online programming and that this has the potential to drain resources that might otherwise be devoted to carriage of independent programming. How pervasive is this practice?

16. Large programmers have defended the use of program bundles and refuted arguments that they have adverse effects on MVPDs or consumers. They maintain that, through the bundling of programming, MVPDs have the option of obtaining valuable programming at discounted prices. In this regard, such programmers contend that these programming bundles—offered to both small and large MVPDs—offer substantially greater value to MVPDs and consumers than standalone offers.

17. We invite comment on the impact of bundling practices. To what extent does bundling constrain MVPDs from carrying independent programming? Do smaller MVPDs feel the constraints of bundling more acutely than large MVPDs because of their limited capacity or limited resources? Does bundling benefit consumers by lowering prices for content? Are there any instances of independent programmers being dropped or not carried at all because of the constraints placed on MVPD systems as a result of bundling? To what extent do bundling practices, together with capacity constraints, result in

independent programmers being dropped from MVPDs' channel lineups? Are capacity constraints as significant as they were years ago? With technological changes, will capacity constraints be a less significant issue in the future?

18. Recently, the marketplace has trended away from large MVPD bundles. Some MVPDs have begun offering smaller programming packages, and programmers have launched a number of online *à la carte* and on-demand program offerings. We seek comment on what effect, if any, these trends have had on independent programmers. Some MVPDs have argued that these trends threaten independent programmers. They assert, among other things, that these trends undermine the economics of large MVPD bundles that have enabled MVPDs to carry independent programmers offering diverse and niche programming to consumers. Is there evidence to support the claims that marketplace trends toward smaller bundles and *à la carte* or on-demand offerings adversely impact independent programmers or reduce consumer choice in programming? Alternatively, is there any evidence suggesting that these trends may provide benefits to independent programmers?

C. Other Marketplace Obstacles

19. In a number of proceedings, independent programmers have cited other obstacles in their efforts to secure carriage by certain MVPDs or OTT providers. According to some programmers, for example, some MVPDs, rather than refusing carriage outright to a programmer (which might spur a complaint), instead will purposefully fail to respond to carriage negotiation requests in a timely manner or fail to acknowledge such requests entirely. Independent programmers further claim that when MVPDs do respond to carriage requests, they in some cases knowingly put forth inadequate counter offers. Independent programmers also claim that some MVPDs have employed a tactic of avoiding negotiations until just before the expiration of existing carriage agreements, thereby forcing independent programmers to accept uncertain, month-to-month carriage arrangements. We seek comment on whether these practices are being employed, and if so, the extent to which they are being used, as well as examples that demonstrate the impact of such practices. To what extent, if at all, do such practices impede entry by or successful growth of independent programmers? Are there other practices or marketplace issues (e.g., demands by

MVPDs for an ownership stake in independent programmers, channel placement, or tiering practices) that may impede the entry or growth of independent programmers? Are there practices that benefit the growth of independent programmers?

20. We also seek comment on the extent to which some independent programmers may have leverage over some MVPDs. For example, are there situations in which an independent programmer may condition any potential carriage arrangement on carriage by an MVPD of its suite of programming on distribution to a very high percentage of the MVPD's customers (i.e., minimum penetration requirements)? How would such practices affect the ability of MVPDs to offer "skinny" bundles that could be combined with OTT services that could include more diverse and independent programming? Similarly, we seek comment on assertions made by some MVPDs that certain programmers insist on tier placement commitments that compel MVPDs to place entire bundles in the most popular programming packages. How do programmers typically calculate the number of video subscribers that minimum penetration requirements are based on?

21. Consumer advocacy groups and PEG providers contend that MVPDs do not make PEG programming and information about PEG programming adequately available to subscribers. For example, they argue that some MVPDs often do not provide in their on-screen menus or guides basic information about PEG channels and programs, such as information about accessibility, channel names, or program names or descriptions. They assert that the failure by MVPDs to provide the same level of program description information for PEG channels that they offer for other programmers discriminates against PEG providers. In other proceedings, these parties have advocated that the Commission mandate a nondiscriminatory approach that would require MVPDs to provide PEG information on their program guides on the same terms and conditions as other programmers if a PEG programmer supplies program-specific information. We seek comment on MVPDs' practices with respect to making PEG programming information available to subscribers. To the extent that MVPDs do not make this information available, is this for technical reasons, and, if so, can the technical barriers be surmounted? Is the Congressionally-imposed prohibition against editorial control of PEG channels relevant to this

issue?⁹ What is the source of the Commission's authority in this area, if any?

D. Possible Regulatory Tools for Addressing Market Obstacles Faced by Independent Programmers

22. What role, if any, should the Commission play in addressing any obstacles that prevent greater access by consumers to sources of independent and diverse programming? Are there other entities—including other agencies, Congress or private entities—that could play a role in addressing these obstacles? Can the marketplace evolution toward greater competition and choice among distribution platforms be expected to ease any obstacles, or may it exacerbate them in some respects? Are the Commission's existing regulatory tools adequate to address any obstacles? Are there actions that we could recommend that others explore in order to promote programming diversity? Is there a role for other federal agencies in this review? Are there concerns that would be appropriate to refer to the Department of Justice and/or the Federal Trade Commission?¹⁰ We seek comment on any regulatory or other approaches the Commission should take to alleviate obstacles to the distribution of independent and diverse programming.

23. We also seek comment on the Commission's legal authority to alleviate any obstacles. Specifically, we seek comment on whether section 257 of the Communications Act of 1934, as amended (Act), provides the Commission with authority to impose regulations aimed at improving programming diversity. In particular, we seek comment on section 257(b), which directs the Commission to promote the policies and purposes of the Act favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.¹¹ We also request input on whether Section 616(a) of the Act provides the Commission with the authority to take action with respect to program carriage practices that may have an adverse impact on independent programmers. Specifically, we invite comment on section 616(a)'s mandate that the Commission establish regulations governing program carriage agreements and related practices

between cable operators or other multichannel video programming distributors and video programming vendors.¹² What other authority does the Commission or others have to alleviate obstacles to the distribution of independent and diverse programming?

III. Procedural Matters

24. *Ex Parte Rules.* This is an exempt proceeding in which *ex parte* presentations are permitted (except during the Sunshine Agenda period) and need not be disclosed.¹³

25. *Filing Requirements.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

26. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

27. *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 FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

28. *Additional Information.* For additional information on this proceeding, contact Calisha Myers or Raelynn Remy of the Policy Division, Media Bureau, at Calisha.Myers@fcc.gov, Raelynn.Remy@fcc.gov, or (202) 418-2120.

IV. Ordering Clause

29. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4(i), 4(j), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C §§ 151, 154(i), 154(j), 303(r), 403, this *Notice of Inquiry* IS ADOPTED.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. 2016-04331 Filed 2-26-16; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Communications Security, Reliability, and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC or Commission) Communications Security, Reliability, and Interoperability Council (CSRIC) V will hold its fourth meeting.

DATES: March 16, 2016.

ADDRESSES: Federal Communications Commission, Room TW-C305 (Commission Meeting Room), 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, Designated Federal

⁹ 47 U.S.C. 533(e).

¹⁰ We note that the Commission acts in a manner that is both complementary to the work of the antitrust agencies and supported by their application of antitrust laws. See *generally* 47 U.S.C. 152(b).

¹¹ 47 U.S.C. 257(b).

¹² 47 U.S.C. 536.

¹³ 47 CFR 1.1204(b)(1).

Officer, (202) 418-1096 (voice) or jeffery.goldthorp@fcc.gov (email); or Suzon Cameron, Deputy Designated Federal Officer, (202) 418-1916 (voice) or suzon.cameron@fcc.gov (email).

SUPPLEMENTARY INFORMATION: The meeting will be held on March 16, 2016, from 1:00 p.m. to 5:00 p.m. in the Commission Meeting Room of the Federal Communications Commission, Room TW-C305, 445 12th Street SW., Washington, DC 20554.

The CSRIC is a Federal Advisory Committee that will provide recommendations to the FCC regarding best practices and actions the FCC can take to help ensure the security, reliability, and interoperability of communications systems. On March 19, 2015, the FCC, pursuant to the Federal Advisory Committee Act, renewed the charter for the CSRIC for a period of two years through March 18, 2017. The meeting on March 16, 2016, will be the fourth meeting of the CSRIC under the current charter. The FCC will attempt to accommodate as many attendees as possible; however, admittance will be limited to seating availability. The Commission will provide audio and/or video coverage of the meeting over the Internet from the FCC's Web page at <http://www.fcc.gov/live>. The public may submit written comments before the meeting to Jeffery Goldthorp, CSRIC Designated Federal Officer, by email to jeffery.goldthorp@fcc.gov or U.S. Postal Service Mail to Jeffery Goldthorp, Associate Bureau Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, 445 12th Street SW., Room 7-A325, Washington, DC 20554.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to fcc504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the FCC can contact you if it needs more information. Please allow at least five days' advance notice; last-minute requests will be accepted, but may be impossible to fill.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2016-04330 Filed 2-26-16; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS16-03]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with section 1104(b) of title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: Federal Reserve Board—International Square location, 1850 K Street NW., Washington, DC 20006.

Date: March 9, 2016.

Time: 10:00 a.m.

Status: Open.

Reports

Chairman
Executive Director
Financial Manager
Delegated State Compliance Reviews

Action and Discussion Items

November 4, 2015 Open Session

Minutes
Appraisal Foundation Grant
Notice of Proposed Rulemaking on AMC Fees

How To Attend and Observe an ASC Meeting

If you plan to attend the ASC Meeting in person, we ask that you send an email to meetings@asc.gov. You may register until close of business four business days before the meeting date. You will be contacted by the Federal Reserve Law Enforcement Unit on security requirements. You will also be asked to provide a valid government-issued ID before being admitted to the Meeting. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: February 24, 2016.

James R. Park,
Executive Director.

[FR Doc. 2016-04376 Filed 2-26-16; 8:45 am]

BILLING CODE 6700-01-P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS16-04]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in closed session:

Location: Federal Reserve Board—International Square location, 1850 K Street, NW., Washington, DC 20006.

Date: March 9, 2016.

Time: Immediately following the ASC open session.

Status: Closed.

Matters to be Considered: State Preliminary Investigation.

Dated: February 24, 2016.

James R. Park,
Executive Director.

[FR Doc. 2016-04367 Filed 2-26-16; 8:45 am]

BILLING CODE 6700-01-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 15, 2016.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *The Marathon 2016 Irrevocable Trust, Mitchell, South Dakota (FNN*

Trust Company, Mitchell, South Dakota, Trustee; Todd L. Johnson, Duluth, Minnesota; and the Cordoba 2016 Irrevocable Trust, Mitchell, South Dakota (FNN Trust Company, Trustee; Todd L. Johnson), to retain shares of NATCOM Bancshares, Inc., Superior, Wisconsin, and join the Todd Johnson Shareholder Group, which controls NATCOM Bancshares, Inc., Superior, Wisconsin, and thereby indirectly retain control of National Bank of Commerce, Superior, Wisconsin. In addition, the NEX.gen 2016 Irrevocable Trust, Mitchell, South Dakota (FNN Trust Company and Jeffrey Thompson, Hermantown, Minnesota, Co-Trustees; Bruce Thompson, Superior, Wisconsin, Trust Protector), to join the Todd Johnson Shareholder Group as a result of adding Todd L. Johnson as a Co-Trustee of the NEX.gen 2016 Irrevocable Trust; to acquire voting shares of NATCOM Bancshares, Inc., and thereby indirectly acquire voting shares of National Bank of Commerce, both in Superior, Wisconsin.

Board of Governors of the Federal Reserve System, February 24, 2016.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2016-04285 Filed 2-26-16; 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 29, 2016.

ADDRESSES: You may submit comments, identified by *Form G-FIN* or *Form G-FINW*, 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 OMB 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 Elmaghribi—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 this 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 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 collection of information is 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 start-up 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 Report

Report title: Notice By Financial Institutions of Government Securities Broker or Government Securities Dealer Activities; Notice By Financial Institutions of Termination of Activities as a Government Securities Broker or Government Securities Dealer.

Agency form number: Form G-FIN; Form G-FINW.

OMB control number: 7100-0224.

Frequency: On occasion.

Reporters: State member banks, foreign banks, uninsured state branches or state agencies of foreign banks, commercial lending companies owned or controlled by foreign banks, and Edge corporations.

Estimated average hours per response: Form G-FIN, 1 hour; Form G-FINW, 0.25 hour.

Estimated Number of respondents: Form G-FIN, 4; Form G-FINW, 2.

Estimated annual reporting hours: 5 hours.

Estimated cost to public: \$259.

General description of report: The notices are authorized under the Securities Exchange Act of 1934, as amended¹ (the Act), which requires a financial institution that is a broker or dealer of government securities dealer to notify the appropriate regulatory agency (ARA) that it is a government securities broker or a government securities dealer (Form G–FIN notice), or that it has ceased to act as such (Form G–FINW notice). In addition, 15 U.S.C. 780–5(b)(1) directs the Treasury to adopt rules requiring every government securities broker and government securities dealer to collect information and to provide reports to the applicable ARA. The Board is an ARA. 15 U.S.C. 78c(a)(34)(G)(ii). Further support for the creation and collection of these notices by the Board is found in Treasury regulations, authorized by 15 U.S.C. 780–5(b)(1), instructing that any amendments or corrections to a financial institution’s status as a government securities broker or dealer also be filed with the ARA on the Form GFIN notice. 17 CFR 400.5(b).

Under the Act, the Secretary of the Treasury is authorized to exempt any government securities broker or dealer, or class thereof, from the notice requirement of section 780–5(a)(1)(B). See 15 U.S.C. 780–5(a)(5). Thus, the obligation to file the notices with the Board is mandatory for those financial institutions for which the Board serves as the ARA, unless the financial institution is exempted from the notice filing requirement by Treasury regulations (17 CFR part 401). If an exemption no longer applies, the institution must immediately file a notice. The filing of these notices is event generated.

Respondents file two copies of the notices directly with the Board. Under the statute, the Board forwards one copy to the Securities and Exchange Commission (SEC), and the notices are then made public by the SEC. 15 U.S.C. 780–5(a)(1)(B)(iii). While the statute only requires the SEC to produce the notices to the public, the notices are also available to the public upon request made to the Board. Accordingly, the Board does not consider these data to be confidential.

Abstract: The Act requires financial institutions to notify their ARA of their intent to engage in government securities broker or dealer activity, to amend information submitted previously, and to record their termination of such activity. The Federal Reserve is the ARA for state member banks, foreign banks, uninsured

state branches or state agencies of foreign banks, commercial lending companies owned or controlled by foreign banks, and Edge corporations. The Federal Reserve uses the information in its supervisory capacity to measure compliance with the Act.

Board of Governors of the Federal Reserve System, February 24, 2016.

Robert deV. Frierson,
Secretary of the Board.

[FR Doc. 2016–04282 Filed 2–26–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0070; Docket 2015–0055; Sequence 26]

Submission for OMB Review; Payments

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding the extension of a previously existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Payments. A 60-day notice was published in the **Federal Register** at 80 FR 76492 on December 9, 2015. No comments were received.

DATES: Submit comments on or before March 30, 2016.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link “Submit a Comment” that corresponds with “Information Collection 9000–0070, Payments”. Follow the instructions provided at the

“Submit a Comment” screen. Please include your name, company name (if any), and “Information Collection 9000–0070, Payments” on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0070, Payments.

Instructions: Please submit comments only and cite Information Collection 9000–0070, Payments, in all correspondence related to this collection. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Kathlyn Hopkins, Procurement Analyst, Office of Acquisition Policy, GSA at 202–969–7226 or email at kathlyn.hopkins@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms performing under Federal contracts must provide adequate documentation to support requests for payment under these contracts. The documentation may range from a simple invoice to detailed cost data. The information is usually submitted once, at the end of the contract period or upon delivery of the supplies or services, but could be submitted more often depending on the payment schedule established under the contract (see FAR 52.232–1 through 52.232–4, and FAR 52.232–6 through 52.232–11). The information is used to determine the proper amounts to be paid to Federal contractors.

B. Annual Reporting Burden

Respondents: 80,000.
Responses per Respondent: 120.
Total Responses: 9,600,000.
Hours per Response: .25.
Total Burden Hours: 2,400,000.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to

¹ 15 U.S.C. 780–5(a)(1)(B)(i).

enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202-501-4755.

Please cite OMB Control No. 9000-0070, Payments, in all correspondence.

Dated: February 23, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016-04280 Filed 2-26-16; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC-2013-0025; Docket Number NIOSH-266]

Issuance of Final Publication

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of issuance of final publication.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), announces the availability of the following publication: *NIOSH Criteria for a Recommended Standard: Occupational Exposure to Heat and Hot Environments* [2016-106].

ADDRESSES: This document may be obtained at the following link: <http://www.cdc.gov/niosh/docs/2016-106/>.

FOR FURTHER INFORMATION CONTACT: Brenda Jacklitsch, NIOSH Education and Information Division, 1090 Tusculum Ave, Mail Stop C-32, Cincinnati, OH 45226, email address: gwe6@cdc.gov.

Dated: February 19, 2016.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2016-04297 Filed 2-26-16; 8:45 am]

BILLING CODE 4163-19-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2011-D-0147]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Industry and Food and Drug Administration Staff; Section 905(j) Reports: Demonstrating Substantial Equivalence for Tobacco Products and Demonstrating the Substantial Equivalence of a New Tobacco Product: Responses to Frequently Asked Questions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Guidance for Industry and Food and Drug Administration Staff; Section 905(j) Reports: Demonstrating Substantial Equivalence for Tobacco Products and Demonstrating the Substantial Equivalence of a New Tobacco Product: Responses to Frequently Asked Questions" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE-14526, Silver Spring, MD 20993-0002, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: On July 16, 2015, the Agency submitted a proposed collection of information entitled "Guidance for Industry and Food and Drug Administration Staff; Section 905(j) Reports: Demonstrating Substantial Equivalence for Tobacco Products and Demonstrating the Substantial Equivalence of a New Tobacco Product: Responses to Frequently Asked Questions" to OMB for review and clearance under 44 U.S.C. 3507. 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.

OMB has now approved the information collection and has assigned OMB control number 0910-0673. The approval expires on January 31, 2019. A copy of the supporting statement for this information collection is available on the Internet at <http://www.reginfo.gov/public/do/PRAMain>.

Dated: February 23, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016-04222 Filed 2-26-16; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2012-N-1093]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Food Additive Petitions and Investigational Food Additive Exemptions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 30, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-7285, or emailed to oir_submission@omb.eop.gov. All comments should be identified with the OMB control number 0910-0546. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE-14526, Silver Spring, MD 20993-0002, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Food Additive Petitions and Investigational Food Additive Exemptions, 21 CFR 570.17 and 571 OMB Control Number 0910-0546—Extension

Section 409(a) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 348(a)) provides that a food additive shall be deemed to be unsafe unless its use is permitted by a regulation which prescribes the condition(s) under which it may safely be used, or unless it is exempted by regulation for investigational use. Section 409(b) of the FD&C Act specifies the information that must be submitted by a petitioner in order to establish the safety of a food additive and to secure the issuance of a regulation permitting its use.

To implement the provisions of section 409 of the FD&C Act, procedural regulations have been issued under 21 CFR part 571. These procedural regulations are designed to specify more thoroughly the information that must be

submitted to meet the requirement set down in broader terms by the FD&C Act. The regulations add no substantive requirements to those indicated in the FD&C Act, but attempt to explain these requirements and provide a standard format for submission to speed processing of the petition. Labeling requirements for food additives intended for animal consumption are also set forth in various regulations contained in parts 501, 573, and 579. The labeling regulations are considered by FDA to be cross-referenced to § 571.1, which is the subject of this same OMB clearance for food additive petitions.

With regard to the investigational use of food additives, section 409(j) of the FD&C Act provides that any food additive, or any food bearing or containing such an additive, may be exempted from the requirements of this section if intended solely for investigational use by qualified experts. Investigational use of a food additive is

typically to address the safety and/or intended physical or technical effect of the additive.

To implement the provisions of section 409(j), regulations have been issued under 21 CFR 570.17. These regulations are designed to specify more thoroughly the information that must be submitted to meet the requirement set down in broad terms by the FD&C Act. Labeling requirements for investigational food additives are also set forth in various regulations contained in part 501. The labeling regulations are considered by FDA to be cross-referenced to § 570.17, which is the subject of this same OMB clearance for investigational food additive files.

In the **Federal Register** of October 21, 2015 (80 FR 63795), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN¹ FOOD ADDITIVE PETITIONS

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
571.1(c) Moderate Category	12	1	12	3,000	36,000
571.1(c) Complex Category	12	1	12	10,000	120,000
571.6 Amendment of Petition	2	1	2	1,300	2,600
Total Hours					158,600

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

We base our estimate of the total annual responses on submissions received during fiscal years 2014 and 2015. We base our estimate of the hours per response upon our experience with the petition and filing processes.

571.1(c) moderate category: For a food additive petition without complex chemistry, manufacturing, efficacy, or safety issues, the estimated time requirement per petition is

approximately 3,000 hours. We estimate that, annually, 12 respondents will each submit 1 such petition, for a total of 36,000 hours.

571.1(c) complex category: For a food additive petition with complex chemistry, manufacturing, efficacy, and/or safety issues, the estimated time requirement per petition is approximately 10,000 hours. We estimate that, annually, 12 respondents

will each submit 1 such petition, for a total of 120,000 hours.

571.6: For a food additive petition amendment, the estimated time requirement per petition is approximately 1,300 hours. We estimate that, annually, 2 respondents will each submit 1 such amendment, for a total of 2,600 hours.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN¹ INVESTIGATIONAL FOOD ADDITIVE FILES

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
570.17 Moderate Category	4	1	4	1,500	6,000
570.17 Complex Category	5	1	5	5,000	25,000
Total Hours					31,000

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

570.17 moderate category: For an investigational food additive file without complex chemistry, manufacturing, efficacy, or safety issues,

the estimated time requirement per file is approximately 1,500 hours. We estimate that, annually, 4 respondents

will each submit 1 such file, for a total of 6,000 hours.

570.17 complex category: For an investigational food additive file with

complex chemistry, manufacturing, efficacy, and/or safety issues, the estimated time requirement per file is approximately 5,000 hours. We estimate that, annually, 5 respondents will each submit 1 such file, for a total of 25,000 hours.

Dated: February 23, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016-04228 Filed 2-26-16; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2012-N-0921]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Adverse Event Reporting; Electronic Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 30, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-7285, or emailed to oir_submission@omb.eop.gov. All comments should be identified with the OMB control number 0910-0645. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE-14526, Silver Spring, MD 20993-0002, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

II. Electronic Submission of Food and Drug Administration Adverse Event Reports and Other Safety Information Using the Electronic Submission Gateway and the Safety Reporting Portal—21 CFR 310.305, 314.80, 314.98, 314.540, 514.80, 600.80, 1271.350 and Part 803 (OMB Control Number 0910-0645)—Revision

The Safety Reporting Portal (SRP) and the Electronic Submission Gateway (ESG) are the Agency's electronic systems for collecting, submitting, and processing adverse event reports, product problem reports, and other safety information for FDA-regulated products. To ensure the safety and identify any risks, harms, or other dangers to health for all FDA-regulated human and animal products, the Agency needs to be informed whenever an adverse event, product quality problem, or product use error occurs. This risk identification process is the first necessary step that allows the Agency to gather the information necessary to be able to evaluate the risk associated with the product and take whatever action is necessary to mitigate or eliminate the public's exposure to the risk.

Some adverse event reports are required to be submitted to FDA (mandatory reporting) and some adverse event reports are submitted voluntarily (voluntary reporting). Requirements regarding mandatory reporting of adverse events or product problems have been codified in 21 CFR parts 310, 314, 514, 600, 803 and 1271, specifically §§ 310.305, 314.80, 314.98, 314.540, 514.80, 600.80, 803.30, 803.40, 803.50, 803.53, 803.56, and 1271.350(a) (21 CFR 310.305, 314.80, 314.98, 314.540, 514.80, 600.80, 803.30, 803.40, 803.50, 803.53, 803.56, and 1271.350(a)). While adverse event reports submitted to FDA in paper format using Forms FDA 3500, 3500A, 1932, and 1932a, are approved under OMB control numbers 0910-0284 and 0910-0291, this notice solicits comments on adverse event reports filed electronically via the SRP and the ESG, and currently approved under OMB control number 0910-0645.

III. The FDA Safety Reporting Portal Rational Questionnaires

FDA currently has OMB approval to receive several types of adverse event reports electronically via the SRP using rational questionnaires. In this notice, FDA seeks comments on the extension of OMB approval for the existing rational questionnaires; the proposed revision of the existing rational questionnaire for dietary supplements; the proposed revision of the existing

rational questionnaire for tobacco products; a proposed new rational questionnaire that will be used for a new safety reporting program for clinical trials and/or investigational use by the Center for Tobacco Products (CTP); and proposed new rational questionnaires that will be used for food, infant formula, and cosmetic adverse event reports.

A. Reportable Food Registry Reports

The Food and Drug Administration Amendments Act of 2007 (Pub. L. 110-085) (FDAAA) amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) by creating section 417 (21 U.S.C. 350f), Reportable Food Registry (RFR or the Registry). Section 417 of the FD&C Act defines "reportable food" as an "article of food (other than infant formula or dietary supplements) for which there is a reasonable probability that the use of, or exposure to, such article of food will cause serious adverse health consequences or death to humans or animals." (See section 417(a)(2) of the FD&C Act). The Secretary of Health and Human Services (the Secretary) has delegated to the Commissioner of FDA the responsibility for administering the FD&C Act, including section 417. The Congressionally identified purpose of the RFR is to provide "a reliable mechanism to track patterns of adulteration in food [which] would support efforts by the Food and Drug Administration to target limited inspection resources to protect the public health" (121 Stat. 965). We designed the RFR report rational questionnaire to enable FDA to quickly identify, track, and remove from commerce an article of food (other than infant formula and dietary supplements) for which there is a reasonable probability that the use of, or exposure to, such article of food will cause serious adverse health consequences or death to humans or animals. FDA's Center for Food Safety and Applied Nutrition (CFSAN) uses the information collected to help ensure that such products are quickly and efficiently removed from the market to prevent foodborne illnesses. The data elements for RFR reports remain unchanged in this request for extension of OMB approval.

B. Reports Concerning Experience With Approved New Animal Drugs

Section 512(l) of the FD&C Act (21 U.S.C. 360b(l)) and § 514.80(b) of FDA's regulations (21 CFR 514.80) require applicants of approved new animal drug applications (NADAs) and approved abbreviated new animal drug applications (ANADAs) to report

adverse drug experiences and product/manufacturing defects to the Center for Veterinary Medicine (CVM). This continuous monitoring of approved NADAs and ANADAs affords the primary means by which FDA obtains information regarding potential problems with the safety and efficacy of marketed approved new animal drugs as well as potential product/manufacturing problems. Postapproval marketing surveillance is important because data previously submitted to FDA may no longer be adequate, as animal drug effects can change over time and less apparent effects may take years to manifest.

If an applicant must report adverse drug experiences and product/manufacturing defects and chooses to do so using the Agency's paper forms, the applicant is required to use Form FDA 1932, "Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report." Periodic drug experience reports and special drug experience reports must be accompanied by a completed Form FDA 2301, "Transmittal of Periodic Reports and Promotional Material for New Animal Drugs" (see § 514.80(d)). Form FDA 1932a, "Veterinary Adverse Drug Reaction, Lack of Effectiveness or Product Defect Report" allows for voluntary reporting of adverse drug experiences or product/manufacturing defects by veterinarians and the general public. Collection of information using existing paper forms FDA 2301, 1932, and 1932a is approved under OMB control number 0910-0284.

Alternatively, an applicant may choose to report adverse drug experiences and product/manufacturing defects electronically. The electronic submission data elements to report adverse drug experiences and product/manufacturing defects electronically remain unchanged in this request for extension of OMB approval.

C. Animal Food Adverse Event and Product Problem Reports

Section 1002(b) of the FDAAA directed the Secretary to establish an early warning and surveillance system to identify adulteration of the pet food supply and outbreaks of illness associated with pet food. As part of the effort to fulfill that directive, the Secretary tasked FDA with developing the instrument that would allow consumers to report voluntarily adverse events associated with pet food. We developed the Pet Food Early Warning System rational questionnaire as a user-friendly data collection tool, to make it easy for the public to report a safety problem with pet food. Subsequently,

we developed a questionnaire for collecting voluntary adverse event reports associated with livestock food from interested parties such as livestock owners, managers, veterinary staff or other professionals, and concerned citizens. Information collected in these voluntary adverse event reports contribute to CVM's ability to identify adulteration of the livestock food supply and outbreaks of illness associated with livestock food. The Pet Food Early Warning System and the Livestock Food Reports are designed to identify adulteration of the animal food supply and outbreaks of illness associated with animal food to enable us to quickly identify, track, and remove from commerce such articles of food. We use the information collected to help ensure that such products are quickly and efficiently removed from the market to prevent foodborne illnesses. The electronic submission data elements to report adverse events associated with animal food remain unchanged in this request for extension of OMB approval.

D. Voluntary Tobacco Product Adverse Event and Product Problem Reports

As noted, this notice seeks comments on two items: (1) A revision to the existing rational questionnaire utilized by consumers and concerned citizens to report tobacco product adverse event or product problems, and (2) a proposed new rational questionnaire that will be used for a new safety reporting program for clinical trials and/or investigational use by CTP.

FDA has broad legal authority under the FD&C Act to protect the public health, including protecting Americans from tobacco-related death and disease by regulating the manufacture, distribution, and marketing of tobacco products and by educating the public, especially young people, about tobacco products and the dangers their use poses to themselves and others. The Family Smoking Prevention and Tobacco Control Act of 2009 (Pub. L. 111-31) (Tobacco Control Act) amended the FD&C Act by creating a new section 909 (21 U.S.C. 387i, Records and Reports on Tobacco Products). Section 909(a) of the FD&C Act (21 U.S.C. 387i(a)) authorizes FDA to establish regulations with respect to mandatory adverse event reports associated with the use of a tobacco product. At this time, FDA collects voluntary adverse event reports associated with the use of tobacco products from interested parties such as health care providers, researchers, consumers, and other users of tobacco products. Information collected in voluntary adverse event reports will contribute to CTP's ability

to be informed of, and assess the real consequences of, tobacco product use.

The need for this collection of information derives from our responsibility to obtain current, timely, and policy-relevant information to carry out our statutory functions. The FDA Commissioner is authorized to undertake this collection as specified in section 1003(d)(2) of the FD&C Act (21 U.S.C. 393(d)(2)).

FDA's CTP has been receiving adverse event and product problem reports through the Safety Reporting Portal since January 2014, when the Safety Reporting Portal for tobacco products first became available to the public. CTP also receives adverse event and product problem reports via paper forms, as approved under OMB Control number 0910-0291. The original questionnaire evolved with input from a National Institutes of Health team of human-factors experts, from other regulatory agencies, and with extensive input from consumer advocacy groups and the general public. The revised CTP questionnaire along with the proposed new Investigator questionnaire build on the foundation of the original rational questionnaire to make the report's data more useful, analyzable, and specific. The changes from the original to the new questionnaire are made in an effort to make the questions more understandable and specific. In some instances, alterations were made to the list of values to choose from by the end user in order to include values more pertinent to CTP's current and future data collection needs. In other instances, questions were added that will provide FDA with more specific, analyzable information. In still other instances, questions were removed altogether in an effort to streamline the questionnaire and make it more user-friendly. All changes were made with the goal of providing FDA more pertinent information while minimizing the burden on the respondent. Finally, we note that respondents unable to submit reports using the electronic system will still be able to provide their information by paper form (by mail or fax) or telephone.

The proposed new rational questionnaire will be used by tobacco product investigators in clinical trials with investigational tobacco products. In addition to the information collected by the existing rational questionnaire for tobacco products, the proposed rational questionnaire will collect identifying information specific to the clinical trial or investigational product such as clinical protocol numbers or other identifying features to pinpoint under

which test or protocol the adverse event occurred.

Both CTP voluntary rational questionnaires will capture tobacco-specific adverse event and product problem information from voluntary reporting entities such as health care providers, researchers, consumers, and other users of tobacco products. To carry out its responsibilities, FDA needs to be informed when an adverse event, product problem, or error with use is suspected or identified. When FDA receives tobacco-specific adverse event and product problem information, it will use the information to assess and evaluate the risk associated with the product, and then FDA will take whatever action is necessary to reduce, mitigate, or eliminate the public's exposure to the risk through regulatory and public health interventions.

E. Dietary Supplement Adverse Event Reports

The Dietary Supplement and Nonprescription Drug Consumer Protection Act (DSNDCPA) (Pub. L. 109-462, 120 Stat. 3469) amended the FD&C Act with respect to serious adverse event reporting and recordkeeping for dietary supplements and nonprescription drugs marketed without an approved application.

Section 761(b)(1) of the FD&C Act (21 U.S.C. 379aa-1(b)(1)) requires the manufacturer, packer, or distributor whose name (under section 403(e)(1) of the FD&C Act (21 U.S.C. 343(e)(1)) appears on the label of a dietary supplement marketed in the United States to submit to FDA all serious adverse event reports associated with the use of a dietary supplement, accompanied by a copy of the product

label. The manufacturer, packer, or distributor of a dietary supplement is required by the DSNDCPA to use the MedWatch form (Form FDA 3500A) when submitting a serious adverse event report to FDA. In addition, under section 761(c)(2) of the FD&C Act, the submitter of the serious adverse event report (referred to in the statute as the "responsible person") is required to submit to FDA a followup report of any related new medical information the responsible person receives within 1 year of the initial report.

As required by section 3(d)(3) of the DSNDCPA, FDA issued guidance to describe the minimum data elements for serious adverse event reports for dietary supplements. The guidance document entitled "Guidance for Industry: Questions and Answers Regarding Adverse Event Reporting and Recordkeeping for Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act," discusses how, when, and where to submit serious adverse event reports for dietary supplements and followup reports. The guidance also provides FDA's recommendation on records maintenance and access for serious and non-serious adverse event reports and related documents.

Reporting of serious adverse events for dietary supplements to FDA serves as an early warning sign of potential public health issues associated with such products. Without notification of all serious adverse events associated with dietary supplements, FDA would be unable to investigate and followup promptly, which in turn could cause delays in alerting the public when safety problems are found. In addition, the

information received provides a reliable mechanism to track patterns of adulteration in food that supports efforts by FDA to target limited inspection resources to protect the public health. FDA uses the information collected to help ensure that such products are quickly and efficiently removed from the market to prevent foodborne illnesses.

Paper mandatory dietary supplement adverse event reports are submitted to FDA on the MedWatch form, Form FDA 3500A, and paper voluntary reports are submitted on Form FDA 3500. Forms FDA 3500 and 3500A are available as fillable pdf forms. Dietary supplement adverse event reports may be electronically submitted to the Agency via the SRP. This method of submission is voluntary. A manufacturer, packer, or distributor of a dietary supplement who is unable to or chooses not to submit reports using the electronic system will still be able to provide their information by paper MedWatch form, Form FDA 3500A (by mail or fax). There is no change to the mandatory information previously required on the MedWatch form. CFSAN is making available the option to submit the same information via electronic means. However, we are proposing to add a new voluntary question on the mandatory report rational questionnaire and a new voluntary question on the voluntary report rational questionnaire. The text of the new questions is provided in table form in table 1. Finally, we are proposing to change the following data elements from a text box method of response to an individual question and answer method: Race and known allergies.

TABLE 1—PROPOSED NEW QUESTIONS ON THE DIETARY SUPPLEMENT RATIONAL QUESTIONNAIRE

Text of new question	Is response mandatory or voluntary?
Mandatory Report—In the Contact Information section, we propose to add, "Please provide contact information for you, the person who is filling out this report."	Voluntary, and only displayed if the person filling out the report is reporting on behalf of a responsible person, such as a contractor, and has not created an account on the SRP.
Voluntary Report—In the Product Information section, we propose to request the ingredients of the suspect and concomitant product(s), as provided on the label of the product(s).	Voluntary.

The reporting and recordkeeping requirements of the FD&C Act for dietary supplement adverse event reports and the recommendations of the guidance document were first approved in 2009 under OMB control number 0910-0635. OMB approved the extension of the 0910-0635 collection of information in February 2013. OMB approved the electronic submission of dietary supplement adverse event

reports via the SRP under OMB control number 0910-0645 in June 2013. Burden hours are also reported under OMB control number 0910-0291 reflecting the submission of dietary supplement adverse event reports on the paper MedWatch form, Form FDA 3500A.

F. Food, Infant Formula, and Cosmetic Adverse Event Reports

We are planning proposed new rational questionnaire functionality that will be used for food, infant formula, and cosmetic adverse event reports. Currently, voluntary adverse event reports for such products are submitted on Form FDA 3500, which is available as a fillable pdf form. However, we have not developed rational questionnaires

by which these reports may be electronically submitted to us via the SRP. In addition, MedWatch forms, although recently updated with field labels and descriptions to better clarify for reporters the range of reportable

products, do not specifically include questions relevant for the analysis of adverse events related to food, infant formula, and cosmetics. The proposed food, infant formula, and cosmetics rational questionnaire functionality will

operate in a manner similar to the dietary supplement rational questionnaire and will include specific questions relevant for the analysis of adverse events related to food, infant formula, and cosmetics.

TABLE 2—NEW QUESTIONS ON THE PROPOSED FOOD, INFANT FORMULA, AND COSMETICS RATIONAL QUESTIONNAIRES FOR BOTH SUSPECT AND CONCOMITANT PRODUCTS

Text of new question	Is response mandatory or voluntary?
For food products: “Is this a medical food?” “If so, what was the diagnosis or reason for use?” “How was the product prepared?”	Voluntary.
For infant formula products: “What form of the product was used: Concentrate, powder or ready to serve?” “Is this a specialized infant formula?” “If so, what was the diagnosis or reason for use?” “How was the product prepared?” “What type of water was used to prepare the formula?”	Voluntary.
For cosmetic products: “Do you have existing skin conditions?” “How soon did symptoms develop after using the product?” “Did the intensity of the reaction get worse with time?” “Where did the reaction develop?” “What treatments were sought for this adverse event?” “What ingredient do you suspect caused the adverse event?” “Has the problem resolved?” “Does the product label contain a warning or caution statement?”	Voluntary.

IV. Information Collection Burden Estimate

Description of respondents: The respondents to this collection of information include all persons

submitting mandatory or voluntary adverse event reports electronically to FDA via the ESG or the SRP regarding FDA-regulated products.

In the **Federal Register** of November 18, 2015 (80 FR 72071) FDA published

a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of this collection of information as follows:

TABLE 3—ESTIMATED ANNUAL REPORTING BURDEN ¹

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Voluntary Adverse Event Report via the SRP (Other than RFR Reports).	1,786	1	1,786	0.6 (36 minutes)	1,072
Mandatory Adverse Event Report via the SRP (Other than RFR Reports).	636	1	636	1.0 (36 minutes)	636
Mandatory Adverse Event Report via the ESG (Gateway-to-Gateway transmission).	1,864,035	1	1,864,035	0.6 (36 minutes)	1,118,421
Mandatory and Voluntary RFR Reports via the SRP	1,200	1	1,200	0.6 (36 minutes)	720
Total					1,120,849

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

The Agency’s estimate of the number of respondents and the total annual responses in table 3, Estimated Annual Reporting Burden, is based primarily on mandatory and voluntary adverse event reports electronically submitted to the Agency. The estimated total annual responses are based on initial reports. Followup reports, if any, are not counted as new reports. Based on its experience with adverse event

reporting, FDA estimates that it will take a respondent 0.6 hour to submit a voluntary adverse event report via the SRP, 1 hour to submit a mandatory adverse event report via the SRP, and 0.6 hour to submit a mandatory adverse event report via the ESG (gateway-to-gateway transmission). Both mandatory and voluntary RFR reports must be submitted via the SRP. FDA estimates that it will take a respondent 0.6 hour

to submit a RFR report, whether the submission is mandatory or voluntary.

The burden hours required to complete paper FDA reporting forms (Forms FDA 3500, 3500A, 1932, and 1932a) are reported under OMB control numbers 0910–0284 and 0910–0291. While FDA does not charge for the use of the ESG, FDA requires respondents to obtain a public key infrastructure certificate in order to set up the account.

This can be obtained in-house or outsourced by purchasing a public key certificate that is valid for 1 year to 3 years. The certificate typically costs from \$20 to \$30.

Dated: February 23, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016-04223 Filed 2-26-16; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2015-N-2126]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Food and Drug Administration's Research and Evaluation Survey for the Public Education Campaign on Tobacco Among LGBT (RESPECT)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Food and Drug Administration's Research and Evaluation Survey for the Public Education Campaign on Tobacco among LGBT (RESPECT)" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE-14526, Silver Spring, MD 20993-0002, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: On January 26, 2016, the Agency submitted a proposed collection of information entitled "Food and Drug Administration's Research and Evaluation Survey for the Public Education Campaign on Tobacco among LGBT (RESPECT)" to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910-0808. The approval expires on January 31, 2019. A copy of the supporting statement for this information collection is available on the Internet at <http://www.reginfo.gov/public/do/PRAMain>.

April 4, 2016

Dated: February 23, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016-04277 Filed 2-26-16; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2016-N-0586]

Draft Food and Drug Administration Tribal Consultation Policy; Availability; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of the draft FDA Tribal Consultation Policy. We are also announcing the establishment of a docket to receive comments on the draft FDA Tribal Consultation Policy. The purpose of the FDA Tribal Consultation Policy, when finalized, is to establish clear policies to further the government-to-government relationship between FDA and American Indian and Alaskan Native Tribes (hereafter, Indian Tribes) and facilitate tribal consultation with FDA. The draft FDA Tribal Consultation Policy provides background on FDA's mission and organizational structure and sets out principles and guidelines for the tribal consultation process.

DATES: Comments must be received on or before May 31, 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-2016-N-0586 for "Draft FDA Tribal Consultation Policy; Availability; Request for Comments." 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: Brian Kehoe, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301-796-8913.

SUPPLEMENTARY INFORMATION:

I. Background

Under Executive Order 13175 of November 6, 2000, executive departments and Agencies are charged with engaging in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications and are responsible for strengthening the government-to-government relationship between the United States and Indian tribes. The Department of Health and Human Services (HHS) Tribal Consultation Policy, revised on December 14, 2010, further clarifies that each HHS Operating and Staff Division must have an accountable consultation process to ensure meaningful and timely input by Tribal officials in the development of policies that have Tribal implications. To date, FDA has followed the HHS Tribal Consultation Policy (available at <http://www.hhs.gov/about/agencies/iea/tribal-affairs/consultation/index.html>). The draft FDA Tribal Consultation Policy is based on the HHS Tribal Consultation Policy and includes Agency-specific consultation guidelines that complement the Department-wide efforts.

The purpose of the draft FDA Tribal Consultation Policy, when finalized, is to establish clear policies to further the government-to-government relationship between FDA and Indian Tribes and facilitate tribal consultation with FDA. The draft policy provides background on FDA's mission and organizational structure and sets out principles and guidelines for the tribal consultation process. FDA intends for its Tribal Consultation Policy to serve as a platform for the Agency to create

consistent and meaningful tribal consultation across FDA Centers and Offices.

FDA is announcing the establishment of a docket to receive comments on the draft FDA Tribal Consultation Policy. We invite tribal officials, tribal organizations, individual tribal members and other interested persons to comment on the draft FDA Tribal Consultation Policy. We are interested in any general comments or concerns that would help us improve our policy as well as suggestions on how we can improve our communication and outreach with Indian Tribes. FDA also intends to consult with Indian Tribal officials on the draft FDA Tribal Consultation Policy and summaries of these consultations will be placed in the docket.

II. Electronic Access

Persons with access to the Internet may obtain the document at either <http://www.fda.gov/ForFederalStateandLocalOfficials/TribalAffairs/default.htm> or <http://www.regulations.gov>. Use the FDA Web site listed in the previous sentence to find the most current version of the document.

Dated: February 23, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016-04276 Filed 2-26-16; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2016-N-0544]

Agency Information Collection Activities; Proposed Collection; Comment Request; National Direct-to-Consumer Advertising Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on research entitled, "National Direct-to-Consumer Advertising Survey." The objective of this research is to survey the

public about their experiences with and attitudes toward direct-to-consumer (DTC) advertising of prescription drugs.

DATES: Submit either electronic or written comments on the collection of information by April 29, 2016.

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-0544 for "Agency Information Collection Activities; Proposed Collection; Comment Request; National Direct-to-Consumer Advertising Survey." 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: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE-14526, Silver Spring, MD 20993-0002, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal

Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA’s functions, including whether the information will have practical utility; (2) the accuracy of FDA’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

National Direct-to-Consumer Advertising Survey

OMB Control Number 0910—NEW

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 393(d)(2)(c)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

FDA last surveyed patients about their experiences with and attitudes toward DTC advertising in 2002 (Ref. 1). Numerous changes have affected the DTC landscape since 2002, including declines in print readership, the rise in online prescription drug promotion, and self-imposed industry guidelines for DTC advertising (Ref. 2). These changes may have affected consumers’ exposure to different kinds of DTC advertising and its influence on their attitudes and behaviors. The purpose of the National Direct-to-Consumer Advertising Survey is to collect updated insights on consumer experiences with and attitudes towards DTC promotion of prescription drugs. This study will build on previous research by recruiting a wider range of respondents, weighting the data to make it nationally representative, and ask a wider range of questions about DTC promotion, including in online formats.

We plan to use an address-based mixed-mode methodology that will direct one randomly-chosen member of sampled households to complete a 20-minute online survey, with non-respondents receiving a paper questionnaire. The sample will be representative of the U.S. population. A sample of U.S. households will be drawn from the U.S. Postal Service Computerized Delivery Sequence File. Adults aged 18 or over will be eligible for participation. Up to five contacts will be sent to respondents by U.S. mail. The contacts will include the URL for the online survey and a unique personal identification number (PIN). This unique PIN will be used to track completed surveys without the use of personally identifying information. The contact method, based on recent recommendations (Ref. 3), includes a notification letter (Day 1), a reminder/thank-you postcard (Day 5), a second letter sent to nonresponders (Day 12), a paper version of the survey mailed to nonresponders (Day 19), and a reminder postcard sent to nonresponders (Day 24).

Based on previous research (Refs. 4, 5, and 6), we plan to recruit using two \$1 bills (\$2 total per sampled respondent) mailed in advance with the initial invitation letter as a gesture to encourage response and maintain data quality. Offering a small token of value to participants establishes a latent social contract and subsequent reciprocity (Ref. 3). In the second contact attempt, we will conduct an experiment to test whether a short statement mentioning the previously paid incentive increases survey response, thereby testing whether social exchange can be extended past the initial contact attempt. Half the sample will be provided language that reminds them they received a cash incentive in the previous letter; the remaining half will be reminded they received a letter but will not be specifically reminded about the incentive.

We estimate a 35 percent response rate, based on recent work on similar studies (Ref. 7). Prior to the main study, a pilot study will be conducted to test the data collection process. We estimate 35 respondents will complete the pilot study and 1,765 will complete the main study (see table 1).

The survey contains questions about respondents’ knowledge of FDA’s authority with respect to prescription drug advertising, their exposure to DTC advertising, their beliefs and attitudes about DTC advertising, and the influence of DTC advertising on further information search and patient-physician interactions. At the end of the

survey, respondents will be randomly assigned to view one of two ads for fictional prescription drugs intended to treat high cholesterol. They will be asked questions about FDA's authority regarding specific claims within the ad. The survey will include a debriefing to inform respondents that the advertised drug was fictitious. We will also measure other potentially important

characteristics such as demographics, insurance coverage, and prescription drug use. The survey is available upon request.

We will test for any differences between modes (online versus mail survey) and will account for any mode effects in our analyses. We will weigh the data to account for different probability of selection and

nonresponse. We will examine the frequencies for survey items and the relation between survey items and demographic and health characteristics. We also plan to compare responses between this survey and FDA's 2002 survey for repeated items.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN¹

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Pilot Study					
Survey invitation letter	100	1	100	.08 (5 min.)	8
Reminder postcard	100	1	100	.03 (2 min.)	3
Non-response letter	82	1	82	.08 (5 min.)	7
Non-response questionnaire letter	81	1	81	.08 (5 min.)	7
Second postcard	60	1	60	.03 (2 min.)	2
Survey	35	1	35	.33 (20 min.)	12
Main Study					
Survey invitation letter	5,042	1	5,042	.08 (5 min.)	403
Reminder postcard	5,042	1	5,042	.03 (2 min.)	151
Non-response letter	4,173	1	4,173	.08 (5 min.)	334
Non-response questionnaire letter	4,073	1	4,073	.08 (5 min.)	326
Second postcard	3,063	1	3,063	.03 (2 min.)	92
Survey	1,765	1	1,765	.33 (20 min.)	582
Total					1927

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at <http://www.regulations.gov>. FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

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- Montaquila, J.M., J.M. Brick, D. Williams, K. Kim, et al., "A Study of Two-Phase Mail Survey Data Collection Methods," *Journal of Survey Statistics and Methodology* 1(1), 66–87 (2013).

Dated: February 23, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–04220 Filed 2–26–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Medical Devices—Quality Systems Survival: Success Strategies for Production and Process Controls/Corrective and Preventative Action; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA), Office of Regulatory Affairs, Southwest Regional Office, in co-sponsorship with the FDA Medical Device Industry Coalition, Inc. (FMDIC), is announcing a public workshop entitled "Medical Devices—Quality Systems Survival: Success Strategies for Production and Process Controls/Corrective and Preventative Action". The public workshop is intended to seek input from representatives of medical device manufacturers and other stakeholders, on best practices, what has worked for them and what FDA can do to inspire

quality efforts. This event will also focus on various topics of interest for those industry representatives who are responsible to insure compliance with FDA regulations.

DATES: The meeting will be held on April 15, 2016, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Courtyard and Towne Place Suites by Marriott, DFW Airport North/Grapevine, 2200 Bass Pro Ct., Grapevine, TX 76051. Directions and lodging information are available at the FMDIC, Inc. Web site at <http://www.fmdic.org/>.

FOR FURTHER INFORMATION CONTACT:

Staci McAllister, Consumer Safety Technician, Food and Drug Administration, 4040 N. Central Expressway, Suite 300, Dallas, TX 75204, 214-253-5259, FAX: 214-253-5314, staci.mcallister@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The workshop is being held in response to the interest in the topics discussed from small medical device manufacturers in the Dallas District area. This workshop helps achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 393), which include working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. This workshop is also consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) as an outreach activity by Government agencies to small businesses.

The goal of the public workshop is to present information that will enable manufacturers and regulated industry to better comply with FDA's medical device requirements. Please visit the <http://www.fmdic.org/> Web site for the agenda and for information about the presenters at the workshop.

II. Participation in the Public Workshop

Registration: FMDIC has early registration (\$250 for industry/\$150 for government with ID/\$50 for students) available until March 14, 2016. Registration after March 14, 2016, increases to \$300 for industry, \$200 for government with ID, with student registration staying the same, at \$50. To register online, please visit <http://www.fmdic.org/>. As an alternative, send the registration information including the registrant's name, title, organization, address, telephone and fax numbers, and email address (for each registrant), along with a check or money order (covering all registration fees) payable to

the FMDIC, Inc., to FMDIC Registrar, 4447 N. Central Expressway, Suite 110 PMB197, Dallas, TX 75205. FMDIC, Inc. accepts registrations onsite on the day of the event beginning at 7:30 a.m. at the regular registration fee stated above. Registration on site will be accepted on a space available basis on the day of the public workshop beginning at 7:30 a.m. Please note that due to popularity, similar past events have reached maximum capacity well before the day of the event. The cost of registration at the site is \$300 payable to the FMDIC, Inc. The registration fee will be used to offset expenses of hosting the event, including continental breakfast, lunch, audiovisual equipment, venue, materials, and other logistics associated with this event.

If you need special accommodations due to a disability, please contact Staci McAllister (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance.

Transcripts: Transcripts of the public workshop will not be available due to the format of this workshop.

Dated: February 23, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016-04221 Filed 2-26-16; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2016-D-0631]

Requirements for Transactions With First Responders Under Section 582 of the Federal Food, Drug, and Cosmetic Act—Compliance Policy; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a guidance for industry entitled "Requirements for Transactions with First Responders under Section 582 of the Federal Food, Drug, and Cosmetic Act—Compliance Policy." This guidance describes FDA's compliance policy regarding certain requirements in the Federal Food, Drug, and Cosmetic Act (the FD&C Act) for trading partners engaged in transactions with first responders. This compliance policy is in effect until further notice by FDA.

DATES: Effective February 29, 2016. For information about enforcement dates,

please see the **SUPPLEMENTARY INFORMATION** section.

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-D-0631 for "Requirements for Transactions with First Responders under Section 582 of the Federal Food, Drug, and Cosmetic Act—Compliance Policy; Guidance for Industry." 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 this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Office of Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–3130, drugtrackandtrace@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a guidance for industry entitled “Requirements for Transactions with First Responders under Section 582 of the Federal Food, Drug, and Cosmetic Act—Compliance Policy.” We are issuing this guidance consistent with our good guidance practices regulation (21 CFR 10.115). We are implementing this guidance without prior public comment because we have determined that prior public participation is not feasible or appropriate (21 CFR 10.115(g)(2)). We made this determination because this guidance document provides information pertaining to compliance with certain statutory requirements described in this document that are currently in effect. In addition, because FDA’s compliance policy regarding the provisions to provide, capture, and maintain product tracing information under section 582(d)(1) of the FD&C Act (21 U.S.C. 360eee–1(d)(1)) will expire on March 1, 2016 (see 80 FR 67408, November 2, 2015), it is important that FDA provide this information before that date to avoid potential disruptions in the supply chain. Although this guidance document is immediately in effect, it remains subject to comment in accordance with the Agency’s good guidance practices (21 CFR 10.115(g)(3)). FDA is particularly interested in comments related to the scope of this guidance. FDA will consider any comments received and may revise the scope of the enforcement policy described in this guidance as appropriate.

On November 27, 2013, the Drug Supply Chain Security Act (DSCSA) (Title II of Pub. L. 113–54) was signed into law. Section 202 of DSCSA adds sections 581 and 582 to the FD&C Act (21 U.S.C. 360eee and 360eee–1), which set forth new definitions and requirements for the tracing of products through the pharmaceutical distribution supply chain. Starting in 2015, certain trading partners (manufacturers, wholesale distributors, dispensers, and repackagers) generally were required under sections 582(b)(1), (c)(1), (d)(1), and (e)(1) of the FD&C Act to exchange product tracing information when engaging in transactions involving certain prescription drugs. These trading partners were also generally required under sections 582(b)(4), (c)(4), (d)(4) and (e)(4) to have systems in place to enable the verification of suspect and illegitimate product. Furthermore, sections 582(b)(3), (c)(3), (d)(3), and (e)(3) specify that the trading partners of manufacturers, wholesale distributors,

dispensers, and repackagers must be “authorized” within the meaning of section 581(2) of the FD&C Act.

For dispensers, requirements for the tracing of products through the pharmaceutical distribution supply chain under section 582(d)(1) of the FD&C Act took effect on July 1, 2015. FDA published a notice of availability for a revised guidance document on November 2, 2015, stating that it does not intend to take action against dispensers who, prior to March 1, 2016, accept ownership of product without receiving the product tracing information, as required by section 582(d)(1)(A)(i) of the FD&C Act, or do not capture and maintain the product tracing information, as required by section 582(d)(1)(A)(iii) of the FD&C Act (80 FR 67408).

As described in the guidance, FDA understands that transactions between dispensers and first responders may present challenges related to compliance with certain requirements in section 582 of the FD&C Act related to the exchange of product tracing information, conducting business only with authorized trading partners, and having verification systems in place. To minimize possible disruptions to the activities of first responders, FDA does not intend to take action against certain trading partners and first responders as described in the guidance. This compliance policy is in effect until further notice by FDA.

The guidance represents the current thinking of 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 guidance document at <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, <http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, or <http://www.regulations.gov>.

Dated: February 23, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–04227 Filed 2–26–16; 8:45 am]

BILLING CODE 4164–01–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: Heart, Lung, and Blood Initial Review Group; Heart, Lung, and Blood Program Project Review Committee.

Date: March 18, 2016.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jeffrey H. Hurst, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7208, Bethesda, MD 20892, 301-435-0303, hurstj@nhlbi.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 23, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016-04233 Filed 2-26-16; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed 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 contract proposals 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: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group; Arthritis and Musculoskeletal and Skin Diseases Clinical Trials Review Committee; AMSC Clinical Review Meeting.

Date: March 15–16, 2016.

Time: March 15, 2016, 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Charles H. Washabaugh, Ph.D., Scientific Review Officer, Scientific Review Branch NIAMS/NIH, 6701 Democracy Boulevard, Suite 816, Bethesda, MD 20892, 301-594-4952, washabac@mail.nih.gov.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Clinical Studies Management.

Date: March 17, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health/NIAMS, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Kathy ScD Salaita, Chief, Scientific Review Branch, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7770, Bethesda, MD 20892, 301-806-8250, salaitak@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: February 23, 2016.

Sylvia Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016-04236 Filed 2-26-16; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Multi-site Clinical Trials.

Date: March 10, 2016.

Time: 10:30 a.m. to 1:30 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: Susan O. McGuire, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Blvd., Room 4245, Rockville, MD 20852, 301-435-1426, MCGUIRESO@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 on Drug Abuse Special Emphasis Panel; Mechanism for Time-Sensitive Drug Abuse Research (R21).

Date: March 11, 2016.

Time: 12:00 p.m. to 1:00 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: Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, 301-402-6020, hiromi.ono@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 on Drug Abuse Special Emphasis Panel; Cutting-Edge Basic Research Awards (CEBRA) (R21).

Date: March 17, 2016.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Susan O. McGuire, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health,

DHHS, 6001 Executive Blvd., Room 4245, Rockville, MD 20852, 301-435-1426, mcguireso@mail.nih.gov.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; R13 Conference Grant Review (PA13-347).

Date: March 28, 2016.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Susan O. McGuire, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Blvd., Room 4245, Rockville, MD 20852, 301-435-1426, mcguireso@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: February 24, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016-04362 Filed 2-26-16; 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; Member Conflict: Cancer Immunology and Immunotherapeutics.

Date: March 1, 2016.

Time: 1:00 p.m. to 3:00 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: Malaya Chatterjee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, (301) 806-2515, chatterm@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; Member Conflict: Cellular and Physiological Mechanism of Diabetes and Obesity.

Date: March 16, 2016

Time: 2:00 p.m. to 5:00 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: Hui Chen, MD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301-435-1044, chenhui@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Skeletal Muscle Biology.

Date: March 21-22, 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: Daniel F. McDonald, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, (301) 435-1215, mcdonald@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Fogarty Global Brain Disorders.

Date: March 24-25, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Mayflower Hotel, 1127 Connecticut Ave. NW., Washington, DC 20036.

Contact Person: Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301-435-1259, nadis@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 23, 2016.

Sylvia Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016-04234 Filed 2-26-16; 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; Member Conflict: Respiratory Sciences.

Date: March 17, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lawrence E. Boerboom, Ph.D., Chief, CVRS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435-8367, boerboom@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Hematology.

Date: March 17-18, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bukhtiar H. Shah, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 806-7314, shahb@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Innate Immunity, Host Defense, and Microbial Vaccines.

Date: March 22, 2016.

Time: 1:00 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 (Virtual Meeting).

Contact Person: Jin Huang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, (301) 435-1230, jh377p@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Physiology and Pathobiology of Musculoskeletal, Oral and Skin Systems.

Date: March 23, 2016.

Time: 8:00 a.m. to 7:00 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: Anshumali Chaudhari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435-1210, chaudhaa@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bioengineering Sciences.

Date: March 24, 2016.

Time: 2:30 p.m. to 5:00 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: 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; Member Conflict: Topics in Bacterial Pathogenesis and Host Interactions.

Date: March 25, 2016.

Time: 10:00 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: Gagan Pandya, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 3200, MSC 7808, Bethesda, MD 20892, (301) 435-1167, pandyaga@mai.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Conference and Meetings: Office of Research Infrastructure Programs (ORIP).

Date: March 25, 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: Cathleen L. Cooper, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2130, MSC 7720, Bethesda, MD 20892, (301) 443-4512, cooperc@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 23, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016-04231 Filed 2-26-16; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke Special Emphasis Panel; ZNS1 SRB-G (05).

Date: March 3-4, 2016.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892-9529, 301-435-6033, rajarams@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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 23, 2016.

Sylvia Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016-04235 Filed 2-26-16; 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; Optimizing Care for Patients With Sickle Cell Disease.

Date: March 21-22, 2016

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Michael P. Reilly, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7200, Bethesda, MD 20892, 301-496-9659, reillymp@nhlbi.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 23, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016-04232 Filed 2-26-16; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice Announcing the Automated Commercial Environment (ACE) as the Sole CBP-Authorized Electronic Data Interchange (EDI) System for Processing Certain Electronic Entry and Entry Summary Filings

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces that the Automated Commercial Environment (ACE) will be the sole electronic data interchange (EDI) system authorized by the Commissioner of U.S. Customs and Border Protection (CBP) for processing certain electronic entry and entry summary filings as of the effective dates of this notice. As of the effective dates of this notice, ACE will be the sole CBP-authorized EDI system for merchandise subject only to the import requirements of CBP and also to the Lacey Act import requirements of the Animal and Plant Health Inspection Service (APHIS), or the import requirements of the National Highway Traffic Safety Administration (NHTSA), or the import requirements of both APHIS (Lacey) and NHTSA, as well as CBP. This document also announces that the Automated Commercial System (ACS) will no longer be a CBP-authorized EDI system for purposes of processing the electronic filings specified in this notice. This document further announces the conclusion of the ACE/International Trade Data System (ITDS) pilots for APHIS (Lacey) and NHTSA. Electronic entry and entry summary filings for merchandise subject to the import requirements of other Partner Government Agencies (PGAs) can be submitted in ACE pursuant to an ongoing PGA pilot, or in ACS, until further notice.

DATES: *Effective March 31, 2016:* ACE will be the sole CBP-authorized EDI system for:

- Electronic entry summaries for merchandise that is subject only to the import requirements of CBP, associated with the following entry types: 01 (consumption), 03 (consumption—antidumping/countervailing duty), 11 (informal), 23 (temporary importation under bond), 51 (Defense Contract Administration Service Region), and 52 (government—dutiable); and
- electronic entries and corresponding entry summaries associated with the above entry types, for merchandise subject to the Lacey Act import requirements of the Animal and Plant Health Inspection Service (APHIS), or to the import requirements of the National Highway Traffic Safety Administration (NHTSA), and no other PGA requirements.

Effective May 28, 2016: ACE will be the sole CBP-authorized EDI system for:

- electronic entries for merchandise that is subject only to the import requirements of CBP, associated with the following entry types: 01 (consumption), 03 (consumption—antidumping/countervailing duty), 11

(informal), 23 (temporary importation under bond), 51 (Defense Contract Administration Service Region), and 52 (government—dutiable); and

- electronic entries and corresponding entry summaries associated with entry type 06 (consumption—foreign trade zone), for merchandise that is subject only to the import requirements of CBP; or for merchandise subject to the import requirements of APHIS (Lacey Act) or NHTSA, and no other PGA requirements.

FOR FURTHER INFORMATION CONTACT:

Questions related to this notice may be emailed to ASKACE@cbp.dhs.gov with the subject line identifier reading “ACS to ACE March 31, 2016 transition”.

SUPPLEMENTARY INFORMATION:

Background

Statutory Authority

Section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), establishes the requirement for importers of record to make entry for merchandise to be imported into the customs territory of the United States. Customs entry information is used by U.S. Customs and Border Protection (CBP) and Partner Government Agencies (PGAs) to determine whether merchandise may be released from CBP custody. Importers of record are also obligated to complete the entry by filing an entry summary declaring the value, classification, rate of duty applicable to the merchandise and such other information as is necessary for CBP to properly assess duties, collect accurate statistics and determine whether any other applicable requirement of law is met.

The customs entry requirements were amended by Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, December 8, 1993), commonly known as the Customs Modernization Act, or Mod Act. In particular, section 637 of the Mod Act amended section 484(a)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1484(a)(1)(A)) by revising the requirement to make and complete customs entry by submitting documentation to CBP to allow, in the alternative, the electronic transmission of such entry information pursuant to a CBP-authorized electronic data interchange (EDI) system. CBP created the Automated Commercial System (ACS) to track, control, and process all commercial goods imported into the United States. CBP established the specific requirements and procedures for the electronic filing of entry and

entry summary data for imported merchandise through the Automated Broker Interface (ABI) to ACS.

Transition From ACS to ACE

In an effort to modernize the business processes essential to securing U.S. borders, facilitating the flow of legitimate shipments, and targeting illicit goods pursuant to the Mod Act and the Security and Accountability for Every (SAFE) Port Act of 2006 (Pub. L. 109–347, 120 Stat. 1884), CBP developed the Automated Commercial Environment (ACE) to eventually replace ACS as the CBP-authorized EDI system. Over the last several years, CBP has tested ACE and provided significant public outreach to ensure that the trade community is fully aware of the transition from ACS to ACE.

On February 19, 2014, President Obama issued Executive Order (E.O.) 13659, *Streamlining the Export/Import Process for America's Businesses*, in order to reduce supply chain barriers to commerce while continuing to protect our national security, public health and safety, the environment, and natural resources. See 79 FR 10657 (February 25, 2014). Pursuant to E.O. 13659, a deadline of December 31, 2016, was established for participating Federal agencies to have capabilities, agreements, and other requirements in place to utilize the International Trade Data System (ITDS) and supporting systems, such as ACE, as the primary means of receiving from users the standard set of data and other relevant documentation (exclusive of applications for permits, licenses, or certifications) required for the release of imported cargo and clearance of cargo for export.

As part of the transition to full ITDS functionality in ACE, CBP has been conducting tests under the National Customs Automation Program (NCAP). The NCAP was established by Subtitle B of the Mod Act. See 19 U.S.C. 1411. These tests of ITDS functionality include the *Partner Government Agency (PGA) Message Set Test* (See, e.g., 78 FR 75931) and the *Document Image System (DIS) Test* (See, e.g., 77 FR 20835).

The PGA Message Set is the data that is needed to satisfy the reporting requirements of other ITDS agencies and that is transmitted to ACE through the Automated Broker Interface (ABI). After the data is submitted, it is validated and made available to the relevant agencies. The data is used to fulfill multiple requirements and enables more effective enforcement and faster release decisions, as well as more certainty for the importer in determining logistics of cargo delivery. Also, by virtue of being

electronic, the PGA Message Set eliminates the necessity for the submission and subsequent handling of paper documents. CBP and several other agencies have announced NCAP test pilot programs regarding the submission of required data using the PGA Message Set.

DIS allows ACE filers to submit electronic images of a specific set of ITDS Agency documentation in XML format through ABI, a Secure File Transfer Protocol (FTP), or Secure Web Services, or as an attachment to an email formatted according to the specifications in the DIS Implementation Guidelines.

On October 13, 2015, CBP published an Interim Final Rule in the **Federal Register** (80 FR 61278) that designated ACE as a CBP-authorized EDI system. The designation of ACE as a CBP-authorized EDI system was effective November 1, 2015. In the Interim Final Rule, CBP stated that ACS would be phased out and anticipated that ACS would no longer be supported for entry and entry summary filing by the end of February 2016. Filers were encouraged to adjust their business practices so that they would be prepared when ACS was decommissioned.

While significant progress has been made, continued concerns about trade readiness have necessitated an updated timeline for the mandatory transition to ACE for electronic entry and entry summary filing. As a result, CBP has developed a staggered transition strategy, to give the trade additional time to adjust their business practices and complete programming for entry and entry summary filing in ACE.

This notice announces that, beginning on March 31, 2016, CBP will begin decommissioning ACS for certain entry filings (including "entry summary certified for cargo release" filings) and entry summary filings, making ACE the sole CBP-authorized EDI system for processing these electronic filings. CBP will announce the conclusion of the PGA Message Set and DIS pilots on a rolling basis. As each pilot is concluded, ACE will become the sole CBP-authorized EDI system for electronic entry and entry summary filings for merchandise subject to the specified PGA import requirements. After conclusion of a pilot, electronic entry and entry summary filings for merchandise subject to the specified PGA import requirements will no longer be permitted in ACS.

This notice announces the conclusion of the pilots for filing Animal and Plant Health Inspection Service (APHIS) Lacey Act data and National Highway

Traffic Safety Administration (NHTSA) data in ACE via the PGA Message Set.

On August 6, 2015, APHIS published a notice in the **Federal Register**, announcing a test of the PGA Message Set for the electronic submission of import data required by the Lacey Act. (80 FR 46951). CBP and APHIS have evaluated the test for submission of Lacey Act data in ACE and have found the test to have been successful. The ACE PGA Message Set has the operational capabilities necessary to electronically collect the Lacey Act data required by APHIS. APHIS and CBP are confident that the system is now ready for full Lacey Act integration based on the sustained success of the pilot, which has experienced no data or system errors. As a result, this test has been concluded, as announced by APHIS in a bulletin communication on January 22, 2016.

On August 10, 2015, CBP published a notice in the **Federal Register** announcing an NCAP test of the PGA Message Set for the electronic submission of import data required by NHTSA. (80 FR 47938). CBP and NHTSA have evaluated the NCAP test for filing import data required by NHTSA in ACE, and have found the test to have been successful. The PGA Message Set has the operational capabilities necessary to electronically collect the import data required by NHTSA in ACE. As a result, this notice announces the conclusion of the NHTSA PGA Message Set test.

ACE as the Sole CBP-Authorized EDI System for the Processing of Certain Electronic Entry and Entry Summary Filings

This notice announces that ACE will be the sole CBP-authorized EDI system for the electronic filings listed below. These electronic filings must be formatted for submission in ACE, and will no longer be accepted in ACS.

I. Electronic filings for merchandise subject only to CBP import requirements:

Effective March 31, 2016, ACE will be the sole CBP-authorized EDI system for electronic entry summaries filed for merchandise that is subject only to import requirements of CBP, associated with the following entry types:

- 01—Consumption—Free and Dutiable
- 03—Consumption—Antidumping/Countervailing Duty
- 11—Informal—Free and Dutiable
- 23—Temporary Importation Bond (TIB)
- 51—Defense Contract Administration Service Region (DCASR)
- 52—Government—Dutiable

Effective May 28, 2016, ACE will be the sole CBP-authorized EDI system for electronic entries for merchandise that is subject only to import requirements of CBP, associated with the following entry types:

- 01—Consumption—Free and Dutiable
- 03—Consumption—Antidumping/Countervailing Duty
- 06—Consumption—Foreign Trade Zone (FTZ)
- 11—Informal—Free and Dutiable
- 23—Temporary Importation Bond (TIB)
- 51—Defense Contract Administration Service Region (DCASR)
- 52—Government—Dutiable

Effective May 28, 2016, ACE will be the sole CBP-authorized EDI system for electronic entry summaries for merchandise that is subject only to import requirements of CBP, associated with the following entry type:

- 06—Consumption—Foreign Trade Zone (FTZ)

II. Electronic filings for merchandise subject to Lacey Act import requirements by APHIS:

Effective March 31, 2016, for the following entry types, ACE will be the sole CBP-authorized EDI system for electronic entries and entry summaries for merchandise that is subject to the Lacey Act import requirements of APHIS, unless such filings also include PGA data or documentation other than NHTSA data:

- 01—Consumption—Free and Dutiable
- 03—Consumption—Antidumping/Countervailing Duty
- 11—Informal—Free and Dutiable
- 23—Temporary Importation Bond (TIB)
- 51—Defense Contract Administration Service Region (DCASR)
- 52—Government—Dutiable

Effective May 28, 2016, for the following entry type, ACE will be the sole CBP-authorized EDI system for electronic entries and entry summaries for merchandise that is subject to the Lacey Act import requirements of APHIS, unless such filings also include PGA data or documentation other than NHTSA data:

- 06—Consumption—Foreign Trade Zone (FTZ)

III. Electronic filings for merchandise subject to NHTSA import requirements:

Effective March 31, 2016, for the following entry types, ACE will be the sole CBP-authorized EDI system for electronic entries and entry summaries for merchandise that is subject to the import requirements of NHTSA, unless such filings also include PGA data or documentation other than APHIS (Lacey) data:

- 01—Consumption—Free and Dutiable
 - 03—Consumption—Antidumping/Countervailing Duty
 - 11—Informal—Free and Dutiable
 - 23—Temporary Importation Bond (TIB)
 - 51—Defense Contract Administration Service Region (DCASR)
 - 52—Government—Dutiable
- Effective May 28, 2016*, for the following entry type, ACE will be the sole CBP-authorized EDI system for electronic entries and entry summaries for merchandise that is subject to the import requirements of NHTSA, unless such filings also include PGA data or documentation other than APHIS (Lacey) data:
- 06—Consumption—Foreign Trade Zone (FTZ)

ACS as the Sole CBP-Authorized EDI System for the Processing of Certain Electronic Entry and Entry Summary Filings

Electronic entry and entry summary filings for the following entry types must continue to be filed only in ACS:

- 02—Consumption—Quota/Visa
 - 07—Consumption—Antidumping/Countervailing Duty and Quota/Visa Combination
 - 08—NAFTA Duty Deferral
 - 09—Reconciliation Summary
 - 12—Informal—Quota/Visa (other than textiles)
 - 21—Warehouse
 - 22—Re-Warehouse
 - 31—Warehouse Withdrawal—Consumption
 - 32—Warehouse Withdrawal—Quota
 - 34—Warehouse Withdrawal—Antidumping/Countervailing Duty
 - 38—Warehouse Withdrawal—Antidumping/Countervailing Duty & Quota/Visa Combination
 - 41—Direct Identification Manufacturing Drawback
 - 42—Direct Identification Unused Merchandise Drawback
 - 43—Rejected Merchandise Drawback
 - 44—Substitution Manufacturer Drawback
 - 45—Substitution Unused Merchandise Drawback
 - 46—Other Drawback
 - 61—Immediate Transportation
 - 62—Transportation and Exportation
 - 63—Immediate Exportation
 - 69—Transit (Rail only)
 - 70—Multi-Transit (Rail only)
- Due to low shipment volume, filings for the following entry types will not be automated in either ACS or ACE:
- 04—Appraisalment
 - 05—Vessel—Repair
 - 24—Trade Fair
 - 25—Permanent Exhibition

- 26—Warehouse—Foreign Trade Zone (FTZ) (Admission)
- 33—Aircraft and Vessel Supply (For Immediate Exportation)
- 64—Barge Movement
- 65—Permit to Proceed
- 66—Baggage

Dated: February 25, 2016.

R. Gil Kerlikowske,

Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2016-04421 Filed 2-26-16; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

[Docket No. ICEB-2016-0001]

Advisory Committee on Family Residential Centers Meeting

AGENCY: Immigration and Customs Enforcement, DHS.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The U.S. Immigration and Customs Enforcement (ICE) Advisory Committee on Family Residential Centers (ACFRC) will meet in San Antonio, TX to brief Committee members on ICE's family residential centers and to review and assess the Committee tasking. This meeting will be open to the public. Due to limited seating, individuals who wish to attend the meeting in person are required to register online at www.ice.gov/acfrc.

DATES: The Advisory Committee on Family Residential Centers will meet on Wednesday, March 16, 2016, from 9:00 a.m. to 2:00 p.m. Please note that these meetings may conclude early if the Committee has completed all business.

ADDRESSES: The meeting will be held in the 2nd floor conference room of the United States Citizenship and Immigration Services San Antonio Field Office at 8940 Fourwinds Drive, San Antonio, TX 78239.

For information on facilities, services for individuals with disabilities, or to request special assistance at the meeting, contact Mr. John Amaya, Designated Federal Officer, at ICE_ACFRC@ice.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Mr. John Amaya, Designated Federal Officer for the Advisory Committee on Family Residential Centers, at ICE_ACFRC@ice.dhs.gov.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act*, (Title 5,

United States Code Appendix). Written statements may be submitted to the ACFRC Designated Federal Officer (DFO) (see FOR FURTHER INFORMATION CONTACT). Statements should be no longer than two type-written pages and address the following details: the issue, discussion, and recommended course of action. Additional information, including the agenda and electronic registration details, is available on the ACFRC Web site at www.ice.gov/acfrc.

Meeting Agenda

The agenda for the Advisory Committee on Family Residential Centers meeting is as follows:

Wednesday, March 16, 2016

- (1) Welcome and Opening Remarks
- (2) ICE Enforcement and Removal Operations Briefing
- (3) Review Previously Issued Committee Tasking on Recommendations for Best Practices at Family Residential Centers
- (4) Public Comment
- (5) Closing Remarks
- (6) Adjourn

The meeting agenda, Committee tasking, and all meeting documentation will be made available online at: www.ice.gov/acfrc. Alternatively, you may contact Mr. John Amaya as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

A public oral comment period will be held at the end of the day. Speakers are requested to limit their comments to 2 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments.

Molly Stubbs,

Acting Deputy Assistant Director, Office of Policy, U.S. Immigration and Customs Enforcement.

[FR Doc. 2016-04286 Filed 2-26-16; 8:45 am]

BILLING CODE 9110-28-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

Agency Information Collection Activities: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery; Reinstatement, Without Change; Comment Request; OMB Control No. 1653-0050

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), and the estimated cost to the respondent.

DATES: Comments are encouraged and will be accepted for 60 days until April 29, 2016.

ADDRESSES: Written comments and suggestions regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), Scott Elmore, Forms Manager, U.S. Immigrations and Customs Enforcement, 801 I Street NW., Mailstop 5800, Washington, DC 20536-5800.

SUPPLEMENTARY INFORMATION:

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement of a Discontinued Information Collection.

(2) *Title of the Form/Collection:* Generic Clearance for the Collection of

Qualitative Feedback on Agency Service Delivery.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households; Farms; Business or other for-profit; Not-for-profit institutions; State, local or Tribal governments; The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 139,587 responses at 5 minutes (0.0833 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 11,586 annual burden hours.

Dated: February 23, 2016.

Scott Elmore,

Program Manager, Forms Management Office, Office of the Chief Information Officer, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2016-04253 Filed 2-26-16; 8:45 am]

BILLING CODE 9111-28-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0014]

Agency Information Collection Activities: Affidavit of Support; Form I-134; Revision of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on December 30, 2015, at 80 FR 81556, allowing for a 60-day public comment period. USCIS did receive comments in connection with the 60-day notice. Note: USCIS published the 60-day notice as an extension without change; USCIS has updated the I-134 Form and Instructions with standardized language that the agency is now inserting into all forms; these changes do not impact the time to complete the form.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 30, 2016. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be

directed to the OMB USCIS Desk Officer via email at oir_submission@omb.eop.gov. Comments may also be submitted via fax at (202) 395-5806 (This is not a toll-free number). All submissions received must include the agency name and the OMB Control Number 1615-0014.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshombres, Acting Chief, 20 Massachusetts Avenue NW., Washington, DC 20529-2140, Telephone number (202) 272-8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at <http://www.uscis.gov>, or call the USCIS National Customer Service Center at (800) 375-5283; TTY (800) 767-1833.

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS-2006-0072 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection. This is a change from the type of collection indicated in the 60-day **Federal Register** Notice published December 30, 2015 at 80 FR 81556.

(2) *Title of the Form/Collection:* Affidavit of Support.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-134; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This information collection is necessary to determine if at the time of application into the United States, the applicant is likely to become a public charge.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I-134 is 18,460 and the estimated hour burden per response is 1.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 27,690 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The total estimated annual cost burden associated with this collection is \$69,225.

Samantha Deshombres,

Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2016-04089 Filed 2-26-16; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R1-ES-2016-N019;
FXES11120100000-167-FF01E00000]

Draft Programmatic Candidate Conservation Agreement With Assurances, Draft Environmental Assessment, and Receipt of Application for Enhancement of Survival Permit for the Fisher in Western Washington

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Receipt of application; notice of availability and request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), received an application from the Washington Department of Fish and Wildlife (WDFW) for an enhancement of survival (EOS) permit under the Endangered Species Act of 1973, as amended (ESA). The permit application includes a draft programmatic candidate conservation agreement with assurances (CCAAs) for the fisher in western Washington. The Service also announces the availability of a draft environmental assessment (EA) addressing the draft CCAA and issuance of the requested EOS permit in accordance with the National Environmental Policy Act of 1969, as amended (NEPA). We invite comments from all interested parties on the application, the draft CCAA, and the draft EA.

DATES: To ensure consideration, written comments must be received from interested parties by March 30, 2016.

ADDRESSES: To request further information or submit written comments, please use one of the following methods, and note that your information request or comments are in reference to the "Fisher CCAA."

- *Internet:* You may view or download copies of the draft CCAA and the draft EA and obtain additional information on the Internet at <http://www.fws.gov/wafwo/>.

- *Email:* wfwcomments@fws.gov. Include "Fisher CCAA" in the subject line of the message or comments.

- *U.S. Mail:* Tim Romanski, U.S. Fish and Wildlife Service; Washington Fish and Wildlife Office; 510 Desmond Drive SE., Suite 102; Lacey, WA 98503.

- *In-Person Drop-off, Viewing or Pickup:* Please call 360-753-5823 to make an appointment (necessary for viewing or picking up documents only) during normal business hours at the U.S. Fish and Wildlife Service; Washington Fish and Wildlife Office; 510 Desmond Drive SE., Suite 102; Lacey, WA 98503. Written comments can be dropped off during regular business hours at the above address on or before the closing date of the public comment period (see **DATES**).

FOR FURTHER INFORMATION CONTACT: Tim Romanski, Conservation Planning and Hydropower Branch Manager, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office (see **ADDRESSES**); telephone: 360-753-5823. If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: We received an application from the Washington Department of Fish and Wildlife (WDFW) for an enhancement of survival (EOS) permit under section 10(a)(1)(A) of the ESA for incidental take of the fisher (*Pekania pennanti*), a species currently considered a candidate for listing as threatened or endangered under the ESA. The permit application includes a draft programmatic candidate conservation agreement with assurances (CCAAs) for the fisher in western Washington. The Service also announces the availability of a draft environmental assessment (EA) addressing the draft CCAA and issuance of the requested EOS permit in accordance with NEPA (42 U.S.C. 4321 *et seq.*). We invite comments from all interested parties on the application, the draft CCAA, and the draft EA.

The application includes a CCAA covering fisher and its habitat on private lands in western Washington. The Service and WDFW prepared the CCAA to provide non-Federal landowners with the opportunity to voluntarily conserve the fisher and its habitat while carrying out specific land management activities commonly practiced on forest lands, as defined in the Washington State Forest Practices Act as of February 1, 2015. Covered activities include but are not limited to timber harvest, reforestation, road and trail construction, water crossing structure construction, and other forest practice hydraulic projects, transport of timber and rock, site preparation, collection of minor forest products, fire suppression, and recreation, as defined in the draft CCAA.

Background

Private and other non-Federal property owners are encouraged to enter into CCAAs, in which they voluntarily undertake management activities on their properties to enhance, restore, or maintain habitat benefiting species that are proposed for listing under the ESA, candidates for listing, or species that may become candidates or proposed for listing. EOS permits are issued to applicants in association with approved CCAAs to authorize incidental take of the covered species from covered activities, should the species become listed. Through a CCAA and its associated EOS permit, the Service provides assurances to property owners that they will not be subjected to increased land use restrictions if the covered species become listed under the ESA in the future, provided certain conditions are met.

Application requirements and issuance criteria for EOS permits for

CCAAs are found in the Code of Regulations (CFR) at 50 CFR 17.22(d) and 17.32(d), respectively. See also our joint policy on CCAAs, which we published in the **Federal Register** with the Department of Commerce's National Oceanic and Atmospheric Administration, National Marine Fisheries Service (64 FR 32726; June 17, 1999).

On April 8, 2004, the Service published a 12-month status review (69 FR 18769) finding that listing the West Coast Distinct Population Segment (DPS) of fisher as threatened or endangered under the ESA (16 U.S.C. 1538) was warranted, but precluded by higher priority actions. On October 7, 2014, we published a proposed rule (79 FR 60419) to list the West Coast DPS of fisher as threatened under the ESA. Due to substantial disagreement regarding available information, the Service issued a 6-month extension to collect and review additional information and make a final determination (80 FR 19953). A regulation implementing the proposed rule or a notice that the proposed regulation is being withdrawn will be issued no later than April 7, 2016. In anticipation of the potential listing of fisher under the ESA, WDFW requested assistance from the Service in developing a CCAA on behalf of private landowners in western Washington.

Proposed Action

The Proposed Action Alternative is the issuance of the requested EOS permit with a 20-year term based on WDFW's commitment to implement the proposed CCAA including issuance of Certificates of Inclusion (CI) to participating non-Federal landowners. The proposed CCAA would implement conservation measures that contribute to the recovery of the fisher. Take authorization would become effective if the species becomes listed, as long as the enrolled landowner is in compliance with the terms and conditions of the CCAA, CI, and the EOS permit. The CCAA, the ESO permit, and the CIs would provide incentives for non-Federal landowners to participate in conservation efforts expected to support reintroduction of the fisher within the western portions of its historical range in Washington.

National Environmental Policy Act Compliance

Approval of a programmatic CCAA and issuance of the associated EOS permit are Federal actions that trigger the need for compliance with NEPA. Pursuant to NEPA, we prepared a draft EA to analyze the environmental impacts related to the issuance of the

requested EOS permit and implementation of the associated programmatic CCAA. The EA analyses two alternatives: A "No-action" alternative, and the proposed action.

No-action alternative: Under the No-action alternative, the Service would not issue the requested EOS permit and the proposed CCAA would not be implemented. Under this alternative, WDFW would not enroll landowners in the CCAA and no voluntary conservation measures would be implemented. WDFW would likely continue their efforts to recover fishers in the State, focusing on the protection and monitoring of previously reintroduced individuals. Non-Federal landowners would not receive assurances that additional conservation measures or any additional land, water, or resource use restrictions could be required if the covered species becomes listed as threatened or endangered under the ESA.

Proposed action alternative: The proposed action alternative is a programmatic approach, in which the Service would issue the requested EOS permit with a 20-year term to WDFW. The WDFW would implement the proposed CCAA including issuance of CIs to participating non-Federal landowners. The proposed CCAA provides conservation measures that would contribute to the recovery of the fisher while providing coverage exempting take that may occur incidental to activities covered under the CCAA if the species becomes listed.

Public Comments

You may submit your comments by one of the methods listed in the **ADDRESSES** section. We specifically request information, views, opinions, or suggestions from the public on our proposed Federal action, including identification of any other aspects of the human environment not already identified in the EA pursuant to NEPA regulations at 40 CFR 1506.6. Further, we specifically solicit information regarding the adequacy of the draft CCAA pursuant to the requirements for permits at 50 CFR parts 13 and 17, and information and comments regarding the following issues:

1. The direct, indirect, and cumulative effects that implementation of the CCAA could have on endangered and threatened species;
2. Other reasonable alternatives consistent with the purpose of the proposed CCAA as described above, and their associated effects;
3. Measures that would minimize and mitigate potentially adverse effects of the proposed action;

4. Identification of any impacts on the human environment that should have been analyzed in the draft EA pursuant to NEPA;

5. Other plans or projects that might be relevant to this action;

6. The proposed term of the enhancement of survival permit; and

7. Any other information pertinent to evaluating the effects of the proposed action on the human environment.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personally identifiable information in your comments, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety. Comments and materials we receive, as well as supporting documentation we used in preparing the draft EA, will be available for public inspection by appointment, during normal business hours, at our Washington Fish and Wildlife Office (see **ADDRESSES**).

Next Steps

After completion of the EA based on consideration of public comments, we will determine whether approval and implementation of the draft programmatic CCAA warrants a finding of no significant impact or whether an environmental impact statement should be prepared pursuant to NEPA. We will evaluate the programmatic CCAA, the permit application, associated documents, and any comments we receive to determine if the permit application meets the criteria for issuance of an EOS permit under section 10(a)(1)(A) of the ESA. We will also evaluate whether the proposed permit action would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will consider the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue an EOS permit to WDFW. We will not make the final NEPA and permit decisions until after the end of the 30-day public comment period

described in this notice, and we will fully consider all comments we receive during the public comment period.

If we determine that the permit issuance requirements are met, the Service will issue an EOS permit to WDFW. The WDFW would then begin enrolling non-Federal landowners that agree to implement the actions described in the CCAA in order to receive coverage for incidental take of fisher in western Washington under the WDFW EOS permit if the species becomes listed under the ESA.

Authority

We provide this notice in accordance with the requirements of section 10 of the ESA (16 U.S.C. 1531 *et seq.*), and NEPA (42 U.S.C. 4321 *et seq.*) and their implementing regulations (50 CFR 17.22 and 40 CFR 1506.6, respectively).

Dated: February 10, 2016.

Stephen Zylstra,

Acting Deputy Regional Director, Pacific Region, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 2016-04294 Filed 2-26-16; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R2-ES-2016-N003;
FXES1113020000-167-FF02ENEH00]

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications; request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered or threatened species. The Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activities. Both the Act and the National Environmental Policy Act require that we invite public comment before issuing these permits.

DATES: To ensure consideration, written comments must be received on or before March 30, 2016.

ADDRESSES: Susan Jacobsen, Chief, Division of Classification and Restoration, by U.S. mail at Division of Classification and Recovery, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103; or by telephone at 505-248-6920. Please refer

to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT:

Susan Jacobsen, Chief, Division of Classification and Restoration, by U.S. mail at P.O. Box 1306, Albuquerque, NM 87103; or by telephone at 505-248-6920.

SUPPLEMENTARY INFORMATION: The Act (16 U.S.C. 1531 *et seq.*) prohibits activities with endangered and threatened species unless a Federal permit allows such activities. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, the Act provides for permits, and requires that we invite public comment before issuing these permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes applicants to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of survival or propagation, or interstate commerce. Our regulations regarding implementation of section 10(a)(1)(A) permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, Tribal, and Federal agencies and the public to comment on the following applications. Please refer to the appropriate permit number (*e.g.*, Permit No. TE-123456) when requesting application documents and when submitting comments.

Documents and other information the applicants have submitted with these applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit TE-81811B

Applicant: Jeremy Henson, Round Rock, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for the following species in Arizona, New Mexico, Texas, and Oklahoma:

- Interior least tern (*Sterna antillarum*)
- northern aplomado falcon (*Falco femoralis septentrionalis*)
- red-cockaded woodpecker (*Picoides borealis*)
- Houston toad (*Bufo houstonensis*)
- golden-cheeked warbler (*Dendroica chrysoparia*)
- Navasota ladies'-tresses (*Spiranthes parksii*)

- large-fruited sand-verbena (*Abronia macrocarpa*)

Permit TE-23162B

Applicant: Eric L. Herman, Cochise, Arizona.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence and nest surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) within Texas, California, and Nevada.

Permit TE-58226B

Applicant: Hall, James A., Dripping Springs, Texas.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys for black-capped vireo (*Vireo atricapilla*) within Texas.

Permit TE-094375

Applicant: Azimuth Forestry Services, Inc., Shelbyville, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys and collect voucher specimens (plants) of the following species within Texas:

- Red-cockaded woodpecker (*Picoides borealis*)
- Texas prairie dawn-flower (*Hymenoxys texana*)
- Navasota ladies'-tresses (*Spiranthes parksii*)
- white bladderpod (*Lesquerella pallida*)
- Texas trailing phlox (*Phlox nivalis* ssp. *texensis*)

Permit TE-82339B

Applicant: Tracy R. White, Austin, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for golden-cheeked warbler (*Dendroica chrysoparia*) within Texas.

Permit TE-802211

Applicant: Texas State University—San Marcos, San Marcos, Texas.

Applicant requests an amendment to a current permit for research and recovery purposes to collect and display for educational purposes the following species within Texas:

- Austin blind salamander (*Eurycea waterlooensis*)
- Barton Springs salamander (*Eurycea sosorum*)
- Jollyville Plateau salamander (*Eurycea tonkawae*)
- Georgetown salamander (*Eurycea naufragia*)
- Salado salamander (*Eurycea chisholmensis*)

- Pecos assimineae (*Assimineae pecos*)
- Coffin Cave mold beetle (*Batrisodes texanus*)

- Helotes mold beetle (*Batrisodes venyivi*)

- Robber Baron Cave meshweaver (*Cicurina baronia*)

- Madla's Cave meshweaver (*Cicurina madla*)

- Braken Bat Cave meshweaver (*Cicurina venii*)

- Government Canyon Bat Cave meshweaver (*Cicurina vespera*)

- diminutive amphipod (*Gammarus hyalleloides*)

- Pecos amphipod (*Gammarus pecos*)
- Comal Springs riffle beetle (*Heterelmis comalensis*)

- American burying beetle (*Nicrophorus americanus*)

- Diamond tryonia (*Pseudotryonia adamantina*)

- Phantom tryonia (*Tryonia cheatumi*)

- Gonzales tryonia (*Tryonia circumstriata* [= *stocktonensis*])

- ground beetle (*Rhadine exilis*)

- ground beetle (*Rhadine infernalis*)

- Tooth Cave ground beetle (*Rhadine persephone*)

- Peck's Cave amphipod

- (*Stygobromus* [= *Stygonectes*] *pecki*)

- Comal Springs dryopid beetle

- (*Stygoparnus comalensis*)

- Tooth Cave pseudoscorpion

- (*Tartarocreagris texana*)

- Government Canyon Bat Cave spider

- (*Neoleptoneta microps*)

- Tooth Cave spider (*Leptoneta myopica*)

- Kretschmarr Cave mold beetle

- (*Texamaurops reddelli*)

- Cokendolpher Cave harvestman

- (*Texella cokendolpheri*)

- Bee Creek Cave harvestman

- (*Texella reddelli*)

- Bone Cave harvestman (*Texella reyesi*)

- Phantom springsnail (*Pyrgulopsis texana*)

Permit TE-054791

Applicant: Bryce L. Marshall, Flagstaff, Arizona.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys for New Mexico meadow jumping mouse (*Zapus hudsonius luteus*) within New Mexico.

Permit TE-84336B

Applicant: Reed Kraemer, Phoenix, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for the following species within Arizona, New Mexico, and Texas:

- Black-capped vireo (*Vireo atricapilla*)

- golden-cheeked warbler (*Dendroica chrysoparia*)

- southwestern willow flycatcher (*Empidonax traillii extimus*)

Permit TE-798920

Applicant: City of Austin Balcones Canyonlands Preserve, Austin, Texas.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct mist-netting and banding activities for black-capped vireo (*Vireo atricapilla*) within Texas.

Permit TE-61046B

Applicant: Christina Perez, Baton Rouge, Louisiana.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys for American burying beetle (*Nicrophorus americanus*) within Texas, Arkansas, Kansas, and Nebraska.

Permit TE-80165B

Applicant: Kale Wetekamm, Baton Rouge, Louisiana.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of American burying beetle (*Nicrophorus americanus*) within Oklahoma.

Permit TE-84375B

Applicant: Mary Elizabeth Johnson, Arlington, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of American burying beetle (*Nicrophorus americanus*) within Texas, Oklahoma, Arkansas, and Kansas.

National Environmental Policy Act (NEPA)

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your

comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*)

Dated: February 10, 2016.

Stewart Jacks,

Acting Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2016-04298 Filed 2-26-16; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R3-ES-2016-0009;
FVES5942030000F2 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; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Receipt of application; request for comment; correction.

SUMMARY: On February 23, 2016, we, the U.S. Fish and Wildlife Service, announced receipt from the Michigan Department of Natural Resources of an application for an enhancement of survival permit under the Endangered Species Act of 1973, as amended. The notice contained a typographical error in the docket number for interested parties to use to submit comments. The correct docket number is [FWS-R3-ES-2016-0009]. With this notice, we correct that error.

FOR FURTHER INFORMATION CONTACT: Scott Hicks, Field Supervisor, East Lansing Field Office, by U.S. mail (see **ADDRESSES**); by telephone (517-351-6274), or by facsimile (517-351-1443). If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: In the *Federal Register* of February 23, 2016 (81 FR 8986), in FR Doc. 2016-03692, on page 8986 in the first column, in the **ADDRESSES** section, correct the docket

number for interested parties to use to submit comments in from “FWS-R3-ES-FWS-R3-ES-2016-0009” to “FWS-R3-ES-2016-0009”.

Dated: February 24, 2016.

Tina A. Campbell,

Chief, Division of Policy, Performance, and Management Programs, U.S. Fish and Wildlife Service.

[FR Doc. 2016-04304 Filed 2-26-16; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[156A2100DD/AAKC001030 /
AOA501010.999900 253G]

Model Indian Juvenile Code

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Availability.

SUMMARY: The Bureau of Indian Affairs is announcing availability of a draft Model Indian Juvenile Code for comment. The draft Model Indian Juvenile Code is intended as a tool to assist Indian Tribes in creating or revising their juvenile codes.

DATES: Comments are due by midnight ET on May 27, 2016. See the **SUPPLEMENTARY INFORMATION** section of this notice for dates of Tribal consultation sessions.

ADDRESSES: Please submit comments by email to bia_tribal_courts@bia.gov, or by mail to Natasha Anderson, Deputy Associate Director, Tribal Justice Support Directorate, Office of Justice Services, Bureau of Indian Affairs, 1849 C Street NW., Mail Stop 2603, Washington, DC 20240. The full draft Model Indian Juvenile Code is at: <http://www.bia.gov/cs/groups/xojs/documents/document/idc1-033097.pdf>.

See the **SUPPLEMENTARY INFORMATION** section of this notice for addresses of Tribal consultation sessions.

FOR FURTHER INFORMATION CONTACT: Natasha Anderson, Deputy Associate Director, Tribal Justice Support Directorate, Office of Justice Services, Bureau of Indian Affairs, at telephone (202) 513-0367.

SUPPLEMENTARY INFORMATION:

I. Background

The BIA initially contracted with the National Indian Justice Center to develop the first Code in 1988 after the passage Public Law 99-570, title IV, § 4221, which required the creation of a “Model Indian Juvenile Code” (25 U.S.C. 2454).

Most codes should be updated on a regular basis; and it has been over 25

years since the initial Model Indian Juvenile Code was created. Additionally, after the passage of the Tribal Law and Order Act of 2010, a Memorandum of Agreement among DOI, DOJ, and DHHS was developed to establish a framework for collaboration that results in the coordination of resources and programs. The MOA specifically referenced 25 U.S.C. 2454 and the Model Indian Juvenile Code.

Since the creation of the initial Model Indian Juvenile Code, much has changed in the field of juvenile justice. Since the late 1980s, many jurisdictions have engaged in reforms of their juvenile justice systems in response to research finding that the standard juvenile justice system model used in the United States showed no impact to juvenile delinquency and may have, in fact, increased delinquency rates. Research has also found that adolescent brains develop later in life than previously thought. Researchers, advocates and policy makers urge changes to the more punitive models of juvenile justice and encourage systems that are more restorative.

After contracting with the Center of Indigenous Research & Justice (CIRJ), the BIA shepherded an “information gathering phase” beginning with a workshop to discuss a plan of action in updating the Code, at the Office on Victims of Crime’s National Indian Nations Conference in Palm Springs, California on December 12, 2014. In April 2015, BIA made available a Discussion Draft on the BIA Web site for review and comment. The CIRJ contractor presented details on the Discussion Draft at the 2015 Annual Federal Bar Indian Law Conference. The BIA held a listening session on the Discussion Draft at the 2015 National Congress of American Indians’ Mid-Year Conference in Saint Paul, Minnesota. NCAI hosted a follow-up webinar in November 2015 on Juvenile Justice with a focus on the principles of the Model Indian Juvenile Code update.

II. Summary of the Model Indian Juvenile Code

The 2016 Model Indian Juvenile Code is divided into three categories: 1) Delinquency; 2) Child in Need of Services; and 3) Truancy.

The 2015 Model Indian Juvenile Code focuses on several principles including, but not limited to:

- Right to Counsel for Each Child Brought Into the Juvenile Justice System;
- Right to Counsel for Parents;
- Preference for Alternatives to Secure Detention; and

- Numerous Opportunities to Divert Cases Out of Adversarial Process and into Traditional Forums as Preferred by a Particular Tribal Community.

III. Model Indian Juvenile Code

The full draft Model Indian Juvenile Code is available at: <http://www.bia.gov/cs/groups/xojs/documents/document/idc1-033097.pdf> or by contacting the person listed in the **FOR FURTHER**

INFORMATION CONTACT section of this notice. Further information is available on the Tribal Justice Support Directorate’s page at <http://www.bia.gov/WhoWeAre/BIA/OJS/ojs-services/ojs-tjs/index.htm>.

IV. Opportunity for Comment & Tribal Consultations

The Department will be hosting the following Tribal consultation sessions

for input on the Model Indian Juvenile Code: Two teleconference sessions in March 2016, two teleconference sessions in April 2016; and one in-person Listening Session to be held in conjunction with the referenced conference. Please visit the Department’s “Consultation” Web page at <http://www.indianaffairs.gov/WhoWeAre/AS-IA/Consultation/index.htm> for additional information.

Date	Time	Call-In Information
March 30, 2016	3:30–5:30 p.m. EST	800–857–5008, passcode 1291169
March 31, 2016	3:30–5:30 p.m. EST	800–857–5008, passcode 1291169
April 13, 2016	3:30–5:30 p.m. EST	800–857–5008, passcode 1291169
April 14, 2016	3:30–5:30 p.m. EST	800–857–5008, passcode 1291169

The Department will also host the following listening session for input on the Model Indian Juvenile Code in conjunction with the referenced conference.

Date	Time	Location	Venue
April 4, 2016	3:30–5:30 p.m. CST	St. Paul, MN	National Indian Child Welfare Association (NICWA) Conference

After receiving comments, the BIA will then publish a link to the final version of the Model Indian Juvenile Code in the **Federal Register**. The final version will be available in PDF and Word document formats for Tribes to immediately adapt to their needs.

Dated: February 24, 2016.

Lawrence Roberts,

Acting Assistant Secretary—Indian Affairs.
[FR Doc. 2016–04325 Filed 2–26–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK942000.L14100000.BJ0000.16X]

Notice of Filing of Plats of Survey; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Alaska State Office, Anchorage, Alaska, 30 days from the date of publication in the **Federal Register**.

Survey Description: The following plats represent the survey, dependent survey, meanders and survey of the fixed and limiting boundary of a portion

of the Arctic National Wildlife Refuge, Alaska.

Umiat Meridian

Tps. 5 & 6 N., Rs. 23 E., accepted July 24, 2015

Tps. 1 thru 4 N., Rs. 24 E., accepted July 24, 2015

T. 1 S., R. 25 E., accepted July 24, 2015

ADDRESSES: Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, Stop 13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT:

Michael H. Schoder, BLM Alaska Chief Cadastral Surveyor, Branch of Cadastral Survey,, Alaska State Office, 222 W. 7th Avenue, Stop 13, Anchorage, Alaska 99513–7504; telephone 907–271–5481; fax: 907–271–4549; email: mschoder@blm.gov.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The survey plats will be available for inspection in the BLM Alaska Public Information Center, Alaska State Office, 222 West 7th Avenue, Anchorage, Alaska 99513–7504; 907–271–5960.

Copies may be obtained from this office for a minimum recovery fee.

If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed.

A person or party who wishes to protest against this survey must file a written response with the BLM Alaska State Director, stating that they wish to protest.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

A statement of reasons for a protest may be filed with the notice of protest to the State Director; the statement of reasons must be filed with the State Director within thirty days after a protest is filed.

Authority: 43 U.S.C. 3§ 53.

Dated: February 22, 2016.

Michael H. Schoder,
Chief Cadastral Surveyor, Alaska.

[FR Doc. 2016–04299 Filed 2–26–16; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[LLORP00000.L12200000.AL
0000.15XL1109AF; HAG 16-0043]

Establishment and Availability of Final Boundary for Crooked Wild and Scenic River, Segment B, Prineville District, Crook County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with Section 3(b) of the Wild and Scenic Rivers Act, the Bureau of Land Management, Washington Office, is providing notice of the establishment and availability of the final boundary of the Crooked National Wild and Scenic River, Segment B, and of the transmittal of the boundary package to Congress.

FOR FURTHER INFORMATION CONTACT: Carol Benkosky, District Manager, BLM Prineville District Office, 3050 NE Third Street, Prineville, Oregon 97754, 541-416-6700. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1(800) 877-8339 to contact the above individuals 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 individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Crooked Wild and Scenic River, Segment B boundary is available for public inspection at the following offices: Bureau of Land Management, National Landscape Conservation System, 20 M Street SE., Washington, DC 20036, 202-912-7624; Bureau of Land Management, Oregon State Office, 1220 SW 3rd Avenue, Portland, OR 97204, 503-808-6001; Bureau of Land Management, Prineville District Office, 3050 NE Third Street, Prineville, Oregon 97754, 541-416-6700.

The Omnibus Oregon Wild and Scenic Rivers Act of 1988 (Pub. L. 100-557) of October 28, 1988, designated the Crooked River, Segment B, Oregon, as a National Wild and Scenic River, to be administered by the Secretary of the Interior. Segment B was described as: "the 8-mile segment from Bowman Dam to dry Creek as a recreational river."

A proposed boundary for the Crooked Wild and Scenic River, Segment B, was published in the **Federal Register** on Monday, December 11, 1989 (54 FR 50825). The proposed administrative boundary was also transmitted to Congress on January 2, 1990. The

boundary began at the Bowman Dam and extended downstream for 8 miles.

The Crooked River Collaborative Water Security and Jobs Act of 2014 (Pub. L. 113-244) amended the proposed boundary for the Crooked Wild and Scenic River, Segment B, by describing it as: "The 7.75-mile segment from a point 1/4-mile downstream from the center crest of the Bowman Dam, as a recreational river." As specified by law, the final boundary becomes effective 90 days after transmittal to Congress, which occurred on October 14, 2015.

Jerome E. Perez,

State Director, Oregon/Washington.

[FR Doc. 2016-04307 Filed 2-26-16; 8:45 am]

BILLING CODE 4310-33-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[LLMT921000-L13200000.EL0000-15X; MTM 107885; MO#4500077364]

Notice of Invitation To Participate Coal Exploration License Application MTM 107855, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the Mineral Leasing Act of 1920, as amended by the Federal Coal Leasing Amendments Act of 1976, and to Bureau of Land Management (BLM) regulations, all interested parties are hereby invited to participate with Decker Coal Company, LLC on a pro rata cost sharing basis in a program for the exploration of coal deposits owned by the United States of America in lands located in Big Horn County, Montana, encompassing 12,618.11 acres.

DATES: Any party seeking to participate in this exploration program must send written notice to both the BLM and Decker Coal Company, LLC as provided in the **ADDRESSES** section below no later than March 30, 2016 or 10 calendar days after the last publication of this notice in the *Sheridan Press* newspaper, whichever is later. This notice will be published once a week for 2 consecutive weeks in the *Sheridan Press*, Sheridan, Wyoming. Such written notice must refer to serial number MTM 107885.

ADDRESSES: The proposed exploration license and plan are available for review from 9 a.m. to 4 p.m., Monday through Friday, in the public room at the BLM Montana State Office, 5001 Southgate Drive, Billings, MT 59101-4669. The exploration license application and

exploration plan are also available for viewing on the Montana State Office coal Web site at <http://www.blm.gov/mt/st/en/prog/energy/coal.html>. A written notice to participate in the exploration licenses should be sent to the State Director, BLM Montana State Office, 5001 Southgate Drive, Billings, MT 59101-4669, and Decker Coal Company, LLC, 170 Main Street, Suite 700, Salt Lake City, UT 84101-1657.

FOR FURTHER INFORMATION CONTACT: Phil Perlewitz, BLM Montana State Office, 406-896-5159, or by email at pperlewi@blm.gov; or Connie Schaff, BLM Montana State Office, 406-896-5060, or by email at cschaff@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Decker Coal Company, LLC has applied to the BLM for a coal exploration license on public lands in Big Horn County, Montana. The exploration activities will be performed pursuant to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. 201(b), and to the regulations at 43 CFR part 3410. The purpose of the exploration program is to gain additional geologic knowledge of the coal underlying the exploration area for the purpose of assessing the coal resources. The BLM regulations at 43 CFR 3410.2-1(c) require the publication of an invitation to participate in coal exploration in the **Federal Register**. The lands to be explored for coal deposits in exploration license MTM 107885 are described as follows:

Principal Meridian, Montana

T. 9 S., R. 39 E.,

Secs. 12 through 14 and secs. 23 through 26;

T. 8 S., R. 40 E.,

Sec. 27, W¹/₂ SW¹/₄ and SW¹/₄ SE¹/₄ SW¹/₄;

Sec. 28, S¹/₂ NE¹/₄, S¹/₂ NW¹/₄, and S¹/₂;

Sec. 29, S¹/₂;

Sec. 32, SW¹/₄;

Sec. 34, W¹/₂ NW¹/₄ NE¹/₄, N¹/₂ NE¹/₄

NW¹/₄, and SE¹/₄ NE¹/₄ NW¹/₄;

T. 9 S., R. 40 E.,

Sec. 2, lots 1 and 2, S¹/₂ NE¹/₄, SE¹/₄ NW¹/₄,

E¹/₂ SW¹/₄, SE¹/₄;

Sec. 4, lot 4, SW¹/₄ NW¹/₄;

Sec. 5, lots 1 through 4, S¹/₂ N¹/₄, S¹/₂

NW¹/₄, SW¹/₄, N¹/₂ SE¹/₄, and SW¹/₄ SE¹/₄;

Sec. 7;

Sec. 8, NW¹/₄ NE¹/₄, NW¹/₄ SW¹/₄ NE¹/₄,

NW¹/₄, NW¹/₄ NE¹/₄ SW¹/₄, NW¹/₄ SW¹/₄,

and NW¹/₄ SW¹/₄ SW¹/₄;

Sec. 11, N¹/₂ NE¹/₄, and NE¹/₄ NW¹/₄;

Sec. 17, W¹/₂ SW¹/₄;
 Sec. 18;
 Sec. 19, lots 1 through 3, E¹/₂, E¹/₂ NW¹/₄,
 and E¹/₂ SW¹/₄;
 Sec. 20, W¹/₂ SW¹/₄ NE¹/₄, W¹/₂, S¹/₂ NE¹/₄
 SE¹/₄, NW¹/₄ SE¹/₄, and S¹/₂ SE¹/₄;
 Sec. 23, E¹/₂, E¹/₂ NW¹/₄, SW¹/₄ NW¹/₄, and
 SW¹/₄;
 Sec. 24;
 Sec. 25, N¹/₂, SW¹/₄;
 Sec. 26;
 Sec. 29, NE¹/₄, N¹/₂ SW¹/₄, SW¹/₄ SW¹/₄, and
 N¹/₂ SE¹/₄;
 Sec. 30, lots 2 through 4, E¹/₂ SW¹/₄, and
 SE¹/₄;
 T. 9 S., R. 41 E.,
 Sec. 19, lot 5.

The area described contains approximately 12,618.11 acres.

The Federal coal within the lands described for exploration license MTM 107885 is currently unleased for development of Federal coal reserves.

Authority: 30 U.S.C. 201(b) and 43 CFR 3410.2-1(c).

Phillip C. Perlewitz,

Chief, Branch of Solid Minerals.

[FR Doc. 2016-04308 Filed 2-26-16; 8:45 am]

BILLING CODE 4310-DN-P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

2016 Preliminary Fee Rate and Fingerprint Fees

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.2, that the National Indian Gaming Commission has adopted its 2016 preliminary annual fee rates of 0.00% for tier 1 and 0.062% (.00062) for tier 2. While the rate for tier 1 remains the same, tier 2 decreases from 0.065% to 0.062%. The tier 2 preliminary annual fee rate represents the lowest fee rate adopted by the Commission in the last five years. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the Commission. If a tribe has a certificate of self-regulation under 25 CFR part 518, the 2016 preliminary fee rate on Class II revenues shall be 0.031% (.00031) which is one-half of the annual fee rate. The preliminary fee rates being adopted here are effective March 1, 2016 and will remain in effect until new rates are adopted.

Pursuant to 25 CFR 514.16, the National Indian Gaming Commission has also adopted its fingerprint processing fees of \$21 per card effective March 1, 2016.

FOR FURTHER INFORMATION CONTACT: Yvonne Lee, National Indian Gaming Commission, C/O Department of the Interior, 1849 C Street NW., Mail Stop #1621, Washington, DC 20240; telephone (202) 632-7003; fax (202) 632-7066.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) established the National Indian Gaming Commission, which is charged with regulating gaming on Indian lands.

Commission regulations (25 CFR 514) provide for a system of fee assessment and payment that is self-administered by gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates and the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission. All gaming operations within the jurisdiction of the Commission are required to self-administer the provisions of these regulations, and report and pay any fees that are due to the Commission.

Pursuant to 25 CFR 514, the Commission must also review annually the costs involved in processing fingerprint cards and set a fee based on fees charged by the Federal Bureau of Investigation and costs incurred by the Commission. Commission costs include Commission personnel, supplies, equipment costs, and postage to submit the results to the requesting tribe. Based on that review, the Commission hereby sets the 2016 fingerprint processing fee at \$21 per card effective March 1, 2016.

Dated: February 23, 2016.

Jonodev O. Chaudhuri,
Chairman.

Dated: February 23, 2016.

E. Sequoyah Simermeyer,
Associate Commissioner.

[FR Doc. 2016-04267 Filed 2-26-16; 8:45 am]

BILLING CODE 7565-01-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NRNL-20297;
 PPWOCRADIO, PCU00RP14.R50000]

National Register of Historic Places; Notification of Extension of Comment Period for Pending Nomination of Chi'chil Bildagoteel (Oak Flats) Historic District

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is extending the period for soliciting

comments on the proposed listing of the Chi'chil Bildagoteel (Oak Flats) Historic District Traditional Cultural Property in the National Register of Historic Places.

DATES: Comments should be submitted by March 4, 2016.

ADDRESSES: Comments may be sent via U.S. Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th Floor, Washington, DC 20005; or by fax, 202-371-6447. Email comments can be sent to edson_beall@nps.gov.

SUPPLEMENTARY INFORMATION: On January 21, 2016, the National Park Service published a notice (81 FR 3469, column 2) soliciting comments on the significance of properties nominated before January 2, 2016 in the National Register of Historic Places. The Chi'chil Bildagoteel (Oak Flats) Historic District Traditional Cultural Property, Pinal County, Arizona, is being considered for listing in the National Register of Historic Places. Pursuant to §§ 60.6(t) and 60.12(a) of 36 CFR part 60, the period for accepting written comments on the significance of the nominated property under the National Register criteria for evaluation has been extended, and all comments should be submitted on or before March 4, 2016.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

If you submitted comments or information during the previous open comment period, please do not resubmit them. We will fully consider them in the preparation of our final determination

Authority: 36 CFR 60.6(t) and 60.12(a).

Dated: February 5, 2016.

J. Paul Loether,

*Chief, National Register of Historic Places/
 National Historic Landmarks Program.*

[FR Doc. 2016-04373 Filed 2-25-16; 11:15 am]

BILLING CODE 4312-51-P

DEPARTMENT OF THE INTERIOR**National Park Service**

[NPS—WASO—NRNHL—20259;
PPWOCRADIO, PCU00RP14.R50000]

**National Register of Historic Places;
Notification of Pending Nominations
and Related Actions**

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before January 30, 2016, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by March 15, 2016.

ADDRESSES: Comments may be sent via U.S. Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th Floor, Washington, DC 20005; or by fax, 202-371-6447.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before January 30, 2016. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

ARIZONA**Maricopa County**

Boomer, Jorgine, House, 5808 N. 30th St., Phoenix, 16000071
Hilvert, Fred G., House, 106 E. Country Club Dr., Phoenix, 16000072

COLORADO**Adams County**

Colorado Sanitary Canning Factory, 224 N. Main St., Brighton, 16000073

Garfield County

Western Hotel, 716 Cooper Ave., Glenwood Springs, 16000074

INDIANA**Boone County**

Simpson—Breedlove House, (Eagle Township and Pike Township, Indiana MPS) 3650 US 421, Zionsville, 16000075

Lawrence County

Clampitt Site, Address Restricted, Bedford, 16000076

Marion County

Indianapolis Public Library Branch No. 3, 2822 E. Washington St., Indianapolis, 16000077

Indianapolis Public Library Branch No. 6, 1801 Nowland Ave., Indianapolis, 16000078

Oriental Lodge No. 500, 2201 Central, Indianapolis, 16000079

Marshall County

Erwin House, 2518 14-B Rd., Bourbon, 16000080

IOWA**Hardin County**

New Providence Building Association Stores, 401-405 W. Main Street Dr., New Providence, 16000081

Jones County

Farm Creek Historic District, Address Restricted, Cascade, 16000083
Kenny Farmstead Archeological District, Address Restricted, Cascade, 16000082

MISSOURI**Cape Girardeau County**

Chapman, Dr. Jean, House, 1150 N. Henderson Ave., Cape Girardeau, 16000084

Jackson County

Peters, Charles and Josephine, House, 1228 W. 55th St., Kansas City, 16000085

OKLAHOMA**Logan County**

Excelsior Library, 323 S. 2nd St., Guthrie, 16000087

Oklahoma County

Lincoln Plaza Historic District, 4345-4545 N. Lincoln Blvd., 416 NE. 46th St., Oklahoma City, 16000086

OREGON**Multnomah County**

Arleta Branch Library, 4420 SE. 64th Ave., Portland, 16000088

RHODE ISLAND**Washington County**

Perry Homestead Historic District, 2, 4, 8, 12, 16 Margin & 15, 17 Beach Sts., Westerly, 16000089

SOUTH CAROLINA**Spartanburg County**

Inman Mills, (Textile Mills designed by W.B. Smith Whaley MPS) 240 4th St., Inman, 16000090

WISCONSIN**Brown County**

Allouez Pump House, 535 Greene Ave., Allouez, 16000091
Allouez Water Department and Town Hall, 2143 S. Webster Ave., Allouez, 16000092

A request for removal was received for the following resources:

IOWA**Johnson County**

Van Patten House, 9 S. Linn St., Iowa City, 83000379

Scott County

Fisher, Lewis M., House, 1003 Arlington Ave., Davenport, 83002432

Van Buren County

Goodin Building, North 106 Front St., Farmington, 02000505

Winnebago County

Forest City Public Library, E. I St. and Clark, Forest City, 84001609

Authority: 60.13 of 36 CFR part 60

Dated: February 4, 2016.

J. Paul Loether,

*Chief, National Register of Historic Places/
National Historic Landmarks Program.*

[FR Doc. 2016-04342 Filed 2-26-16; 8:45 am]

BILLING CODE 4312-51-P

**INTERNATIONAL TRADE
COMMISSION**

[Investigation No. 337-TA-986]

**Certain Diaper Disposal Systems and
Components Thereof, Including Diaper
Refill Cassettes; Institution of
Investigation**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 21, 2016, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Edgewell Personal Care Brands, LLC of Chesterfield, Missouri and International Refills Company Ltd. of Barbados. Supplements to the complaint were filed on February 3, 2016 and February 9, 2016. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain diaper disposal systems and components thereof, including diaper refill cassettes, by reason of infringement of certain claims of U.S. Patent No. 8,899,420 ("the '420 patent") and U.S. Patent No. 6,974,029 ("the '029

patent"). The complaint further alleges that an industry in the United States exists and/or is in the process of being established as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: The Office of Docket Services, U.S. International Trade Commission, telephone (202) 205-1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2015).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on February 22, 2016, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain diaper disposal systems and components thereof, including diaper refill cassettes, by reason of infringement of one or more of claims 1-17 of the '420 patent and claims 1, 2, 4, 6, and 7 of the '029 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following

are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Edgewell Personal Care Brands, LLC, 1350 Timberlake Manor Pkwy, Chesterfield, MO 63017.

International Refills Company Ltd., #1 Hythe Gardens, Welches, Christ Church, Barbados.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Munchkin, Inc., 7835 Gloria Avenue, Van Nuys, CA 91406.

Munchkin Baby Canada Ltd., 50 Precidio Court, Unit A, Brampton, Ontario L6S 6E3, Canada.

Lianyungang Brilliant Daily Products Co. Ltd, No. 7 Wei San Dong Road, Guanyun Economic Development Zone, Lianyungang, Jiangsu, 222000, China.

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge; and

(4) The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Dated: February 23, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016-04265 Filed 2-26-16; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Nanopores and Products Containing Same, DN 3123*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,¹ and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.² The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.³ Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Illumina, Inc., University of

¹ Electronic Document Information System (EDIS): <http://edis.usitc.gov>.

² United States International Trade Commission (USITC): <http://edis.usitc.gov>.

³ Electronic Document Information System (EDIS): <http://edis.usitc.gov>.

Washington, and UAB Research Foundation on February 23, 2016. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain nanopores and products containing same. The complaint names as respondents Oxford Nanopore Technologies Ltd. of the United Kingdom; and Oxford Nanopore Technologies, Inc. of Cambridge, MA. The complainant requests that the Commission issue a limited exclusion order and cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

- (i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;
- (ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;
- (iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;
- (iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and
- (v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 3123") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures).⁴ Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.⁵

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: February 23, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016-04272 Filed 2-26-16; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-467 and 731-TA-1164-1165 (Review)]

Narrow Woven Ribbons With Woven Selvedge From China and Taiwan; Scheduling of Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to the Tariff Act of 1930 ("the Act") to determine whether revocation of the countervailing duty order on

narrow woven ribbons with woven selvedge from China and revocation of the antidumping duty orders on narrow woven ribbons with woven selvedge from China and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days.

DATES: Effective Date: February 23, 2016

FOR FURTHER INFORMATION CONTACT:

Edward Petronzio (202) 205-3176, 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 these reviews may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On November 6, 2015, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews should proceed (80 FR 73829, November 26, 2015); accordingly, full reviews are being scheduled pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, within 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons,

⁴ Handbook for Electronic Filing Procedures: http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.

⁵ Electronic Document Information System (EDIS): <http://edis.usitc.gov>.

or their representatives, who are parties to the reviews.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on June 16, 2016, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on Tuesday, July 12, 2016, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 5, 2016. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on July 6, 2016, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing

briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is June 28, 2016. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is July 21, 2016. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before July 21, 2016. On August 12, 2016, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before August 16, 2016, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at <http://edis.usitc.gov>, elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

The Commission has determined that these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B)).

Authority: These reviews are 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 24, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016-04319 Filed 2-26-16; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Information Collection Request Submitted for Public Comment; on the Road to Retirement Surveys

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed 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. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed information collection request (ICR) described below. A copy of the ICRs may be obtained by contacting the office listed in the **ADDRESSES** section of this notice. ICRs also are available at [reginfo.gov](http://www.reginfo.gov) (<http://www.reginfo.gov/public/do/PRAMain>).

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before April 29, 2016.

ADDRESSES: G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., N-5718, Washington, DC 20210, (202) 693-8410, FAX (202) 219-4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: This notice requests public comment on the Department's proposed collection of information regarding a household survey that will investigate retirement planning and decision-making. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: On the Road to Retirement Surveys.

Type of Review: New collection of information.

OMB Number: 1210-NEW.

Respondents: (Annual) 4,963.

Year when Pretesting and Pre-survey occur: 10,390.

Year 1 of Survey: 4,500.

Year 2 of Survey: 4,075.

Number of Annual Responses: 19,607.

Total Annual Burden Hours: 10,319 hours.

Total Annualized Capital/Startup Costs: \$0.

Total Annual Costs: \$0.

Description: The Department is planning to undertake a long-term research study to develop a panel that will track U. S. households over several years in order to collect data and answer important research questions on how retirement planning strategies and decisions evolve over time. Relatively little is known about how people make planning and financial decisions before and during retirement. A major hurdle to retirement research is the lack of data on how people make these decisions related to retirement. Gaining insight into Americans' decision-making processes and experiences will provide policy-makers and the research community with valuable information that can be used to guide future policy and research.

This investigation will explore a set of research questions on retirement savings, investment, and drawdown behavior by conducting a study that tracks retirees and future retirees over an extended period. Household reports of such items as retirement account contributions and investment allocations will be combined with survey responses on planning methods and strategies and on financial advice received to perform a cross-sectional analysis, conditional on other respondent attributes. Multiple waves of data drawn from various surveys will be utilized to analyze how retirement planning strategies, decisions, and outcomes evolve over time.

Prior to administering the surveys, the data collection instruments will be pretested via cognitive interviews, pilot surveys, and debriefing of respondents to the pilot surveys.

I. Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are 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 collections 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., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICRs for OMB approval of the extension of the information collection; they will also become a matter of public record.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 2016-04315 Filed 2-26-16; 8:45 am]

BILLING CODE 4510-29-P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 16-CRB-0009-CD (2014)]

Distribution of 2014 Cable Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice requesting comments.

SUMMARY: The Copyright Royalty Judges solicit comments on a motion of Phase I claimants for partial distribution of 2014 cable royalty funds.

DATES: Comments are due on or before March 30, 2016.

ADDRESSES: Interested claimants must submit comments to only one of the following addresses. Unless responding by email or online, claimants must submit an original, five paper copies, and an electronic version on a CD.

Email: crb@loc.gov; or

U.S. mail: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024-0977; or

Overnight service (only USPS Express Mail is acceptable): Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024-0977; or

Commercial courier: Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue SE., Washington, DC 20559-6000. Deliver to: Congressional Courier Acceptance Site, 2nd Street NE., and D Street NE., Washington, DC; or

Hand delivery: Library of Congress, James Madison Memorial Building, LM-

401, 101 Independence Avenue SE., Washington, DC 20559-6000.

FOR FURTHER INFORMATION CONTACT:

LaKeshia Keys, Program Specialist, by telephone at (202) 707-7658 or email at crb@loc.gov.

SUPPLEMENTARY INFORMATION: Each year cable systems must submit royalty payments to the Register of Copyrights as required by the statutory license set forth in section 111 of the Copyright Act for the retransmission to cable subscribers of over-the-air television and radio broadcast signals. See 17 U.S.C. 111(d). The Copyright Royalty Judges (Judges) oversee distribution of royalties to copyright owners whose works were included in a qualifying transmission and who timely filed a claim for royalties. Allocation of the royalties collected occurs in one of two ways.

In the first instance, the Judges may authorize distribution in accordance with a negotiated settlement among all claiming parties. 17 U.S.C. 111(d)(4)(A). If all claimants do not reach agreement with respect to the royalties, the Judges must conduct a proceeding to determine the distribution of any royalties that remain in controversy. 17 U.S.C. 111(d)(4)(B). Alternatively, the Judges may, on motion of claimants and on notice to all interested parties, authorize a partial distribution of royalties, reserving on deposit sufficient funds to resolve identified disputes. 17 U.S.C. 111(d)(4)(C), 801(b)(3)(C).

On February 5, 2016, representatives of the Phase I claimant categories (the "Phase I Claimants")¹ filed with the Judges a motion requesting a partial distribution amounting to 60% of the 2014 cable royalty funds pursuant to section 801(b)(3)(C) of the Copyright Act. 17 U.S.C. 801(b)(3)(C). That section requires that, before ruling on the motion, the Judges publish a notice in the **Federal Register** seeking responses to the motion for partial distribution to ascertain whether any claimant entitled to receive the subject royalties has a

¹ The self-identified "Phase I Claimants" are Program Suppliers; Joint Sports Claimants; Public Television Claimants; National Association of Broadcasters; American Society of Composers, Authors and Publishers; Broadcast Music, Inc.; SESAC, Inc.; Canadian Claimants Group; National Public Radio; and Devotional Claimants. In what has been known as Phase I of a cable royalty distribution proceeding, the Judges allocate royalties among certain categories of claimants whose broadcast programming has been retransmitted by cable systems. The "Phase I Claimants" who are the moving parties in this requested partial distribution represent traditional claimant categories. The Judges have not and do not by this notice determine the universe of claimant categories for 2014 cable retransmission royalties.

reasonable objection to the requested distribution.

Accordingly, this Notice seeks comments from interested claimants on whether any reasonable objection exists that would preclude the distribution of 60% of the 2014 cable royalty funds to the Phase I Claimants. Parties objecting to the partial distribution must advise the Judges of the existence and extent of all objections by the end of the comment period. The Judges will not consider any objections with respect to the partial distribution motion that come to their attention after the close of the comment period.

The Judges have caused the Motion of the Phase I Claimants for Partial Distribution to be posted on the Copyright Royalty Board Web site at <http://www.loc.gov/crb>.

Suzanne M. Barnett,

Chief U.S. Copyright Royalty Judge.

[FR Doc. 2016-04274 Filed 2-26-16; 8:45 am]

BILLING CODE 1410-72-P

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS:

Mississippi River Commission

TIME AND DATE: 9:00 a.m., April 11, 2016.

PLACE: On board MISSISSIPPI V at City Front, Cairo, Illinois.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1)

Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the St. Louis and Memphis Districts; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9:00 a.m., April 12, 2016.

PLACE: On board MISSISSIPPI V at Beale Street Landing, Memphis, Tennessee.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1)

Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis

District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9:00 a.m., April 13, 2016.

PLACE: On board MISSISSIPPI V at City Front, Lake Providence, Louisiana

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1)

Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Vicksburg District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9:00 a.m., April 15, 2016.

PLACE: On board MISSISSIPPI V at City Dock, New Orleans, Louisiana.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: ((1)

Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the New Orleans District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Charles A. Camillo, telephone 601-634-7023.

Charles A. Camillo,

Director, Mississippi River Commission.

[FR Doc. 2016-04490 Filed 2-25-16; 4:22 pm]

BILLING CODE 3720-58-P

NUCLEAR REGULATORY COMMISSION

[NRC-2016-0001]

Sunshine Act Meeting

DATE: February 29, March 7, 14, 21, 28, April 4, 2016.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of February 29, 2016

Wednesday, March 2, 2016

3:00 p.m. Discussion of Management and Personnel Issues (Closed—Ex. 2&6).

Thursday, March 3, 2016

9:30 a.m. Briefing on NRC International Activities (Closed—Ex. 1&9).

Friday, March 4, 2016

10:00 a.m. Meeting with Advisory Committee on Reactor Safeguards (Public Meeting); (Contact: Mark Banks: 301-415-3718)

This meeting will be webcast live at the Web address—<http://www.nrc.gov/>.

Week of March 7, 2016—Tentative

There are no meetings scheduled for the week of March 7, 2016.

Week of March 14, 2016—Tentative

Tuesday, March 15, 2016

9:00 a.m. Briefing on Power Reactor Decommissioning Rulemaking (Public Meeting); (Contact: Jason Carneal: 301-415-1451).

This meeting will be webcast live at the Web address—<http://www.nrc.gov/>.

Thursday, March 17, 2016

9:30 a.m. Meeting with the Advisory Committee on the Medical Uses of Isotopes (Public Meeting); (Contact: Douglas Bollock: 301-415-6609)

This meeting will be webcast live at the Web address—<http://www.nrc.gov/>.

Week of March 21, 2016—Tentative

There are no meetings scheduled for the week of March 21, 2016.

Week of March 28, 2016—Tentative

Tuesday, March 29, 2016

9:30 a.m. Briefing on Project Aim (Public Meeting); (Contact: Janelle Jessie: 301-415-6775)

This meeting will be webcast live at the Web address—<http://www.nrc.gov/>.

Wednesday, March 30, 2016

9:30 a.m. Briefing on Security Issues (Closed Ex. 1).

Week of April 4, 2016—Tentative

Tuesday, April 5, 2016

9:30 a.m. Briefing on Threat Environment Assessment (Closed Ex. 1)

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301-415-0681 or via email at Denise.McGovern@nrc.gov.

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/public-involve/public-meetings/schedule.html>.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301-287-0739, by videophone at 240-428-3217, or by email at Kimberly.Meyer-Chambers@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301-415-1969), or email

Brenda.Akstulewicz@nrc.gov or Patricia.Jimenez@nrc.gov.

Dated: February 25, 2016.

Denise McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2016-04478 Filed 2-25-16; 4:15 pm]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2012-0068]

Mitigation Strategies for Beyond-Design-Basis External Events

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim staff guidance; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing the final Japan Lessons-Learned Division Interim Staff Guidance (JLD-ISG), JLD-ISG-2012-01, Revision 1, "Compliance with Order EA-12-049, Order Modifying Licenses with Regard to Requirements for Mitigation Strategies for Beyond-Design-Basis External Events." This JLD-ISG provides guidance and clarification to assist nuclear power reactor licensees with the identification of measures needed to comply with requirements to mitigate challenges to key safety functions. These requirements are contained in Order EA-12-049, "Order Modifying Licenses with Regard to Requirements for Mitigation Strategies for Beyond-Design-Basis External Events."

DATES: This guidance is effective on February 29, 2016.

ADDRESSES: Please refer to Docket ID NRC-2012-0068 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-2012-0068. 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 JLD-ISG-2012-01, Revision 1 is available in ADAMS under Accession No. ML15357A163.

- 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.

- NRC's Interim Staff Guidance Web site: <http://www.nrc.gov/reading-rm/doc-collections/isg/japan-lessons-learned.html>.

FOR FURTHER INFORMATION CONTACT: Eric Bowman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2963; email: Eric.Bowman@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

The original interim staff guidance (ISG), Final Japan Lessons-Learned Project Directorate Interim Staff Guidance (JLD-ISG), JLD-ISG-2012-01, "Compliance with Order EA-12-049, Order Modifying Licenses with Regard to Requirements for Mitigation Strategies for Beyond-Design-Basis External Events," (ADAMS Accession No. ML12229A174) was issued to describe to the public methods acceptable to the NRC for complying with Order EA-12-049, "Order Modifying Licenses with Regard to

Requirements for Mitigation Strategies for Beyond-Design-Basis External Events" (Order EA-12-049), issued March 12, 2012 (ADAMS Accession No. ML12054A736). This ISG endorsed the methodologies described in the industry guidance document, Nuclear Energy Institute (NEI) 12-06, "Diverse and Flexible Coping Strategies (FLEX) Implementation Guide" (NEI 12-06), Revision 0 (ADAMS Accession No. ML12242A378) submitted on August 21, 2012. The staff is now issuing Revision 1 to JLD-ISG-2012-01. This revision incorporates the NRC's review strategy described in COMSECY 14-0037, "Integration of Mitigating Strategies for Beyond-Design Basis External Events and the Reevaluation of Flooding Hazards" (ADAMS Accession No. ML14238A616) and endorses NEI 12-06, Revision 2 (ADAMS Accession No. ML16005A625).

The NRC issued Order EA-12-049 following evaluation of the Japan earthquake and tsunami, and resulting nuclear accident, at the Fukushima Dai-ichi nuclear power plant in March 2011. Order EA-12-049 requires all licensees and construction permit holders to develop a three-phase approach for mitigating beyond-design-basis external events. The initial phase requires the use of installed equipment and resources to maintain or restore core cooling, containment, and spent fuel pool cooling. The transition phase requires providing sufficient, portable, onsite equipment and consumables to maintain or restore these functions until they can be accomplished with resources brought from off site. The final phase requires obtaining sufficient offsite resources to sustain those functions indefinitely. Order EA-12-049 also specified that the NRC would issue final interim staff guidance in August 2012, to provide additional details on an acceptable approach for complying with Order EA-12-049.

The original version of this ISG which endorsed the original NEI 12-06 was issued on August 29, 2012. The NRC staff revised this ISG in order to incorporate acceptable alternative approaches to compliance proposed by licensees and after clarifying its position on the interdependency of the Mitigating Strategies responses and the responses to the seismic and flooding reevaluations. The staff's clarified position was addressed in COMSECY-14-0037. This revised guidance will be publicly available and used by members of the industry to help develop their responses to Order EA-12-049, including impacts of the reevaluated seismic and flooding information, and by the NRC staff in its reviews of the

licensees' strategies. On November 10, 2015 (80 FR 69702), the NRC requested public comments on draft JLD-ISG-12-01, Revision 1. The NRC staff received comments from four stakeholders which were considered in the development of the final JLD-ISG-12-01, Revision 1. The questions, comments, and staff resolutions of those comments are contained in "NRC Responses to Public Comments: Revision to Japan Lessons-Learned Division Interim Staff Guidance JLD-ISG-2012-01: Compliance with Order EA-12-049, Order Modifying Licenses with Regard to Requirements for Mitigation Strategies for Beyond-Design-Basis External Events" (ADAMS Accession No. ML15357A142).

II. Congressional Review Act

This ISG revision is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

III. Backfitting and Issue Finality

This ISG provides guidance on an acceptable method for implementing the requirements contained in Order EA-12-049. Licensees may voluntarily use the guidance in JLD-ISG-2012-01, Revision 1 to demonstrate compliance with Order EA-12-049. Methods or solutions that differ from those described in this ISG may be deemed acceptable if they provide sufficient basis and information for the NRC to verify that the proposed alternative demonstrates compliance with Order EA-12-049. Issuance of this ISG does not constitute backfitting as defined in title 10 of the *Code of Federal Regulations* (10 CFR) 50.109, "Backfitting" (the Backfit Rule), and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants."

Dated at Rockville, Maryland, this 22 day of February 2016.

For The Nuclear Regulatory Commission,
Jack R. Davis,

Director, Japan Lessons-Learned Division,
Office of Nuclear Reactor Regulation.

[FR Doc. 2016-04353 Filed 2-26-16; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the

Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on March 3-5, 2016, 11545 Rockville Pike, Rockville, Maryland.

Thursday, March 3, 2016, Conference Room T2-B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.—8:35 a.m.: *Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.—10:30 a.m.: *Non-Power Production and Utilization Facilities (NPUF) Proposed License Renewal Rulemaking* (Open)—The Committee will hear presentations by and hold discussions with representatives of the staff regarding the NPUF proposed license renewal rulemaking.

10:45 a.m.—12:00 p.m.: *Biennial Review and Evaluation of the NRC Safety Research Program* (Open)—The Committee will hold a discussion regarding the NRC Safety Research Program.

1:00 p.m.—3:00 p.m.: *Group 2 Fukushima Tier 2 and 3 Closure Plans* (Open)—The Committee will hear presentations by and hold discussions with representatives of the staff regarding Group 2 Fukushima closure plans.

3:00 p.m.—6:00 p.m.: *Preparation of ACRS Reports* (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting.

Friday, March 4, 2016, Conference Room T2-B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.—9:45 a.m.: *Preparation for Meeting with the Commission* (Open)—The Committee will prepare for the March Commission Meeting.

10:00 a.m.—12:00 p.m.: *Meeting with the Commission* (Open)—The Committee will discuss topics of mutual interest with the Commission.

1:00 p.m.—2:30 p.m.: *Future ACRS Activities/Report of the Planning and Procedures Subcommittee* (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. [Note: A portion of this meeting may be closed pursuant to 5 U.S.C.

552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

2:30 p.m.—2:45 p.m.: *Reconciliation of ACRS Comments and Recommendations* (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

2:45 p.m.—6:00 p.m.: *Preparation of ACRS Reports* (Open)—The Committee will continue its discussion of proposed ACRS reports discussed during this meeting.

Saturday, March 5, 2016, Conference Room T2-B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.—11:30 a.m.: *Preparation of ACRS Reports* (Open)—The Committee will continue its discussion of proposed ACRS reports.

11:30 a.m.—12:00 p.m.: *Miscellaneous* (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015 (80 FR 63846). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff (Telephone: 301-415-5844, Email: Quynh.Nguyen@nrc.gov), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before

meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) of Public Law 92-463 and 5 U.S.C. 552b(c), certain portions of the March 4th meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room at pdr.resource@nrc.gov, or by calling the PDR at 1-800-397-4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> or <http://www.nrc.gov/reading-rm/doc-collections/ACRS/>.

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301-415-8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated at Rockville, Maryland, this 23rd day of February, 2016.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2016-04334 Filed 2-26-16; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040-09091; NRC-2011-0148]

Strata Energy, Inc., Ross *In Situ* Recovery Project

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to request a hearing, and to petition for leave to intervene; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received an application from Strata Energy, Inc. (Strata), for amendment of its Source and Byproduct Materials License SUA-1601 for the Ross *In Situ* Recovery Project. The amendment would authorize recovery of uranium by *In Situ* Leach (ISL) extraction techniques at the Kendrick Expansion Area. The amendment request contains sensitive unclassified non-safeguards information (SUNSI).

DATES: A request for a hearing or petition for leave to intervene must be filed by April 29, 2016. Any potential party, as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by March 10, 2016.

ADDRESSES: Please refer to Docket ID NRC-2011-0148 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-2011-0148. 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: John Saxton, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-0697; email: John.Saxton@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC has received by letter dated March 20, 2015 (ADAMS Accession No. ML15096A141), and supplemented on April 24, 2015 (ADAMS Accession No. ML15152A154), an application to amend Strata's Source and Byproduct Materials License SUA-1601 for the Ross *In Situ* Recovery Project in Crook County, Wyoming. The proposed amendment would authorize the recovery of uranium by ISL extraction techniques at the Kendrick Expansion Area. This application contains SUNSI.

An NRC administrative completeness review found the application acceptable for a technical review (ADAMS Accession No. ML15362A613). Prior to approving the amendment request, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. The NRC's findings will be documented in a safety evaluation report and an environmental impact statement (EIS) as a supplement to NUREG-1910, "Generic Environmental Impact Statement for *In-Situ* Leach Uranium Milling Facilities," dated May 2009 (ADAMS Accession No. ML091560163). A notice of intent to prepare an EIS will be the subject of a subsequent notice in the **Federal Register**.

II. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the NRC's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located in One White Flint North, Room O1-F21 (first floor), 11555 Rockville Pike, Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition. The Secretary or the Chief Administrative

Judge of the Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth, with particularity, the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must specifically explain the reasons why intervention should be permitted, with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions that the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures.

The Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)-(iii).

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by April 29, 2016. The petition must be filed in accordance with the filing instructions in the "Electronic Submission (E-Filing)" section of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by April 29, 2016.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior

to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/getting-started.html>. System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web

browser plug-in from the NRC's Web site.

Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by email to MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory

Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <http://ehd1.nrc.gov/ehd/>, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Strata Energy, Inc., Docket No. 040-09091, Ross In Situ Recovery Project, Crook County, Wyoming

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who

intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555-0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are Hearing.Docket@nrc.gov and OGCmailcenter@nrc.gov, respectively.¹ The request must include the following information:

- (1) A description of the licensing action with a citation to this **Federal Register** notice;
- (2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and
- (3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

- (1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and
- (2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2)

¹ While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order² setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. This provision does not extend the time for filing a request for a hearing and petition to intervene, which must

comply with the requirements of 10 CFR 2.309.

G. Review of Denials of Access.
 (1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) an officer if that officer has been designated to rule on information access issues.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.³

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 23rd day of February, 2016.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of FEDERAL REGISTER notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requestor to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.

² Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not

yet been designated, within 30 days of the deadline for the receipt of the written access request.

³ Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC

staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/activity
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2016-04337 Filed 2-26-16; 8:45 am]

BILLING CODE 7590-01-P

EXECUTIVE OFFICE OF THE PRESIDENT**Office of National Drug Control Policy****Designation of 14 Counties as High Intensity Drug Trafficking Areas****AGENCY:** Office of National Drug Control Policy.**ACTION:** Notice of HIDTA designations.

SUMMARY: The Director of the Office of National Drug Control Policy designated 14 additional counties as High Intensity Drug Trafficking Areas (HIDTA) pursuant to 21 U.S.C. 1706. The new counties are (1) Blount County, Tennessee and Carroll and Grayson Counties (including the Independent City of Galax) in Virginia as part of the Appalachia HIDTA; (2) Escambia and Santa Rosa Counties in Florida as part of the Gulf Coast HIDTA; (3) Muskegon County, Michigan as part of the Michigan HIDTA; (4) Bristol County, Massachusetts as part of the New England HIDTA; (5) Broome and Ulster Counties in New York as part of the New York/New Jersey HIDTA; (6) Linn County, Oregon as part of the Oregon-Idaho HIDTA; (7) McIntosh and Pittsburg Counties in Oklahoma as part of the Texoma HIDTA; (8) Carroll County, Maryland and Jefferson County, West Virginia as part of the Washington/Baltimore HIDTA.

FOR FURTHER INFORMATION CONTACT:

Questions regarding this notice should be directed to Michael K. Gottlieb, National HIDTA Program Director, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20503; (202) 395-4868.

Dated: January 14, 2016.

Michael Passante,
Deputy General Counsel.

[FR Doc. 2016-04291 Filed 2-26-16; 8:45 am]

BILLING CODE 3280-F5-P

OVERSEAS PRIVATE INVESTMENT CORPORATION**Sunshine Act Meeting Notice****TIME AND DATE:** Thursday, March 17, 2016, 2 p.m. (Open Portion) 2:15 p.m. (Closed Portion).**PLACE:** Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW., Washington, DC.**STATUS:** Meeting OPEN to the Public from 2 p.m. to 2:15 p.m. Closed portion will commence at 2:15 p.m. (approx.)**MATTERS TO BE CONSIDERED:**

1. President's Report
2. Confirmation—Tracey Webb
3. Minutes of the Open Session of the December 10, 2015 Board of Directors Meeting

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 2:15 p.m.):

1. Finance Project—Indonesia
2. Finance Project—India
3. Finance Project—India
4. Finance Project—Guinea
5. Finance Project—Cambodia
6. Finance Project—Cambodia
7. Finance Project—Global
8. Minutes of the Closed Session of the December 19, 2015 Board of Directors Meeting
9. Formation of a Risk Committee of the Board
10. Reports
11. Pending Projects

CONTACT PERSON FOR MORE INFORMATION:

Information on the meeting may be obtained from Catherine F. I. Andrade at (202) 336-8768, or via email at Catherine.Andrade@opic.gov.

Dated: February 25, 2016.

Catherine F. I. Andrade,
Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. 2016-04476 Filed 2-25-16; 4:15 pm]

BILLING CODE 3210-01-P

PENSION BENEFIT GUARANTY CORPORATION**Proposed Submission of Information Collection for OMB Review; Comment Request; Administrative Appeals****AGENCY:** Pension Benefit Guaranty Corporation.**ACTION:** Notice of intent to request extension of OMB approval of information collection.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") intends to request the Office of Management and Budget ("OMB") to extend approval, under the Paperwork Reduction Act, of a collection of information under its regulation on Rules for Administrative Review of Agency Decisions. This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by April 29, 2016.**ADDRESSES:** Comments may be submitted by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the Web site instructions for submitting comments.

Email: paperwork.comments@pbgc.gov.

Fax: 202-326-4224.

Mail or Hand Delivery: Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026. PBGC will make all comments available on its Web site, www.pbgc.gov.

Copies of the collection of information may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address or by visiting the Disclosure Division or calling 202-326-4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4040.) PBGC's regulation on Administrative Appeals may be accessed on PBGC's Web site at www.pbgc.gov.

FOR FURTHER INFORMATION CONTACT:

Catherine B. Klion, Assistant General Counsel, or Donald McCabe, Attorney, Regulatory Affairs Group, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026, 202-326-4400. (For TTY and TDD, call 800-877-8339 and request connection to 202-326-4400).

SUPPLEMENTARY INFORMATION: PBGC's regulation on Rules for Administrative Review of Agency Decisions (29 CFR part 4003) prescribes rules governing the issuance of initial determinations by PBGC and the procedures for requesting and obtaining administrative review of initial determinations. Certain types of initial determinations are subject to administrative appeals, which are covered in subpart D of the regulation. Subpart D prescribes rules on who may file appeals, when and where to file appeals, contents of appeals, and other matters relating to appeals.

Most appeals filed with PBGC are filed by individuals (participants, beneficiaries, and alternate payees) in connection with benefit entitlement or amounts. A small number of appeals are filed by employers in connection with other matters, such as plan coverage under ERISA section 4021 or employer liability under ERISA sections 4062(b)(1), 4063, or 4064. Appeals may be filed by hand, mail, commercial delivery service, fax or email. For appeals of benefit determinations, PBGC has optional forms for filing appeals and requests for extensions of time to appeal.

OMB has approved the administrative appeals collection of information under control number 1212-0061 through May 31, 2016. PBGC intends to request that OMB extend approval of this collection of information for three years. 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.

PBGC estimates that an average of 900 appellants per year will respond to this collection of information. PBGC further estimates that the average annual burden of this collection of information is about forty-five minutes and \$52 per appellant, with an average total annual burden of 643 hours and \$46,680.

PBGC is soliciting public comments to—

- Evaluate 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;
- Evaluate the accuracy of the agency's estimate of the burden of the

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.

Issued in Washington, DC, this 23rd day of February 2016.

Judith Starr,

General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2016-04268 Filed 2-26-16; 8:45 am]

BILLING CODE 7709-02-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77218; File No. SR-FINRA-2015-047]

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 To Adopt FINRA Rule 6191(a) To Implement the Quoting and Trading Requirements of the Regulation NMS Plan To Implement a Tick Size Pilot Program

February 23, 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 proposal to adopt FINRA Rule 6191(a) to implement the quoting and trading requirements of the Plan to Implement Tick Size Pilot Program ("Plan") submitted to the Commission pursuant to Rule 608 of Regulation NMS under the Act ("Tick Size Pilot").³ The proposal was published for comment in the **Federal Register** on November 25, 2015.⁴ The Commission received three comment letters on the proposal and a

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) (order approving the Tick Size Pilot) ("Approval Order").

⁴ See Securities Exchange Act Release No. 76483 (November 19, 2015), 80 FR 73853.

response letter from FINRA.⁵ On February 23, 2016, FINRA filed Partial Amendment No. 1.⁶ On January 7, 2016, the Commission designated a longer period for Commission action on the proposal, until February 23, 2016.⁷ This order approves the proposal, 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., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC, and NYSE Arca, Inc. (collectively "Participants"⁸), filed with the Commission, pursuant to Section 11A of the Act⁹ and Rule 608 of Regulation NMS thereunder,¹⁰ the Plan to Implement the Tick Size Pilot.¹¹ The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.¹² The Plan was published for comment in the **Federal Register** on November 7, 2014,¹³ and approved by the Commission, as

⁵ See letters from Mary Lou Von Kaenel, Managing Director, Financial Information Forum, dated December 16, 2015 ("FIF Letter"); Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated December 18, 2015 ("SIFMA Letter"); Brendon J. Weiss, Co-Head, Government Affairs, Intercontinental Exchange, Inc. and John K. Kerin, CEO, Chicago Stock Exchange, Inc., dated January 15, 2016 ("NYSE Letter"); and Andrew Madar, Associate General Counsel, FINRA and Chris Solgan, Assistant General Counsel, BATS, dated February 23, 2016 ("FINRA Response Letter").

⁶ In Partial Amendment No. 1, FINRA proposes to: (1) Add an exception to permit members to fill a customer order in a Pilot Security in Test Group Two or Test Group Three at a non-nickel increment to comply with FINRA Rule 5320 under limited circumstances; (2) add exceptions to the Trade-at Prohibition for certain error correction transactions; (3) modify the stopped order exception to the Trade-at Prohibitions to better align it with the stopped order exception in Rule 611; and (4) clarify the use of Trade-at Intermarket Sweep Orders in connection with the Trade-At Prohibition.

⁷ See Securities Exchange Act Release No. 76855, 81 FR 1670 (January 13, 2016).

⁸ The Commission notes that on February 5, 2016, National Stock Exchange, Inc. ("NSX") filed a Plan amendment with the Commission to become a Plan Participant pursuant to Section II.C of the Plan. This amendment is effective upon filing pursuant to Rule 608(b)(3)(iii) of Regulation NMS.

⁹ 15 U.S.C. 78k-1.

¹⁰ 17 CFR 242.608.

¹¹ See letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

¹² See Securities Exchange Act Release No. 72460, 79 FR 36840 (June 30, 2014).

¹³ See Securities Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423.

modified, on May 6, 2015.¹⁴ On November 6, 2015, the Commission issued an exemption to the Participants from implementing the Plan until October 3, 2016.¹⁵

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.¹⁶ The Plan requires Participants to develop quoting and trading requirements for the Tick Size Pilot as well as collect, publish, and submit to the Commission a variety of data elements such as market quality statistics and market maker profitability.¹⁷ FINRA is proposing to adopt FINRA Rule 6191(a) and certain Supplementary Material to implement the quoting and trading requirements of the Tick Size Pilot.¹⁸

III. Description of the Proposed Rule Change

A. Policies and Procedures to Comply With the Plan

Proposed FINRA Rule 6191(a) would establish the rules necessary for compliance with the applicable quoting

and trading requirements specified in the Plan for FINRA and its members.¹⁹

Proposed FINRA Rule 6191(a)(1) provides that members shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the applicable quoting and trading requirements of the Plan. Proposed FINRA Rule 6191(a)(2) sets forth that FINRA systems will not display quotations in violation of the Plan or its proposed rule.

B. Compliance and Pilot Securities Under \$1.00 During the Pilot Period

Proposed FINRA Rule 6191(a)(3) sets forth the procedures for Pilot Securities whose price drops below \$1.00 during the Pilot Period.²⁰ If the price of a Pilot Security drops below \$1.00 during regular trading hours on any trading day, the Pilot Security will continue to trade according to the quoting and trading requirements of its originally assigned Test Group within the Plan. If a Pilot Security has a Closing Price²¹ below \$1.00 on any trading day the Pilot Security would be moved from its respective Test Group into the Control Group, and would be quoted and traded at any price increment that is currently permitted for the remainder of the Pilot Period. Proposed FINRA Rule 6191(a)(3) further provides, that notwithstanding anything to the contrary, all Pilot Securities will continue to be subject to FINRA Rule 6191(b), which sets forth FINRA's data collection requirements for Tick Size Pilot.

C. Quoting and Trading Rules for Test Group One

Proposed FINRA Rule 6191(a)(4) describes the quoting and trading requirements for Pilot Securities in Test Group One. Specifically, FINRA proposes that no member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in increments other than \$0.05 for Pilot Securities in Test Group One. Orders priced at either the midpoint of the national best bid and national best offer ("NBBO") or best protected bid and best protected offer ("PBBO") and orders

entered into a Participant-operated retail liquidity program may be ranked and accepted in increments of less than \$0.05. The provision also sets forth that Pilot Securities in Test Group One would continue to be able to trade at any price increment that is currently permitted by applicable Participant, Commission, and FINRA rules.

D. Quoting and Trading Rules for Test Group Two

Proposed FINRA Rule 6191(a)(5) describes the quoting and trading requirements of Pilot Securities in Test Group Two. Specifically, FINRA proposes that no member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in increments other than \$0.05 for Pilot Securities in Test Group Two.²² Further, FINRA proposes that absent any enumerated exceptions, no member organization may execute an order in any increment other than \$0.05 for Pilot Securities in Test Group Two.²³

Proposed FINRA Rule 6191(a)(5)(C) provides that Test Group Two Pilot Securities may trade in increments less than \$0.05 in three circumstances: (1) Trading may occur at the midpoint between the NBBO or the PBBO; (2) Retail Investor Orders that are provided with price improvement that is at least \$0.005 better than the PBBO; and (3) Negotiated Trades may trade in increments less than \$0.05.

In Partial Amendment No. 1, FINRA proposes an additional exception from the requirement that trades in Test Group Two must be in \$0.05 increments. Specifically, FINRA proposes to permit members to execute customer orders to comply with FINRA Rule 5320 following the execution of a proprietary trade by the member at an increment other than \$0.05, where such proprietary trade was permissible pursuant to an exception under the Plan.²⁴

²² Similar to the exception in Test Group One, orders priced to trade at the midpoint of the NBBO or PBBO and orders entered into a Participant-operated retail liquidity price program may be ranked and accepted in increments of less than \$0.05. See Proposed FINRA Rule 6191(a)(5)(A).

²³ Proposed FINRA Rule 6191(a)(5)(B) applies to all trades, including Brokered Cross Trades. A Brokered Cross Trade is defined in the Plan as a trade that a broker-dealer that is a member of a Participant executes directly by matching simultaneous buy and sell orders for a Pilot Security. See Plan Section I.G.

²⁴ See Partial Amendment No. 1, *supra* note 6. FINRA has requested an exemption from the Plan related to this provision. See February Exemption Request, *supra* note 18.

¹⁴ See Approval Order, *supra* note 3.

¹⁵ See Securities Exchange Act Release No. 76382, 80 FR 70284 (November 13, 2015).

¹⁶ Rule 608(c) of Regulation NMS, 17 CFR 242.608(c). See also Plan Sections II.B and IV.

¹⁷ The data collection requirements for the Plan are specified in Appendices B and C. See Approval Order, *supra* note 3. FINRA has adopted rules to implement the data collection requirements under the Plan. See FINRA Rule 6191(b). Securities Exchange Act Release No. 77164 (February 17, 2016), 81 FR 9043, (February 23, 2016).

¹⁸ NYSE, on behalf of the Plan Participants, submitted a letter to the Commission requesting exemption from certain provisions of the Plan related to the quoting and trading requirements as they apply to Pilot Securities that have a price under \$1.00. See letter from Elizabeth K. King, General Counsel & Corporate Secretary, NYSE, to Brent J. Fields, Secretary, Commission, dated October 14, 2015 ("October Exemption Request"). In addition, FINRA, on behalf of the Plan Participants, submitted a letter to the Commission requesting additional exemptions from certain provisions of the Plan related to the quoting and trading requirements. See letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, to Robert W. Errett, Deputy Secretary, Commission, dated February 23, 2016 ("February 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 letters 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 23, 2016 ("SEC Exemption Letter").

¹⁹ FINRA proposed that its Rule 6191 be in effect during a pilot period to coincide with the Pilot Period of the Plan, including any extensions. See Proposed FINRA Rule 6191(a) Supplementary Material .03.

²⁰ FINRA has requested an exemption from the Plan related to this provision. See October Exemption Request, *supra* note 18.

²¹ Capitalized terms used in this Order are defined in the Plan, unless otherwise specified herein. Further, FINRA has proposed to use the Plan's defined terms in its Rule 6191(a). See Proposed FINRA Rule 6191(a) Supplementary Material .01.

E. Quoting and Trading Rules for Test Group Three

Proposed FINRA Rule 6191(a)(6) describes the quoting and trading requirements of Pilot Securities in Test Group Three. FINRA proposes for Pilot Securities in Test Group Three that no member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in increments other than \$0.05.²⁵ Proposed FINRA Rule 6191(a)(6)(B) states that for Test Group Three Pilot Securities no member would be permitted to execute an order, including Brokered Cross Trades, in an increment other than \$0.05 unless there was an exception enumerated by the rule. Proposed FINRA Rule 6191(a)(6)(C) sets forth four exceptions for trading of Test Group Three Pilot Securities to occur in increments of less than \$0.05: (1) At the midpoint between the NBBO or the PBBO; (2) for Retail Investor Orders that are provided with price improvement at least \$0.005 better than the PBBO; (3) for Negotiated Trades; and (4) for executions of a customer order to comply with FINRA Rule 5320 following the execution of a proprietary trade by the member at an increment other than \$0.05, where such proprietary trade was permissible pursuant to an exception under the Plan.²⁶

Proposed FINRA Rule 6191(a)(6)(D)(i) sets forth that, absent an exception set forth in proposed FINRA Rule 6191(a)(6)(D)(ii), no member that operates a Trading Center may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer during regular trading hours (*i.e.*, the “Trade-at Prohibition”). Under the Trade-at Prohibition, a member that operates a Trading Center that is displaying a quotation, via either a processor or an SRO quotation feed, that is at a price equal to the traded-at Protected Bid or Protected Offer is permitted to execute orders at that level, but only up to the amount of its displayed size. A member that operates a Trading Center that was not displaying a quotation at a price equal to the traded-at Protected Quotation, via either a processor or an

SRO quotation feed, is prohibited from price-matching protected quotations unless at least one of the exceptions applies.

Proposed FINRA Rule 6191(a)(6)(D)(ii) sets forth the exceptions to the Trade-at Prohibition for members that operate Trading Centers as follows:

(a) The order is executed within the same independent aggregation unit²⁷ of the member that operates the Trading Center that displayed the quotation via either a processor or an SRO quotation feed, to the extent such member uses independent aggregation units, at a price equal to the traded-at Protected Quotation that was displayed before the order was received, but only up to the full displayed size of that independent aggregation unit’s previously displayed quote. Further, proposed FINRA Rule 6191(a)(6)(D)(ii)(a) also specifies that a Trading Center that is displaying a quotation as agent or riskless principal may only execute as agent or riskless principal and a Trading Center displaying a quotation as principal (excluding riskless principal) may execute as principal, agent or riskless principal;

(b) the order that is of Block Size²⁸ at the time of origin and is not an aggregation of non-block orders; broken into orders smaller than Block Size prior to submitting the order to a Trading Center for execution; or executed on multiple Trading Centers;

(c) the order is a Retail Investor Order²⁹ that is executed with at least \$0.005 price improvement;

(d) the order is executed when the Trading Center displaying the Protected Quotation that was traded-at was

²⁷ FINRA proposes that, “Independent aggregation unit” has the same meaning as provided under Rule 200(f) of Regulation SHO. See 17 CFR 242.200(f).

²⁸ “Block Size” is defined in the Plan as an order (1) of at least 5,000 shares or (2) for a quantity of stock having a market value of at least \$100,000.

²⁹ FINRA proposes to clarify the Retail Investor Order definition for purposes of FINRA’s rules to include an order originating from a natural person, provided that prior to submission, no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. Any member that operates a Trading Center may execute against a Retail Investor Order otherwise than on an exchange to satisfy the Retail Investor Order exceptions to the Tick Size Pilot. Further, any member for whom FINRA is the Designated Exchange Authority (“DEA”) who executes Retail Investor Orders must submit a signed attestation that substantially all orders utilizing the Retail Investor Order exception meet the qualifications. Finally, a member relying on an exception to the Trade-at Prohibition for a transaction otherwise than on an exchange must include all applicable modifiers in trade reports pursuant to FINRA Rule 6282, 6380A and 6380B. See Proposed FINRA Rule 6191(a)(7)(A).

experiencing a failure, material delay, or malfunction of its systems or equipment;

(e) the order is executed as part of a transaction that was not a “regular way” contract;

(f) the order is executed as part of a single-priced opening, reopening, or closing transaction by the Trading Center;

(g) the order is executed when a Protected Bid is priced higher than a Protected Offer in the Pilot Security;

(h) the order is identified as a Trade-at Intermarket Sweep Order (“ISO”);³⁰

(i) the order is executed by a Trading Center that simultaneously routed Trade-at ISO to execute against the full displayed size of the Protected Quotation with a price that is better than, or equal to, the limit price of the limit order identified as a Trade-at ISO;

(j) the order is executed as part of a Negotiated Trade;

(k) the order is executed when the Trading Center displaying the Protected Quotation that was traded at had displayed within one second prior to execution of the transaction that constituted the Trade-at, a Best Protected Bid or Best Protected Offer, as applicable, for the Pilot Security with a price that was inferior to the price of the Trade-at transaction.;

(l) the order is executed by a Trading Center, which at the time of order receipt, had guaranteed an execution at no worse than a specified price (a “stopped order”) where: (1) The stopped order was for the account of a customer; (2) the customer agreed to the specified price on an order-by-order basis; and (3) the price of the Trade-at transaction was, for a stopped buy order, equal to or less than the National Best Bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to or greater than the National Best Offer in the Pilot Security at the time of execution, as long as such order is priced at an acceptable increment;³¹

³⁰ See Partial Amendment No. 1, *supra* note 6. In Partial Amendment No. 1, FINRA proposes to define a Trade-At ISO as a limit order for a Pilot Security that meets the following requirements: 1. When routed to a Trading Center, the limit order is identified as a Trade-at ISO; and 2. simultaneously with the routing of the limit order identified as a Trade-at ISO, one of more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at ISO. These additional routed orders also must be marked as Trade-at ISO.

³¹ See Partial Amendment No. 1, *supra* note 6. FINRA has requested an exemption from the Plan related to this provision. See February Exemption Request, *supra* note 18.

²⁵ Similar to the exceptions for Test Group One and Test Group Two, orders priced to trade at the midpoint of the NBBO or PBBO and orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than \$0.05. See Proposed FINRA Rule 6191(a)(6)(A).

²⁶ See Partial Amendment No. 1, *supra* note 6. FINRA has requested an exemption from the Plan related to this provision. See February Exemption Request, *supra* note 18.

(m) the order is for a fractional share order of a Pilot Security, provided that such fractional share order was not the result of breaking an order³² for one or more whole shares of a Pilot Security into orders for fractional shares or was not otherwise effected to evade the requirements of the Tick Size Pilot; and

(n) the order is to correct a bona fide error, which is recorded by the Trading Center in its error account. FINRA proposes to define a bond fide error as: 1. The inaccurate conveyance or execution of any term of an order including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market; 2. the unauthorized or unintended purchase, sale, or allocation of securities, or the failure to follow specific client instructions; 3. the incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or 4. a delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order.³³

IV. Summary of Comments

As noted above, the Commission received three comment letters concerning the proposed rule change and a response letter from FINRA.³⁴ All three commenters discussed various aspects of the Trade-at Prohibition. The commenters noted differences between the Trade-at Prohibition rules proposed by FINRA and NYSE.³⁵ One commenter noted that the NYSE's proposal would limit a Trading Center from price matching a Protected Quotation to when the Trading Center is displaying in a principal capacity, while FINRA's proposal would not restrict price matching to a Trading Center's principal capacity.³⁶

Two commenters expressed support for FINRA's Trade-at Prohibition

³² Additionally, no member shall break an order into smaller orders or otherwise effect or execute an order to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan. See Proposed FINRA Rule 6191(a) Supplementary Material .02.

³³ See Partial Amendment No. 1, *supra* note 6. FINRA has requested an exemption from the Plan related to this provision. See February Exemption Request, *supra* note 18.

³⁴ See *supra* note 5.

³⁵ See Securities Exchange Act Release No. 73229 (October 22, 2015), 80 FR 66065 (October 28, 2015).

³⁶ See SIFMA Letter.

proposal.³⁷ However, one commenter stated FINRA's proposal was inconsistent with the goals of the Plan because it would incentivize a migration of trading to dark venues.³⁸ This commenter stated FINRA's proposal would allow an alternative trading system ("ATS") to execute matched trades of any of its participants at the Traded-at Protected Quotation if the ATS is displaying on an agency basis, a quotation of another participant at the Protected Quotation.³⁹ The commenter noted that all participant orders displayed by an ATS are agency orders of the ATS and that trades matched by ATS participants without display are also agency orders of that ATS. Therefore, the commenter believes that FINRA's proposal would allow trades by ATS participants at the Trade-at Protected Quotation without that participant displaying a Protected Quotation. The commenter believes that the proposal allows ATS participants to "free-ride" on the displayed Protected Quotation of other ATS participants.⁴⁰ The commenter stated that if implemented, trading would continue in dark pools at a price of displayed liquidity and that the proposal would result in similar trading behaviors between Test Group Three and Test Group Two.⁴¹

In its response, FINRA disagreed with NYSE's characterization of the display exception's operation as set forth in the FINRA proposal, and confirmed that a broker-dealer would not be permitted to trade based on interest that it is not responsible for displaying.⁴² FINRA noted that it would view a broker-dealer that matches orders in the over-the-counter ("OTC") market, as principal, agent or riskless principal, to have "executed" such orders as a Trading Center for purposes of proposed FINRA Rule 6191(a), regardless of whether such broker-dealer ultimately executes and reports such trade through an OTC trade reporting facility, an ATS or another Trading Center. Accordingly, if a broker-dealer has displayed, as principal, a buy order at the protected bid on an

³⁷ See FIF Letter and SIFMA Letter. For example, SIFMA stated that it believed that the Commission should approve FINRA's proposal.

³⁸ The commenter also indicated that the proposal did not follow the procedure outlined by the Plan's Operating Committee. See NYSE Letter.

³⁹ See NYSE Letter.

⁴⁰ See NYSE Letter.

⁴¹ See NYSE Letter.

⁴² As noted above, the FINRA Response Letter was also signed by BATS. The Commission notes that BATS has filed a proposal to implement the quoting and trading requirements that is similar to the FINRA proposal. See Securities Exchange Act Release No. 76552 (December 3, 2015), 80 FR 76591 (December 9, 2015).

exchange or Electronic Communications Network ("ECN") prior to its receipt of a customer sell order, it could internalize that customer sell order, up to its displayed size, in reliance on the proposed FINRA Rule 6191(a)(6)(D)(ii)(a) exceptions. If, however, that broker-dealer has not displayed a principal buy order at the protected bid, but matches its customer order with an order for its own account and submits the paired orders to an ECN where another broker-dealer is displaying a buy order at the protected bid, the broker-dealer submitting the paired orders could not rely on the proposed display exceptions. While the ECN, as a Trading Center, could execute the displayed order as agent with offsetting interest because it was displaying an agency quotation at the protected bid, the broker-dealer submitting the paired orders could not, as a Trading Center, trade with its customer order, because it was not displaying a principal quotation at the protected bid. Accordingly, such a transaction could not be effected consistent with the Trade-at Prohibition under the FINRA proposal.

One commenter discussed the proposal by asking specific questions concerning the operation and interpretation of the Trade-at Prohibition and within their comment provided explanatory examples.⁴³ Further, this commenter either requested clarifying information or sought an amendment to the proposal in order to further the Plan's purposes.

Specifically, the commenter sought clarification as to whether odd lot orders were subject to the Trade-at Prohibition. The commenter indicated they believed odd lots should be allowed to execute at the price of the Protected Quotation under any circumstance irrespective of whether a Trading Center had satisfied its Trade-at Prohibition obligations.⁴⁴ FINRA, in response stated that a Trading Center would be prevented from executing an odd lot order at the Protected Quotation unless an exception applied and that the proposal does not include a separate odd lot exception to the Trade-at Prohibition.⁴⁵

In addition, the commenter stated the proposal's definition of Block Size order, used for the Block Size exception to the Trade-at Prohibition, would prevent a Trading Center from

⁴³ See FIF Letter.

⁴⁴ This commenter noted that odd lots are not protected quotes themselves under Rule 611 of Regulation NMS. See FIF Letter.

⁴⁵ See FINRA Response Letter.

facilitating a block cross trade.⁴⁶ The commenter requested that the proposal be amended to permit the aggregation of non-block orders as long as at least one component of the order was of the defined Block Size.⁴⁷ In response, FINRA stated it does not believe that such an exception would be consistent with the Plan. FINRA believes that permitting the aggregation of non-block orders or permitting members to combine Block Size orders with non-block orders would overly broaden the Block Size exception and create a means by which members could undermine the exception.

The commenter requested that additional exceptions be provided to the Trade-at Prohibition within the FINRA proposal so that it would more closely align with the exceptions provided to Rule 611 of Regulation NMS.⁴⁸ Specifically, the commenter referenced certain error correction transactions and certain print protection transactions.⁴⁹ FINRA agreed with the commenter regarding certain error correction transactions and amended their proposal to incorporate this additional exception to the Trade-at Prohibition.⁵⁰ FINRA stated that it did not believe that it would be appropriate to provide an exception to the Trade-at Prohibition for print protection transactions.⁵¹

The commenter also noted that for stopped orders there was a distinction between the applicable Rule 611 of Regulation NMS exception and the Trade-at Prohibition exception included within the Plan. The commenter provided an example where an order would satisfy Rule 611 of Regulation NMS but would not satisfy the Plan's Trade-at Prohibition exception. FINRA responded by stating it would amend the stopped trade exception to harmonize the stopped order exception.⁵²

The commenter sought clarification for how undisplayed liquidity is

handled when a Trading Center receives a Trade-at ISO that is larger than their displayed liquidity ("Oversize ISO"). FINRA responded by stating that a Trade-at ISO indicates that the sending broker has executed against all other Protected Quotations at that price, satisfying the Trade-at requirements. Therefore, the Trading Center receiving the Trade-at ISO can fill the oversize portion of the order against its undisplayed liquidity.⁵³

The commenter requested further information and clarification on the operation of the Trade-At Prohibition in the context of FINRA Rule 5320.⁵⁴ This commenter presented, and FINRA responded to, the following four scenarios that were unclear to the commenter.

Scenario 1: The Trading Center receives a customer buy order for 400 shares at \$10.10, and facilitates this order by executing against protected offers at \$10.00, \$10.05, and \$10.10. The Trading Center then fills the customer buy order on a riskless principal basis at an average price of \$10.05. The commenter inquired whether the Trading Center would be obligated to send Trade-at ISOs to execute against the protected offers in allocating the fill to the customer. FINRA responded by stating the second leg of a riskless principal transaction that complies with the relevant SRO riskless principal rule would not constitute a separate transaction for purposes of Rule 611 of Regulation NMS. Similarly, FINRA believes that the second leg of a riskless principal transaction would not constitute a separate transaction for purposes of complying with the Trade-at Prohibition. Therefore, in filing the customer order in the example, the Trading Center would not need to send out ISOs to execute against the protected offers to comply with the Trade-at Prohibition.

Scenario 2: The Trading Center receives a customer buy order for 200 shares at \$9.95 and a customer sell order for 200 shares at \$9.95. The commenter inquired whether the Trading Center would need to route a Trade-at ISO to execute the customer sell order against the displayed order on the exchange. FINRA responded by stating that in the example, the member would be able to comply with both the FINRA Rule 5320 obligations as well as the Trade-at Prohibition by routing a Trade-at ISO.⁵⁵

Scenario 3: The Trading Center fills a customer buy order for 200 shares at \$9.954 pursuant to the Negotiated Trade

exception to the Trade-at Prohibition, and the Trading Center has a customer sell order for \$9.95. The commenter inquired whether the Trading Center may execute the customer sell order at \$9.954 even though the Plan requires orders be executed in \$0.05 increments. In Partial Amendment No. 1, FINRA proposes to permit the member to execute the customer order in a non-nickel increment in certain limited circumstances.

Scenario 4: A member principally fills a customer buy order for 200 shares at \$9.949 pursuant to a Negotiated Trade exception to the Trade-at Prohibition and owes a fill on a customer order to sell 200 shares with a limit price of \$9.95, pursuant to FINRA Rule 5320. The commenter inquired whether the member may principally fill the customer order at \$9.95 without sending a Trade-at ISO to another displayed Trading Center. FINRA states that the member is not displaying at the price of the Protected Quotation and therefore to comply with the Trade-at Prohibition it must route a Trade-at ISO to fill the customer sell order.⁵⁶

The commenter sought clarification on how an order received with an impermissible trading increment would be handled.⁵⁷ FINRA responded that firms are not permitted to change the price or terms of a customer order without the informed consent of the customer. Accordingly, whether a member may round the limit price down to the nearest valid increment will depend on the specific communication between the member and the customer.

The commenter sought clarification on whether Market Makers are obligated to send ISOs in connection with executing against Market Maker interest.⁵⁸ In the commenter's example, a Market Maker is displayed on an exchange but may wish to trade without sending an ISO to its displayed interest. In response, FINRA explained that the Market Maker in the example was not obligated to send an ISO to trade against its exchange quote but would be limited to its displayed size.

The commenter sought clarification on whether a Market Maker could

⁴⁶ According to the commenter, a "block cross trade" is block size order that includes smaller orders. The commenter noted that the three additional qualifications contained within the FINRA proposal are meant to ensure the purpose of the Trade-at Prohibition is not undermined. See FIF Letter. See also Proposed FINRA Rule 6191(a)(6)(D)(i)(b).

⁴⁷ See FIF Letter.

⁴⁸ 17 CFR 242.611.

⁴⁹ The commenter noted Commission orders related to Rule 611 of Regulation NMS. Order Exempting Certain Error Correction Transactions from Rule 611 of Regulation NMS under the Securities Exchange Act of 1934 (<http://www.sec.gov/rules/exorders/2007/34-55884.pdf>); Order Exempting Certain Print Protection Transactions from Rule 611 (<http://www.sec.gov/rules/exorders/2007/34-55883.pdf>). See FIF Letter.

⁵⁰ See Partial Amendment No. 1, *supra* note 6.

⁵¹ See Partial Amendment No.1, *supra* note 6.

⁵² See Partial Amendment No.1, *supra* note 6.

⁵³ See FINRA Response Letter.

⁵⁴ See FIF Letter.

⁵⁵ See FINRA Response Letter.

⁵⁶ See FINRA Response Letter.

⁵⁷ See FIF Letter. The commenter also requested clarification on the treatment of a variety of order types, including Good Till Canceled orders entered in non-nickel increments before the Pilot Period, indications of interest priced to execute at the mid-point, and market maker peg orders. FINRA noted that Test Group One permits indications of interest priced to execute at the mid-point. With regard to the other orders, FINRA noted that the Participants are drafting FAQs that will address the commenter's questions.

⁵⁸ See FIF Letter.

increase its quote after it had received a long-lived not held order.⁵⁹ FINRA stated that the Market Maker's quote could increase while working a not held order as long as the price increase was not intentional and the Market Maker had policies and procedures to protect against abuse.⁶⁰

Finally, one commenter expressed concern regarding the differences between the Participants' various proposed quoting and trading rule filings.⁶¹ The commenter noted that there are differences among the Participants' proposed rule changes for certain key defined terms, such as "Retail Investor Order" that should be harmonized across the Participants' proposed rule filings.⁶² The commenter indicated that if the differences persisted it would be "virtually impossible" for its members to comply with the Plan.⁶³

V. Discussion and Findings

After carefully considering the proposed rule change, the comments submitted, and FINRA's response to the comments, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁶⁴ Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,⁶⁵ 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,⁶⁶ which requires that FINRA rules not impose

any burden on competition that is not necessary or appropriate.

The Commission stated in the Approval Order that the Tick Size Pilot 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.⁶⁷ 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 meaningful 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."⁶⁸ Proposed FINRA Rule 6191(a) would impose compliance obligations on its members with the trading and quoting requirements set forth in Section VI of the Plan. As discussed below, 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.

A. Policies and Procedures To Comply With the Plan

Proposed FINRA Rule 6191(a)(1) provides that FINRA members must establish, maintain, and enforce written policies and procedures that are reasonably designed to meet the applicable quoting and trading requirements of the Plan. Proposed FINRA Rule 6191(a)(2) states that FINRA systems will not display quotations in violation of the Plan and the rule. As noted above, Sections II.B and IV of the Plan provide that each Participant must establish, maintain and enforce written policies and procedures that are reasonably designed to comply

with the quoting and trading requirements of the Plan and adopt rules requiring compliance by its members with the terms of the Plan. Accordingly, proposed FINRA Rules 6191(a)(1) and (2) are consistent with the Act as they implement these Plan provisions.

B. Compliance and Pilot Securities Under \$1.00 During the Pilot Period

Proposed FINRA Rule 6191(a)(3) provides a mechanism to address instances where the price of a Pilot Security assigned to a Test Group falls below \$1.00. Specifically, if the price of a Pilot Security assigned to a Test Group falls below \$1.00 during a trading day, the Pilot Security would remain in its assigned Test Group. If, however, a Pilot Security has a Closing Price below \$1.00 during any trading day, that Pilot Security would be moved out of its respective Test Group and into the Control Group.⁶⁹ The Commission notes that the selection criteria for Pilot Securities were developed to minimize the likelihood of the inclusion of securities that trade with a share price of \$1.00 or less. However, the Commission understands that there could be instances over the course of the Pilot Period where a Pilot Security's price falls below \$1.00. According to the Participants, a \$0.05 quoting and/or trading increment could be harmful to trading for such low priced Pilot Securities. Accordingly, the Commission believes that this provision is consistent with the Act because it should help to ensure that the universe of Pilot Securities remains constant over the Pilot Period while also addressing trading concerns for Pilot Securities that experience a fall in price.

Proposed FINRA Rule 6191(a) Supplementary material .03 specifies that the rule's effectiveness shall be contemporaneous with the pilot period. The Commission believes that this proposed rule is consistent with the Act because it reinforces and clarifies important dates and obligations under the Plan.

C. Quoting and Trading Rules for Test Group One and Test Group Two

Proposed FINRA Rule 6191(a)(4) provides that no member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group One in increments other than \$0.05. However, proposed FINRA Rule

⁵⁹ The commenter noted that the market maker may change their quote numerous times over the life of a long-lived order, which may be worked via an agency algorithm, principal/riskless principal fills, an agency cross or other principal fills. See FIF Letter.

⁶⁰ See FINRA Response Letter.

⁶¹ See SIFMA Letter.

⁶² See SIFMA Letter.

⁶³ See SIFMA Letter.

⁶⁴ 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).

⁶⁵ 15 U.S.C. 78o-3(b)(6).

⁶⁶ 15 U.S.C. 78o-3(b)(9).

⁶⁷ See Approval Order, *supra* note 3.

⁶⁸ 17 CFR 242.608(c). See also Section II.B of the Plan which provides that each Participant will adopt rules requiring compliance by its members with provisions of the Plan. In addition, Section IV of the Plan requires all Participants and members of Participants to establish maintain and enforce written policy and procedures that are reasonably designed to comply with the applicable quoting and trading requirements specified in Section VI of the Plan for the Pilot Securities.

⁶⁹ The Commission notes that it has granted FINRA an exemption from Rule 608(c) related to this provision. See SEC Exemption Letter, *supra* note 18.

6191(a)(4) also provides that orders priced to execute at the midpoint of the NBBO or best PBBO and orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than \$0.05. Finally, proposed FINRA Rule 6191(a)(4) provides that Pilot Securities in Test Group One may continue to trade at any price increment that is currently permitted by applicable Participant, SEC and FINRA rules. The Commission finds that proposed FINRA Rule 6191(a)(4) is consistent with the Act because it implements provisions of the Plan.

Proposed FINRA Rule 6191(a)(5) provides that no member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group Two in increments other than \$0.05. However, proposed FINRA Rule 6191(a)(5) also provides that orders priced to execute at the midpoint of the NBBO or PBBO and orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than \$0.05. Proposed FINRA Rule 6191(a)(5)(B) further provides that no member may execute an order in a Test Group Two Pilot Security in an increment other than \$0.05, unless an exception applies. Pilot Securities in Test Group Two may trade in increments less than \$0.05 when trading: (i) At the midpoint between the NBBO or the PBBO; (ii) Retail Investor Orders⁷⁰ that are provided price improvement that is at least \$0.005 better than the PBBO; (iii) Negotiated Trades; and (iv) customer orders to comply with FINRA Rule 5320 following the execution of a proprietary trade that is permissible pursuant to Plan exception.⁷¹ The Commission finds that proposed FINRA Rules 6191(a)(5)(C)(i), (ii) and (iii) are consistent with the Act because they implement provisions of the Plan.

In Partial Amendment No. 1, FINRA proposes to add a trading increment exception in FINRA Rule 6191(a)(5)(C)(iv), which would allow the execution of a customer order following a proprietary trade by a FINRA member at an increment less than \$0.05 in the same security, on the same side and at the same price as (or within the prescribed amount of) a customer order owed a fill pursuant to FINRA Rule 5320, where the triggering

⁷⁰ See Discussion below related to the proposed Rule 6191(a)(7)(A) related to the Retail Investor Order exception for the trading of Pilot Securities in Test Group Two and Test Group Three.

⁷¹ See Partial Amendment No. 1, *supra* note 6.

proprietary trade was permissible pursuant to an exception under the Plan. FINRA believes that this customer order protection exception should facilitate the ability of its members to continue to protect customer orders while retaining the flexibility to engage in proprietary trades that comply with an exception to the Plan. Based on the foregoing, the Commission finds that proposed FINRA Rule 6191(a)(5)(C)(iv) is consistent with the Act.⁷²

D. Quoting and Trading Rules for Test Group Three

Proposed FINRA Rule 6191(a)(6)(A) provides that no member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group Three in increments other than \$0.05. Proposed FINRA Rule 6191(a)(6)(A) also provides that for Test Group Three Pilot Securities orders priced to execute at the midpoint of the NBBO or PBBO and orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than \$0.05. Proposed FINRA Rule 6191(a)(6)(B) specifies that the \$0.05 trading increment will apply to all trades, including Brokered Cross Trades; and that trades for Test Group Three Pilot Securities may not occur in increments of less than \$0.05 unless there is an applicable exception listed in proposed Rule FINRA Rule 6191(a)(6)(C). Pursuant to proposed Rule FINRA Rule 6191(a)(6)(C), Test Group Three Pilot Securities may trade in increments less than \$0.05 when trading: (i) At the midpoint between the NBBO or the PBBO; (ii) Retail Investor Orders⁷³ that are provided price improvement that is at least \$0.005 better than the PBBO and; (iii) Negotiated Trades; and (iv) customer orders to comply with FINRA Rule 5320 following the execution of a proprietary trade that is permissible pursuant to Plan exception.⁷⁴

The Commission finds that proposed FINRA Rule 6191(a)(6)(A), proposed FINRA Rule 6191(a)(6)(B), and proposed FINRA Rules 6191(a)(6)(C)(i), (ii) and (iii) are consistent with the Act because they implement provisions of the Plan.

⁷² The Commission notes that it has granted FINRA an exemption from Rule 608(c) related to this provision. See SEC Exemption Letter, *supra* note 18.

⁷³ See Discussion below related to the proposed FINRA Rule 6191(a)(7)(A) related to the Retail Investor Order exception for the trading of Pilot Securities in Test Group Two and Test Group Three.

⁷⁴ See Partial Amendment No. 1, *supra* note 6.

In addition, as discussed above,⁷⁵ the Commission finds that proposed FINRA Rule 6191(a)(6)(C)(iv) is consistent with the Act.

1. Quoting and Trading Rules for Test Group Three: Trade-at Prohibition

Proposed FINRA Rule 6191(a)(6)(D) describes the Trade-at Prohibition and the exceptions applicable thereto.⁷⁶ Specifically, proposed FINRA Rule 6191(a)(6)(D)(i) sets forth that absent any of the exceptions listed in subparagraph (D)(ii), no member that operates a Trading Center may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer during regular trading hours (*i.e.*, the Trade-at Prohibition). Proposed FINRA Rule 6191(a)(6)(D)(i) also states that under the Trade-at Prohibition, a member that operates a Trading Center that is displaying a quotation, via either a processor or an SRO quotation feed, that is at a price equal to the traded-at Protected Bid or Protected Offer is permitted to execute orders at that level, but only up to the amount of its displayed size. Finally, proposed FINRA Rule 6191(a)(6)(D)(i) states that a member that operates a Trading Center that was not displaying a quotation at a price equal to the traded-at Protected Quotation, via either a processor or an SRO quotation feed, is prohibited from price-matching protected quotations unless an exception applies.

Proposed FINRA Rule 6191(a)(6)(D)(ii) lists the exceptions to the Trade-at Prohibition.⁷⁷ The proposed exceptions set forth in FINRA Rules 6191(a)(6)(D)(ii)(c) through (g), (j), (k), and (m) mirror the exceptions set forth in the Plan.⁷⁸ The Commission

⁷⁵ See Section V.C above related to the discussion of proposed FINRA Rule 6191(a)(5)(C)(iv). The Commission notes that it has granted FINRA an exemption from Rule 608(c) related to this provision. See SEC Exemption Letter, *supra* note 18.

⁷⁶ The Commission notes that one commenter submitted extensive interpretative questions on the implementation and operation to the Trade-at Prohibition. See FIF Letter. As noted above, FINRA provided detailed responses to the interpretative questions. See FINRA Response Letter. The Commission understands that the Participants are developing interpretative guidance on the quoting and trading rules under the Plan and expects that Participants will continue to work with market participants on the implementation of the quoting and trading rules of the Tick Size Pilot.

⁷⁷ One commenter requested that odd lot orders be exempt from the Trade-at Prohibition. See FIF Letter. The Commission notes that the Approval Order addressed odd lot orders under the Trade-at Prohibition. See Approval Order, *supra* note 3.

⁷⁸ See Section VI.D(3) through (7), (10), (11) and (13) of the Plan.

finds these exceptions to be consistent with the Act because they implement Plan provisions.

In proposed FINRA Rule 6191(a)(6)(D)(ii)(a), FINRA proposes to implement the display exception to the Trade-at Prohibition. As proposed, FINRA has added several details about its operation and implementation. For example, FINRA proposes that a Trading Center that uses independent aggregation units execute orders within the same independent aggregation unit that displayed the quotation. In addition, FINRA proposes to specify that Trading Centers that display a quotation as agent or riskless principal may only execute as agent or riskless principal. If the Trading Center is displaying a quotation as principal (excluding riskless principal), the Trading Center may execute as principal, agent or riskless principal.

As noted above, one commenter suggested that FINRA's proposal would create an incentive for trading in Test Group Three to migrate to dark venues.⁷⁹ According to the commenter, FINRA's proposal would permit a non-displayed Trading Center to submit matched trades to an ATS that was displaying on an agency basis the quotation of another ATS subscriber.⁸⁰ FINRA responded that it did not believe this scenario could occur under its proposal, and confirmed that the broker-dealer submitting the matched trade could not, as a Trading Center trade with its customer order because it was not displaying a principal quotation. The Commission finds that FINRA's proposed Rule 6191(a)(6)(D)(ii)(a) to be consistent with the Act. The Commission believes that FINRA's proposed rule clarifies the operation of the display exception in a manner consistent with the goals of the Plan. First, a Trading Center would only be able to execute an order in the same capacity in which it has displayed a quotation. Accordingly, a Trading Center could not rely on an agency quotation to execute on a principal basis. Further, a Trading Center that uses independent aggregation units would be restricted in its ability to rely on quotations displayed by other independent aggregation units. As noted above, a Trading Center that utilizes independent aggregation units may only execute an order in the independent aggregation unit that displayed the quotation. The Commission believes that these additional rules implement the display exception to the Trade-at

Prohibition in a manner that should incent the display of liquidity.⁸¹

Proposed FINRA Rule 6191(a)(6)(D)(ii)(b) sets forth the exception to the Trade-at Prohibition for orders of Block Size. FINRA proposes additional provisions with respect to Block Size orders including that orders at the time of origin may not be: (1) An aggregation of non-block orders; (2) broken into orders smaller than Block Size prior to submitting the order to a Trading Center for execution; or (3) executed on multiple Trading Centers.

As noted above, one commenter suggested that these additional provisions would limit firms' ability to facilitate block cross trades.⁸² FINRA responded that the additional criteria would clarify this Trade-at Prohibition exception. Further, FINRA noted that permitting the aggregation of non-block orders or permitting members to combine a block order with non-block orders would overly expand the scope of the exception.

The Commission believes that the additional criteria for the Block Size exception are consistent with the Act. In the Approval Order, the Commission modified the Block Size definition for the purposes of the Plan to more closely reflect the trading characteristics of potential Pilot Securities.⁸³ The Commission believes proposed FINRA Rule 6191(a)(6)(D)(ii)(b) appropriately limits the scope and applicability of the Block Size exception, and should help to exclude trades and order handling scenarios that were not contemplated or intended to be considered for an exception for the Trade-at Prohibition.

Proposed FINRA Rule 6191(a)(6)(D)(ii)(h) sets forth the exception to the Trade-at Prohibition for orders identified as Trade-at ISO. In Partial Amendment No. 1, FINRA proposes to clarify the definition of a Trade-at ISO for purposes of the exception. Specifically, FINRA proposes to define Trade-At ISO as a limit order for a Pilot Security that meets the following requirements: (1) When routed to a Trading Center, the limit order is identified as a Trade-at ISO; and (2) simultaneously with the routing of the limit order identified as a Trade-at ISO, one of more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected

offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at ISO. These additional routed orders also must be marked as Trade-at ISO.⁸⁴

According to FINRA, the use of the term ISO as set forth in the Plan could be unclear in Test Group Three.⁸⁵ As noted in FINRA's Partial Amendment No. 1, an ISO may mean that the sender of the ISO has swept better-priced protected quotations, so that the recipient of that ISO may trade through the price of the protected quotation (in compliance with Rule 611 of Regulation NMS⁸⁶), or it could mean that the sender of the ISO has swept protected quotations at the same price at which it wishes to execute (in addition to any better-priced quotations), so that the recipient of that ISO may trade at the price of the protected quotation (as an exception to the Trade-at Prohibition). Accordingly, since the meaning of an ISO may differ under Rule 611 of Regulation NMS and the Trade-at Prohibition under the Plan, FINRA proposes Rule 6191(a)(6)(D)(ii)(h) to reflect that the order is a Trade-at ISO so that a receiving Trading Center in a Test Group Three Pilot Security would know, upon receipt of that Trade-at ISO, that the Trading Center that sent the Trade-at ISO had already executed against the full size of displayed quotations at that price (e.g., the recipient of that Trade-at ISO could permissibly trade at the price of the protected quotation). In addition, FINRA proposes to make a corresponding change to FINRA Rule 6191(a)(6)(D)(ii)(i).

The Commission believes that proposed FINRA Rule 6191(a)(6)(D)(ii)(h) and FINRA Rule 6191(a)(6)(D)(ii)(i) are consistent with the Act because they clarify the use and operation of ISOs under the Plan. The definition in the Plan provided that an ISO received under the Plan would indicate to the recipient that orders to

⁸⁴ See Proposed FINRA Rule 6191(a)(7)(B)(i).

⁸⁵ Section VI.D(8) of the Plan provides an exception to the Trade-at Prohibition for ISOs. In addition, Section I(MM) defined a Trade-at ISO as a limit order for a Pilot Security that meets the following requirements: (1) When routed to a Trading Center, the limit order is identified as an ISO; and (2) simultaneously with the routing of the limit order identified as an ISO, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is equal to the limit price of the limit order identified as an ISO. These additional routed orders also must be market as ISO.

⁸⁶ 17 CFR 242.611.

⁸¹ See Approval Order, *supra* note 3. In the Approval Order, the Commission stated that the Trade-at Prohibition should test whether market participants are incentivized to display more liquidity in a wider tick environment.

⁸² See FIF Letter.

⁸³ See Approval Order, *supra* note 3.

⁷⁹ See NYSE Letter.

⁸⁰ *Id.*

execute against the full displayed size at a price equal to the ISO's limit price had been routed. However, the Commission understands that the use of the term ISO in connection with the exception to the Trade-at Prohibition could cause confusion. Therefore, the Commission believes that FINRA's proposal should clarify the use of ISOs under the Plan and facilitate their implementation.

Proposed FINRA Rule 6191(a)(6)(D)(ii)(l) sets forth an exception to the Trade-at Prohibition for stopped orders. A stopped order is defined as an order executed by a Trading Center which, at the time of order receipt, the Trading Center had guaranteed an execution at no worse than a specified price where: (1) The stopped order was for the account of a customer; (2) the customer agreed to the specified price on an order-by-order basis; and (3) the price of the Trade-at transaction was, for a stopped buy order, equal to or less than the National Best Bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to or greater than the National Best Offer in the Pilot Security at the time of execution, as long as such order is priced at an acceptable increment.

As noted above, one commenter raised questions about how the stopped order exception would operate as an exception to the Trade-at Prohibition.⁸⁷ In Partial Amendment No. 1, FINRA amended the rule text of proposed FINRA Rule 6191(a)(6)(D)(ii)(l) to clarify its operation under the Trade-at Prohibition. The Commission finds that proposed FINRA Rule 6191(a)(6)(D)(ii)(l), as modified by Partial Amendment No. 1, is consistent with the Act because it implements the Plan provision in a manner that clarifies its operation for these order types.⁸⁸

In Partial Amendment No. 1, FINRA proposes an additional exception to the Trade-at Prohibition.⁸⁹ Specifically, proposed FINRA Rule 6191(a)(6)(D)(ii)(n) sets forth an exception to the Trade-at Prohibition for "bona fide errors."⁹⁰ Proposed FINRA

Rule 6191(a)(6)(D)(ii)(n) provides an exception to the Trade-at Prohibition where the order is to correct a bona fide error, which is recorded by the Trading Center in its error account. The proposed definition for a "bona fide error" is: (i) The inaccurate conveyance or execution of any term of an order including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market; (ii) the unauthorized or unintended purchase, sale, or allocation of securities, or the failure to follow specific client instructions; (iii) the incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or (iv) a delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order.⁹¹ In order to utilize this exception to the Trade-at Prohibition, the following conditions must be met: (1) The bona fide error must be evidenced by objective facts and circumstances, the Trading Center must maintain documentation of such facts and circumstances, and the Trading Center must record the transaction in its error account; (2) the Trading Center must establish, maintain, and enforce written policies and procedures that are reasonably designed to address the occurrence of errors and, in the event of an error, the use and terms of a transaction to correct the error in compliance with this exception; and (3) the Trading Center must regularly surveil to ascertain the

contemplates protection for both displayed and reserve (undisplayed) size of orders. In this regard, the Commission believes that such an exception for the Trade-at Prohibition often will be unnecessary because a print protection exception for the Trade-at Prohibition would need to be premised upon a displayed customer order, which already is excepted from the Trade-at Prohibition if it satisfies the requirements of proposed FINRA Rule 6191(a)(6)(D)(i) and the Plan. Moreover, providing a print protection exemption from the Trade-at Prohibition would create the potential for trading scenarios that would result in better-priced, displayed orders being bypassed for the execution of inferior, same-priced orders. The Commission believes such a result is inconsistent with the Plan in general, and the Trade-at Prohibition in particular. Finally, the Commission notes that FINRA represents that the print protection exemption applicable to Rule 611 of Regulation NMS is rarely used by its members.

⁹¹ Absent a bona fide error as defined above, the proposed exception would not apply to a broker dealer's mere failure to execute a not-held order in accordance with a customer's expectations.

effectiveness of its policies and procedures to address errors and transactions to correct errors and takes prompt action to remedy deficiencies in such policies and procedures.⁹²

The Commission finds that the exception to the Trade-at Prohibition for the correction of bona fide errors is consistent with the Act.⁹³ The Commission believes that this exception should promote efficiency and the best execution of investor orders. As noted in the Commission's order exempting such orders from Rule 611 of Regulation NMS, the exemption will allow Trading Centers to execute error correction transactions at the appropriate prices to correct bona fide errors without having to qualify for one of the exceptions to the Trade-at Prohibition.⁹⁴

Proposed FINRA Rule 6191(a)(7)(A) addresses the execution of Retail Investor Orders other than on a national securities exchange.⁹⁵ FINRA proposes that any member that operates a Trading Center may execute against an order received directly from a natural person that did not originate from a trading algorithm or any other computerized methodology. This proposed provision generally tracks the Plan's definition of "Retail Investor Order" while allowing a member to execute against orders received directly from retail customers. FINRA contends that in the absence of this proposal, many orders that are currently sent to Trading Centers that otherwise satisfy the Retail Investor Order definition would not be eligible for the exceptions of the Plan in the OTC market solely due to the capacity (or lack thereof) of that order.

⁹² See Partial Amendment No. 1, *supra* note 6. See also Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007).

⁹³ The Commission notes that the conditions for a bona fide error exception for the Trade-at Prohibition would be consistent with the corresponding bona fide error exemption for Rule 611 would apply only to the error correction transaction itself and would not, for example, apply to any subsequent trades effected by a Trading Center to eliminate a proprietary position connected with the error correction transaction or a broker dealer's mere failure to execute a not-held order in accordance with a customer's expectations. See also Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007).

⁹⁴ The Commission notes that it has granted FINRA an exemption from Rule 608(c) related to this provision. See SEC Exemption Letter, *supra* note 18.

⁹⁵ Proposed Rule 6191(a)(7)(A)(iii) provides that any member for which FINRA is the DEA that operates a Trading Center and executes Retail Investor Orders must submit a signed attestation to FINRA that substantially all orders to be executed as Retail Investor Orders will qualify as such under this Rule. The Plan provides that the Trading Center executing a Retail Investor Order must sign an attestation that substantially all orders to be executed as Retail Investor Orders will qualify as such under the Plan.

⁸⁷ See FIF Letter.

⁸⁸ The Commission notes that it has granted FINRA an exemption from Rule 608(c) related to this provision. See SEC Exemption Letter, *supra* note 18.

⁸⁹ This additional exception was requested by a commenter. See FIF Letter.

⁹⁰ The Commission notes that one commenter suggested that there should be a print protection exception to the Trade-at Prohibition that corresponds to the print protection exemption that is applicable to Rule 611 of Regulation NMS. See FIF Letter. The Commission does not agree that a print protection exemption would be consistent with the Trade-at Prohibition in the Plan. First, the print protection exemption applicable to Rule 611 is inconsistent with the Trade-at Prohibition because the Rule 611 print protection exemption explicitly

The Plan defines a Retail Investor Order as an agency or riskless principal order. Therefore, according to FINRA orders received directly from a customer, without an accompanying capacity, and executed by the receiving Trading Center would not currently fall within the scope of the Plan's definition of "Retail Investor Order" and the corresponding exceptions from the \$0.05 trading increment in Test Groups Two and Three.

The Commission believes that proposed FINRA Rule 6191(a)(7)(A) is consistent with the Act as it implements provisions of the Plan. The provisions related to Retail Investor Orders permit such orders to receive price improvement. In the Approval Order, the Commission noted that allowing Retail Investor Orders to receive price improvement could minimize some of the concerns related to costs for retail investors. FINRA's proposal to accommodate price improvement for Retail Investor Orders executed in the OTC market is consistent with the intent and goals of the Plan for such orders.

The Commission finds that the FINRA proposal to implement the Tick Size Pilot quoting and trading requirements, including the Supplementary Material, are consistent with the Act. The proposal clarifies and implements the quoting and trading requirements set forth in the Plan.

VI. 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-2015-047 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-2015-047. 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-2015-047 and should be submitted on or before March 21, 2016.

VII. 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 amends four of the requirements set forth in this proposed rule change. First, FINRA proposes to add an exception to permit members to fill a customer order in a Pilot Security in Test Group Two or Three at a non-nickel increment to comply with FINRA Rule 5320 (Prohibition Against Trading Ahead of Customer Orders) under limited circumstances. Second, FINRA is amending the proposal to adopt an exception to the Trade-at Prohibition for certain error correction transactions. Third, FINRA is proposing to modify the stopped order exception to the Trade-at Prohibition to clarify its operation under the Plan. Finally, FINRA is proposing to clarify the use of ISOs in connection with the Trade-at Prohibition.

FINRA believes that the change to allow members to fill a customer order at a non-nickel increment to comply with Rule 5320 under limited circumstances best facilitates the ability of members to continue to protect

customer orders while retaining the flexibility to engage in proprietary trades that comply with an exception to the Plan. FINRA believes adding an exception to the Trade-at Prohibition for error correction transactions is appropriate as this exception is equally applicable to the Trade-at Prohibition as to Rule 611 of Regulation NMS, and that adopting this exception appropriately aligns the requirements of the Trade-at Prohibition with Rule 611 of Regulation NMS. Similarly, FINRA believes that amending the stopped order exception will result in more consistent treatment under Regulation NMS and the Plan, which should ease compliance burdens for members. Finally, FINRA believes that amending the reference to ISOs in connection with the Trade-at Prohibition is consistent with the Act because it will better align that reference to the definition of "Trade-At Intermarket Sweep Order" as set forth in the Plan.

Based on the foregoing, the Commission believes that the changes to: (1) Add an exception to FINRA Rule 6191(a)(5)(C)(iv) and 6191(a)(6)(C)(iv) to permit members to fill a customer order in a Pilot Security at a non-nickel increment to comply with FINRA Rule 5320 under limited circumstances, (2) create an exception to the Trade-at Prohibition for certain error correction transactions, (3) modify the stopped order exception to the Trade-at Prohibition, and (4) to clarify the use of ISOs in connection with the Trade-at Prohibition are all consistent with the Act. 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.

VIII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act⁹⁶ that the proposed rule change, as modified by Partial Amendment No. 1 (SR-FINRA-2015-047) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹⁷

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-04320 Filed 2-26-16; 8:45 am]

BILLING CODE 8011-01-P

⁹⁶ 15 U.S.C. 78s(b)(2).

⁹⁷ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77211; File No. SR-EDGX-2016-10]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees as Applicable to the Equity Options Platform

February 23, 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 10, 2016, EDGX Exchange, Inc. (the “Exchange” or “EDGX”) 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 Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members⁵ and non-members of the Exchange pursuant to EDGX Rules 15.1(a) and (c).

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.

(A) Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 1, 2015, the Exchange adopted an initial fee schedule establishing fees applicable to Members trading options on and using services provided by its equity options platform (“EDGX Options”).⁶ As a new options exchange, the Exchange aimed to attract order flow by offering market participants a competitive and simplified pricing structure. Therefore, the Exchange did not initially propose to implement a tiered pricing structure under which it would provide enhanced rebates or reduced fees based on the Member’s monthly trading activity. Nor did the Exchange propose to implement “maker-taker” pricing (*i.e.*, providing a rebate to the side of the transaction that added liquidity and a fee to the side of the transaction that removed liquidity).⁷

The Exchange has experienced an increase in order flow since it commenced trading in November 2015⁸ and now seeks to amend its fee schedule in order to incentivize Members to send additional order flow to the Exchange.⁹ Therefore, the Exchange proposes to amend its fee schedule to amend the Standard Rates and Fee Codes and Associated Fees Table to delete or update existing fee codes as well as to add two new fee codes. The Exchange also proposes to adopt pricing tiers under proposed footnotes 1 and 2, Customer Volume Tiers and Market Maker Volume Tiers, respectively. Under the proposed tiers, Customers¹⁰

or Market Makers¹¹ that achieve certain volume criteria may qualify for reduced fees or enhanced rebates. As a result of the proposed tiers, the Exchange proposes to add definitions of ADV, ADAV, and TCV, as described below, to the Definitions section of its fee schedule. Lastly, the Exchange proposes to amend its Marketing Fee to increase the fee for Non-Penny Pilot Securities¹² from \$0.65 per contract to \$0.70 per contract.

Standard Transaction Fees

The Exchange currently maintains a fee structure under which standard rates are applied, the amount of which depend on whether the order is for a Customer, Non-Customer,¹³ or Market Maker as well as the capacity of the order with which such order trades.¹⁴ The Exchange now proposes to amend the Standard Rates table, which summarizes the main fees and rebates applicable to trading on the Exchange, including tiered pricing, as well as the Fee Codes and Associated Fees table, which provides detailed rates for all types of executions occurring on the Exchange and of orders that have been routed to other options exchanges, to delete or update existing fee codes as well as to add two new fee codes. The result of these amendments would result in a fee structure under which the standard rate that applies would depend solely on whether the order is for a Customer, Non-Customer, or Market Maker, and not the capacity of the contra-side order.

Customer. Currently, neither side of a transaction is charged a fee where both sides trade in a Customer capacity. Such Customer orders yield either fee code PA or NA where they add liquidity and PR or NR where they remove liquidity, depending on whether the order is in a

⁶ See Securities Exchange Act Release No. 76453 (November 17, 2015), 80 FR 72999 (November 23, 2015) (SR-EDGX-2015-56). On December 1, 2015, the Exchange amended the EDGX Options fee schedule to modify pricing for orders routed away and executed at various away options exchanges. See Securities Exchange Act Release No. 76708 (December 21, 2015), 80 FR 80832 (December 28, 2015) (SR-EDGX-2015-63).

⁷ The Exchange does not propose to implement maker-taker pricing in this proposed rule change.

⁸ See Market Volume Summary, available at http://www.batsoptions.com/market_summary/.

⁹ The Exchange initially filed the proposed fee change on February 1, 2016, in SR-EDGX-2016-05. On February 3, 2016, the Exchange withdrew SR-EDGX-2016-05 and submitted SR-EDGX-2016-07. On February 9, 2016, the Exchange withdrew SR-EDGX-2016-07 and submitted this filing.

¹⁰ The term “Customer” applies to any transaction identified by a Member for clearing in the Customer range at the Options Clearing

Corporation (“OCC”), excluding any transaction for a Broker Dealer or a “Professional” as defined in Exchange Rule 16.1.

¹¹ The term “Market Maker” applies to any transaction identified by a Member for clearing in the Market Maker range at the OCC, where such Member is registered with the Exchange as a Market Maker as defined in Rule 16.1(a)(37).

¹² The term “Non-Penny Pilot Security” applies to those issues that are not Penny Pilot Securities quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01.

¹³ The term “Non-Customer” applies to any transaction that is not a Customer order.

¹⁴ The standard rates and applicable fee codes apply unless a Member’s transaction is assigned a fee code other than a standard fee code. A fee code other than a standard fee code is only applied to a Member’s transaction that is routed to and executed on another options exchange or where it is to participate in the EDGX Options opening process under Exchange Rule 21.7.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ The term “Member” is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

Penny Pilot Security¹⁵ or not. An order that trades in a Customer capacity receives a rebate of \$0.21 per contract where it executes against a contra-side order that trades in a Non-Customer capacity. Such Customer orders yield either fee code PY or NY where they add liquidity and PC or NC where they remove liquidity, depending on whether the order is in a Penny Pilot Security or not.

The Exchange proposes to amend the pricing for Customer orders by eliminating fee codes PA, NA, PR, NR, PY, and NY. Fee codes PA and NA are currently appended to Customer orders in Penny Pilot Securities and Non-Penny Pilot Securities, respectively that add liquidity against a contra-side Customer order and are charged no fee. Likewise, fee codes PR and NR are currently appended to Customer orders in Penny Pilot Securities and Non-Penny Pilot Securities, respectively that remove liquidity against a contra-side Customer order and are charged no fee. Fee codes PY and NY are currently appended to Customer orders in Penny Pilot Securities and Non-Penny Pilot Securities, respectively that add liquidity against a contra-side Non-Customer order and receive a rebate of \$0.21 per contract. The Exchange also proposes to update fee codes PC and NC, which are currently appended to Customer orders in Penny Pilot Securities and Non-Penny Pilot Securities, respectively that remove liquidity against a contra-side Non-Customer order and receive a rebate of \$0.21 per contract.

As a result of the above amendments, fee code PC would be appended to all Customer orders in Penny Pilot Securities. Likewise, fee code NC would be appended to all Customer orders in Non-Penny Pilot Securities. Customer orders that yield fee codes PC or NC would receive a rebate of \$0.01 per contract, rather than \$0.21 per contract, regardless of the counter party and whether the Customer order adds or removes liquidity.

Market Maker. Currently, an order that trades in a Market Maker capacity is charged a fee of \$0.21 per contract where it executes against a contra-side order that trades in a Customer capacity. Such Market Maker orders yield either fee code PM or NM where they add liquidity and PP or NP where they remove liquidity, depending on whether the order is in a Penny Pilot Security or not.

The Exchange proposes to amend the pricing for Customer orders by updating fee codes PM, NM, PP, and NP. Fee code PM and NM are currently appended to Market Maker orders in Penny Pilot Securities and Non-Penny Pilot Securities, respectively that add liquidity against contra-side Customer orders and are charged a fee of \$0.21 per contract. As amended, fee code PM would be appended to Market Maker orders in Penny Pilot Securities. Likewise, fee code NM would be appended to Market Maker orders in Non-Penny Pilot Securities. Market Maker orders that yield fee codes PM or NM would be charged a fee of \$0.19 per contract, rather than \$0.21 per contract, regardless of the counter party and whether the Customer order adds or removes liquidity.

Fee codes PP and NP are currently appended to Market Maker orders in Penny Pilot Securities and Non-Penny Pilot Securities, respectively that remove liquidity against contra-side Customer orders and are charged a fee of \$0.21 per contract. As discussed in more detail below, the Exchange proposes to amend fee codes PP and NP and to re-purpose such fee codes to apply instead to certain Professional orders. Therefore, Market Maker orders that remove liquidity would yield fee codes PM or NM and be charged a fee of \$0.19 per contract, rather than \$0.21 per contract, regardless of the counter party and whether the Customer order adds or removes liquidity.

Non-Customer. Currently, for Penny Pilot Securities, an order that trades in a Non-Customer capacity, other than a Market Maker order, is charged a fee of \$0.46 per contract where it executes against a contra-side order that trades in a Customer capacity. Such Non-Customer orders in Penny Pilot Securities yield fee code PO where they add liquidity and PQ where they remove liquidity. Currently, Non-Customer orders in Non-Penny Pilot Securities are charged a fee of \$0.86 per contract and yield fee code NO where they add liquidity and NQ where they remove liquidity. Neither side of a transaction is currently charged a fee where both sides trade in a Non-Customer capacity. Such Non-Customer orders yield either fee code PF or NF where they add liquidity and PN or NN where they remove liquidity, depending on whether the order is in a Penny Pilot Security or not.

Orders that trade in a Non-Customer Capacity include Broker Dealer,¹⁶

Firm,¹⁷ Joint Back Office,¹⁸ Professional,¹⁹ and Away Marker Maker.²⁰ The Exchange proposes to amend fee codes PP, NP, PO, PQ, NO, NQ, PF, NF, PN, and NN to apply to the specific capacities that a Non-Customer order may represent. Each of the proposed amendments are as follows:

- **Fee Codes PP and NP.** As stated above, fee codes PP and NP are currently appended to Market Maker orders in Penny Pilot Securities and Non-Penny Pilot Securities, respectively that remove liquidity against contra-side Customer orders and are charged a fee of \$0.21 per contract. The Exchange proposes to amend fee codes PP and NP to instead apply to Professional orders. As amended, fee code PP would be appended to Professional orders in Penny Pilot Securities regardless of the counter party and whether the Customer order adds or removes liquidity. Orders that yield fee code PP would be charged a fee of \$0.48 per contract. Fee code NP would be amended to apply to Professional orders in Non-Penny Pilot Securities regardless of the counter party and whether the order adds or removes liquidity. Orders that yield fee code NP would be charged a fee of \$0.75 per contract.

- **Fee Codes PO and PQ.** An order in a Penny Pilot Security that trades in a Non-Customer capacity, other than a Market Maker, is charged a fee of \$0.46 per contract where it executes against a contra-side order that trades in a Customer capacity. Such orders yield fee code PO where they add liquidity and PQ where they remove liquidity. The Exchange proposes to amend fee code PO to instead apply to Joint Back Office orders. Fee code PO would be amended to apply to Joint Back Office orders in Penny Pilot Securities, regardless of the counter party and whether the order adds or removes liquidity. Also, orders that yield fee code PO would be charged a fee of \$0.48

foreign broker dealer, that clears in the Customer range at the OCC.

¹⁷The term "Firm" applies to any transaction identified by a Member for clearing in the Firm range at the OCC, excluding any Joint Back Office transaction.

¹⁸The term "Joint Back Office" applies to any transaction identified by a Member for clearing in the Firm range at the OCC that is identified with an origin code as Joint Back Office. A Joint Back Office participant is a Member that maintains a Joint Back Office arrangement with a clearing broker-dealer.

¹⁹The term "Professional" applies to any transaction identified by a Member as such pursuant to Exchange Rule 16.1.

²⁰The term "Away Market Maker" applies to any transaction identified by a Member for clearing in the Market Maker range at the OCC, where such Member is not registered with the Exchange as a Market Maker, but is registered as a market maker on another options exchange.

¹⁵The term "Penny Pilot Security" applies to those issues that are quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01.

¹⁶The term "Broker Dealer" applies to any order for the account of a broker dealer, including a

per contract, rather than \$0.46. As a result of the proposed amendments to fee code PO and the general proposal in this filing to apply fees regardless of whether orders add or remove liquidity, fee code PQ is no longer necessary and the Exchange proposes to remove it from its fee schedule.

- *Fee Code NO and NQ.* Non-Customer orders in Non-Penny Pilot Securities are charged a fee of \$0.86 per contract and yield fee code NO where they add liquidity and NQ where they remove liquidity against a contra-side Customer order. Similar to fee code PO, the Exchange proposes to amend fee code NO to instead apply to Joint Back Office orders. Fee code NO would be amended to apply to Joint Back Office orders in Penny Pilot Securities, regardless of the counter party and whether the order adds or removes liquidity. Also, orders that yield fee code NO would be charged a fee of \$0.75 per contract, rather than \$0.86 per contract. As a result of the proposed amendments to fee code NO and the general proposal in this filing to apply fees regardless of whether orders add or remove liquidity, fee code NQ is no longer necessary and the Exchange proposes to remove it from its fee schedule.

- *Fee Codes PF, NF, PN, and NN.* Neither side of a transaction is currently charged a fee where both sides trade in a Non-Customer capacity. Such Non-Customer orders yield either fee code PF or NF where they add liquidity and PN or NN where they remove liquidity. Fee codes PF and PN are applied to Non-Customer orders in Penny Pilot Securities and NF and NN are applied to orders in Non-Penny Pilot Securities. The Exchange proposes to amend fee codes PF and NF to instead apply to Firm orders and fee codes PN and NN to instead apply to Away Market Maker orders. As amended, fee code PF would apply to Firm orders in Penny Pilot Securities, regardless of the counter party and whether the order adds or removes liquidity. Orders that yield fee code PF would no longer be free and would be subject to a charge of \$0.45 per contract. Fee code NF would be amended to apply to Firm orders in Non-Penny Pilot Securities, regardless of the counter party and whether the order adds or removes liquidity. Orders that yield fee code NF would no longer be free and would be subject to a charge of \$0.75 per contract. Fee code PN would be amended to apply to Away Market Maker orders in Penny Pilot Securities, regardless of the counter party and whether the order adds or removes liquidity. Orders that yield fee code PN would no longer be free and

would be subject to a charge of \$0.48 per contract. Fee code NN would be amended to apply to Away Market Maker orders in Non-Penny Pilot Securities, regardless of the counter party and whether the order adds or removes liquidity. Orders that yield fee code NN would no longer be free and would be subject to a charge of \$0.75 per contract.

The Exchange also proposes to add two new fee codes to its Fee Codes and Associated Fees table to apply to Broker Dealer orders. Proposed fee code NB would apply to Broker Dealer orders in Non-Penny Pilot Securities and proposed fee code PB would apply to Broker Dealer orders in Penny Pilot Securities. Orders that yield fee code NB would be charged a fee of \$0.75 per contract. Orders that yield fee code PB would be charged a fee of \$0.48 per contract. Fee codes NB and PB would be appended to Broker Dealer orders regardless of the capacity of the counter party or whether they add or remove liquidity.

Proposed Tiers and Definitions

Initially, the Exchange did not propose to implement a tiered pricing structure under which it would provide enhanced rebates or reduced fees based on the Member's monthly trading activity. The Exchange now proposes to adopt two pricing tiers under proposed footnotes 1 and 2, Customer Volume Tiers and Market Maker Volume Tiers, respectively. Under the proposed tiers, Customers and Market Makers that achieve certain volume criteria may qualify for reduced fees or enhanced rebates.

Definitions. As a result of the proposed tiers, the Exchange proposes to add definitions of ADV, ADAV, and TCV to the Definitions section of its fee schedule. The proposed definitions are designed to provide transparency with regard to the criteria necessary to achieve the proposed Customer Volume Tier and Market Maker Volume Tier and are based on and nearly identical to those currently provided for in the fee schedule for the equity options platform operated by BATS Exchange, Inc. ("BZX Options").²¹ "ADAV" would be defined as the average daily added volume calculated as the number of contracts added and "ADV" would be defined as the average daily volume calculated as the number of contracts added or removed, combined, per day. The definitions of ADAV and ADV would further state that ADAV and ADV would

be calculated on a monthly basis and would exclude contracts added or removed on any day that the Exchange's system experienced a disruption that lasted for more than 60 minutes during regular trading hours ("Exchange System Disruption") and on any day with a scheduled early market close. The definitions would further state that routed contracts would also not be included in ADAV or ADV calculation. The definitions would also permit, with prior notice to the Exchange, a Member to aggregate their ADAV or ADV with other Members that control, are controlled by, or are under common control with such Member. "TCV" would be defined as the total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

Customer Volume Tiers. As described above, fee code PC and NC would be appended to all Customer orders in Penny Pilot and Non-Penny Pilot Securities, respectively and would receive a rebate of \$0.01 per contract. The proposed Customer Volume Tier in footnote 1 shall consist of four separate tiers, each providing an enhanced rebate to Member's Customer orders that yield fee codes PC or NC upon satisfying monthly volume criteria required by the respective tier. The amount of the rebate is in relation to the volume required to achieve their tier. The rebates and required criteria available to Member's Customer orders that yield fee codes PC or NC are as follows:

- *Tier 1.* A rebate of \$0.10 per contract will be provided where the Member has an ADV in Customer orders equal to or greater than 0.20% of average TCV.
- *Tier 2.* A rebate of \$0.16 per contract will be provided where the Member has an ADV in Customer orders equal to or greater than 0.30% of average TCV.
- *Tier 3.* A rebate of \$0.21 per contract will be provided where the Member has an ADV in Customer orders equal to or greater than 0.50% of average TCV.
- *Tier 4.* A rebate of \$0.25 per contract will be provided where the Member has an ADV in Customer orders equal to or greater than 0.80% of average TCV.

Market Maker Volume Tiers. As described above, fee codes PM and NM would be appended to Market Maker orders in Penny Pilot Securities and Non-Penny Pilot Securities,

²¹ See the BZX Options' fee schedule available at http://www.batsoptions.com/support/fee_schedule/bzx/.

respectively. Market Maker orders that yield fee codes PM or NM would be charged a fee of \$0.19 per contract. The proposed Market Maker Volume Tier in footnote 2 shall consist of four separate tiers, each providing a reduced fee or rebate to Member's Market Maker orders that yield fee codes PM or NM upon satisfying monthly volume criteria required by the respective tier. The amount of the reduced fee or rebate is in relation to the volume required to achieve their tier. The rebates and required criteria available to Member's Market Maker orders that yield fee codes PM or NM are as follows:

- *Tier 1.* A reduced fee of \$0.16 per contract will be provided where the Member has an ADV in Market Maker orders equal to or greater than 0.05%.
- *Tier 2.* A reduced fee of \$0.07 per contract will be provided where the Member has an ADV in Market Maker orders equal to or greater than 0.30%.
- *Tier 3.* A reduced fee of \$0.02 per contract will be provided where the Member has an ADV in Market Maker orders equal to or greater than 0.70%.
- *Tier 4.* A rebate of \$0.01 per contract will be provided where the Member has an ADV in Market Maker orders equal to or greater than 1.10%.

Marketing Fees

The Exchange assesses a Marketing Fee to all Market Makers for contracts they execute in their assigned classes when the contra-party to the execution is a Customer. The Marketing Fee is charged only in a Market Maker's assigned classes because it is in these classes that the Market Maker has the general obligation to attract order flow to the Exchange. Each Primary Market Maker ("PMM")²² and Directed Market Maker ("DMM")²³ have a Marketing Fee pool into which the Exchange deposits the applicable per-contract Marketing Fee. For orders directed to DMMs, the applicable Marketing Fees are allocated to the DMM pool. For non-directed orders, the applicable Marketing Fees are allocated to the PMM pool. All Market Makers that participated in such transaction pay the applicable Marketing Fees to the Exchange, which will allocate such funds to the Market Maker that controls the distribution of the marketing fee pool. Each month the Market Maker provides instruction to the Exchange describing how the Exchange is to distribute the Marketing Fees in the pool to the order flow provider, who submit as agent, Customer orders to the Exchange.

²² See Exchange Rule 21.8(g).

²³ See Exchange Rule 21.8(f).

The amount of the Marketing Fee depends upon whether the affected option class is a Penny Pilot Security. A Marketing Fee of \$0.25 per contract is assessed to Market Makers for transactions in Penny Pilot Securities. A Marketing Fee of \$0.65 per contract is currently assessed to Market Makers for transactions in Non-Penny Pilot Securities. The Exchange now proposes to increase the Marketing Fee assessed to Market Makers for transactions in Non-Penny Pilot Securities from \$0.65 per contract to \$0.70 per contract. For option classes that are Non-Penny Pilot Securities, the Exchange's proposed Marketing Fee is equal to other options exchanges, such as PHLX, which also charges \$0.70 per contract.²⁴

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.²⁵ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,²⁶ in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls.

Standard Transaction Fees

The Exchange believes its proposed standard rates are equitable and reasonable. The Exchange operates in a highly competitive market in which market participants may readily send order flow to any of twelve competing venues if they deem fees at the Exchange to be excessive. As a new options exchange, the proposed fee structure remains intended to attract order flow to the Exchange by offering market participants a competitive and simplified pricing structure. To that end, the Exchange believes it is reasonable to remove fee codes for orders that add and remove liquidity, as the rates are the same whether an order adds or removes liquidity under both the prior fee structure and the proposed fee structure. Accordingly, having one fee code dependent on the capacity of the order and whether the issue is a Penny Pilot Security or not will result in a simpler fee schedule.

²⁴ See Nasdaq OMX PHLX LLC ("PHLX") fee schedule available at <http://nasdaqtrader.com/Micro.aspx?id=PHLXPricing>.

²⁵ 15 U.S.C. 78f.

²⁶ 15 U.S.C. 78f(b)(4).

The Exchange believes it is equitable, reasonable and non-discriminatory to charge fees to Non-Customers (including Market Makers other than those qualifying for Market Maker Volume Tier 4) and provide a rebate to Customers under the proposed fee structure. Non-Customer accounts generally engage in increased trading activity as compared to Customer accounts. This level of trading activity draws on a greater amount of Exchange system resources than that of Customers. Simply, the more orders submitted to the Exchange, the more messages sent to and received from the Exchange, and the more Exchange system resources utilized. This level of trading activity by Non-Customer accounts results in greater ongoing operational costs to the Exchange.²⁷ As such, the Exchange generally aims to recover its costs by fees to Non-Customers executed on the Exchange. Sending orders to and trading on the Exchange are entirely voluntary. Under these circumstances, Exchange transaction fees must be competitive to attract order flow, execute orders, and grow its market. Other options exchanges also provide for varying rates based on the capacity of the order.²⁸ As such, the Exchange believes its proposed trading fees are fair and reasonable.

The Exchange also believes it is equitable, reasonable and not unfairly discriminatory to charge Market Makers lower fees than other Non-Customers who participate on the Exchange. The proposed differentiation between Market Makers and other market participants, such as Broker Dealers and Firms, recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. Market Makers, unlike other market participants, have obligations to the market and regulatory requirements,²⁹ which normally do not apply to other market participants. A Market Maker has the obligation to make continuous markets, engage in course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are

²⁷ The Exchange, however, does not propose to assess ongoing fees for EDGX Options market data or fees related to order cancellation.

²⁸ See Nasdaq OMX PHLX LLC ("PHLX") fee schedule available at <http://nasdaqtrader.com/Micro.aspx?id=PHLXPricing> (charging no fee to customer orders and variable rates non-customer orders). See also Nasdaq OMX BX, Inc. fee schedule available at <http://nasdaqtrader.com/Micro.aspx?id=BXOptionsPricing>.

²⁹ See Exchange Rule 22.5, Obligations of Market Makers.

inconsistent with such course of dealings. On the other hand, other Non-Customers do not have such obligations on the Exchange. For the same reasons, the Exchange believes it is reasonable to provide an additional incentive to Market Makers in the form of the proposed Market Maker Volume Tiers.

Moreover, the Exchange believes it is equitable, reasonable and not unfairly discriminatory to provide a rebate to Customer orders that execute on the Exchange. The securities markets generally, and the Exchange in particular, have historically aimed to improve markets for investors and develop various features within the market structure for Customer benefit. Providing a rebate to Customers is designed to encourage Customers to add liquidity to the Exchange. In turn, increased liquidity is beneficial to all other market participants on the Exchange that seek executions against those Customer orders. As such, the Exchange believes the proposed Customer transaction pricing is equitably allocated, reasonable and not unfairly discriminatory. For the same reasons, the Exchange believes it is reasonable to provide an additional incentive to Customers in the form of the proposed Customer Volume Tiers.

Although the proposal will result in an increased fee for certain participants, including all Non-Customers other than Firms and Market Makers in Penny Pilot Securities, or will result in a lower rebate for others, namely all Customers other than those qualifying for Customer Volume Tier 3 or 4, the Exchange still believes that its proposed pricing structure is fair and equitable, reasonable, and not unfairly discriminatory. As noted above, while the Exchange is seeking to encourage additional participation particularly from those representing Customer orders and Market Maker orders, the Exchange believes that its pricing as a whole remains competitive with other options exchanges, offering rates that are generally equal to or better than incumbent exchanges. Additional revenue earned from the increases to pricing will be used to fund additional initiatives and incentives that are all intended to further grow EDGX Options, which, as noted above, is a new options exchange. As has also been noted above, the proposed changes in many ways simplify the pricing structure of EDGX Options. Further, the proposed pricing also eliminates uncertainty that came with variable rates that were based on counter-party. Instead, the proposed fees and rebates provide certainty to market participants regarding the cost of trading in certain capacities and in both

Penny Pilot Securities and Non-Penny Pilot Securities. Also, the proposed fee structure does provide cost savings for some participants, including all Non-Customers in Non-Penny Pilot Securities (when executing against Customers given that executions against Non-Customers were free) and Market Makers. Based on the foregoing, the Exchange believes that the proposed fees and rebates to replace the Exchange's initial fee structure for executions on the Exchange is fair and equitable, reasonable, and not unfairly discriminatory.

Proposed Tiers and Definitions

Volume-based rebates such as those currently maintained on the Exchange have been widely adopted by equities and options exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes. The proposed Customer Volume Tiers and Market Maker Volume Tiers are intended to incentivize Members to send additional orders to the Exchange in an effort to qualify for the enhanced rebate available by the respective tier.

The Exchange believes that the proposed tiers are reasonable, fair and equitable, and non-discriminatory, for the reasons set forth with respect to volume-based pricing generally and because such change will either incentivize participants to further contribute to market quality. The Exchange also believes that the proposed tiered pricing structure is consistent with pricing previously offered by the Exchange for its equity securities trading platform as well as options competitors of the Exchange and does not represent a significant departure from such pricing structures.

The Exchange believes that the proposed definitions of ADV, ADAV and TCV are reasonable, fair and equitable, and non-discriminatory as they are based on the rules of the Exchange's affiliated options exchange, BZX Options, and will provide transparency to Members regarding the calculations used to determine volume levels for purposes of the proposed tiered pricing model.

Marketing Fees

The Exchange notes that the U.S. options markets are highly competitive, and the marketing fee is intended to

provide an incentive for Market Makers to enter into marketing agreements with Members so that they will provide order flow to the Exchange. The marketing fee is charged only in a Market Maker's assigned classes because it is in these classes that the Market Maker has the general obligation to attract order flow to the Exchange. The Exchange believes that the proposed increase to marketing fees for Non-Penny Pilot Securities is equitably allocated and reasonable because it will enhance the Exchange's competitive position and will result in increased liquidity on the Exchange, thereby providing more of an opportunity for customers to receive best executions. The Exchange also believes that its proposed increase to the marketing fee for Non-Penny Pilot Securities is reasonable since the amount of the Exchange's marketing fee is the same as other exchanges for Non-Penny Pilot Securities.³⁰ Further, as the marketing fee will be applied to all Market Makers, the Exchange believes that the proposed fee is not unfairly discriminatory.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposed amendments to its fee schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Rather, the proposal is a competitive proposal that is seeking to further the growth of the Exchange. The Exchange has structured its proposed fees and rebates to attract certain additional order flow from Market Makers and Customers, however, as noted above, the Exchange believes that its pricing for all capacities is competitive with that offered by other options exchanges. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

The Exchange does not believe that the proposed tiered pricing structure burdens competition, but instead, enhances competition as it is intended to increase the competitiveness of the Exchange by incentivizing certain

³⁰ See *supra* note 24 and accompanying text.

participants to increase their participation on the Exchange.

The Exchange believes that its program of marketing fees, which is similar to marketing fee programs that have previously been implemented on other options exchanges, will enhance the Exchange's competitive position and will result in increased liquidity on the Exchange, thereby providing more of an opportunity for customers to receive best executions.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act³¹ and paragraph (f) of Rule 19b-4 thereunder.³² 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-EDGX-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-EDGX-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 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-EDGX-2016-10 and should be submitted on or before March 21, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-04249 Filed 2-26-16; 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:

Form SD; SEC File No. 270-647, OMB Control No. 3235-0697.

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.

Form SD (17 CFR 249b-400) under Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Exchange Act") pursuant to Section 13(p)(15 U.S.C. 78m(p)) of the Exchange Act is filed by issuers to provide disclosures regarding the source and chain of custody of certain minerals used in their products. We estimate that Form SD takes approximately 480.61 hours per response to prepare and is filed by approximately 864 issuers. We estimate that 75% of the 480.61 hours per response (360.46 hours) is prepared by the issuer internally for a total annual burden of 311,437 hours (360.46 hours per response x 864 responses).

Written comments are invited on: (a) Whether this 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 imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment 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 24, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-04351 Filed 2-26-16; 8:45 am]

BILLING CODE 8011-01-P

³¹ 15 U.S.C. 78s(b)(3)(A).

³² 17 CFR 240.19b-4(f).

³³ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77212; File No. SR-FINRA-2016-004]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt FINRA Rule 0151 (Coordination with the MSRB) and Amend FINRA Rule 0150 (Application of Rules to Exempted Securities Except Municipal Securities)

February 23, 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, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

FINRA is proposing to adopt FINRA Rule 0151 (Coordination with the MSRB) regarding coordination between FINRA and the Municipal Securities Rulemaking Board (“MSRB”), as required by the Exchange Act. FINRA also proposes to amend FINRA Rule 0150 to better align the language of the rule with the relevant language in the Exchange Act.

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The proposed rule change would adopt FINRA Rule 0151 regarding coordination between FINRA and the MSRB. The proposed rule change would also amend FINRA Rule 0150 to better align the language of the rule with the relevant language in the Exchange Act.

Statutory Requirement

With respect to the proposed adoption of Rule 0151, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 added Section 15A(b)(15) to the Exchange Act.⁴ Section 15A(b)(15) of the Exchange Act mandates that the rules of a national securities association require the association to: (i) Request guidance from the MSRB in interpretation of the rules of the MSRB;⁵ and (ii) provide information to the MSRB about the enforcement actions and examinations of the association under 15 U.S.C. Section 78o-4(b)(2)(E) so that the MSRB may assist in such enforcement actions and examinations and evaluate the ongoing effectiveness of the rules of the MSRB.

With respect to the proposed amendments to Rule 0150, Section 15A(f) of the Exchange Act provides that “[n]othing in subsection (b)(6) or (b)(11) of [Section 15A] shall be construed to permit a registered securities association to make rules concerning any transaction by a registered broker or dealer in a municipal security.”⁶

Proposal

FINRA, a national securities association, is proposing to adopt Rule 0151 addressing coordination between FINRA and the MSRB to comply with

the statutory requirement. Specifically, proposed Rule 0151 would state that FINRA will request guidance from the MSRB in interpretation of the rules of the MSRB. Proposed Rule 0151 would also state that FINRA will provide information to the MSRB about the enforcement actions and examinations pertaining to municipal securities brokers, municipal securities dealers, and municipal advisors conducted by FINRA regarding the Exchange Act and the rules and regulations thereunder and the rules of the MSRB, so that the MSRB may: (i) Assist in such enforcement actions and examinations; and (ii) evaluate the ongoing effectiveness of the rules of the MSRB (collectively, “coordination”).

FINRA notes that the reference to “enforcement actions and examinations pertaining to municipal securities brokers, municipal securities dealers, and municipal advisors conducted by FINRA regarding the Exchange Act and the rules and regulations thereunder and the rules of the MSRB” in proposed Rule 0151 is intended as a non-substantive change from the statutory language in Section 15A(b)(15) of the Exchange Act,⁷ which instead includes a cross-reference to 15 U.S.C. Section 78o-4(b)(2)(E). FINRA proposes the change in the proposed rule for ease of reference and not to reflect any substantive change from the statutory requirement.

FINRA believes that proposed Rule 0151 reflects FINRA’s current close coordination with the MSRB and satisfies the requirements of Section 15A(b)(15) of the Exchange Act.⁸ FINRA has regulatory responsibilities to, among other things, engage in surveillance of the securities markets, administer qualification examinations, perform examinations and investigations, and enforce the Exchange Act, the rules and regulations thereunder, the rules of FINRA, and the rules of the MSRB as to its member firms and their associated persons, for the protection of investors and in the public interest. These responsibilities extend to broker-dealers engaged in municipal securities activities and municipal advisory activities and persons associated with such firms.

FINRA is also proposing to amend Rule 0150 to better align the language of the rule with the relevant language in Section 15A(f) of the Exchange Act.⁹ Specifically, FINRA is proposing to amend Rule 0150(b) to provide that FINRA rules are not intended to be, and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ 15 U.S.C. 78o-3(b)(15).

⁵ Section 15B of the Exchange Act provides, among other things, that the MSRB shall adopt rules with respect to municipal securities transactions effected by brokers, dealers and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers and municipal advisors. 15 U.S.C. 78o-4(b)(2).

⁶ 15 U.S.C. 78o-3(f).

⁷ 15 U.S.C. 78o-3(b)(15).

⁸ 15 U.S.C. 78o-3(b)(15).

⁹ 15 U.S.C. 78o-3(f).

shall not be construed as, rules concerning transactions in municipal securities. FINRA notes that this change is consistent with the approach in NASD Rule 0114 (Effect on Transactions in Municipal Securities) which provided that FINRA rules shall not be construed to apply to transactions in municipal securities.¹⁰

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,¹¹ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change to adopt Rule 0151 will further the purposes of the Act by addressing coordination between FINRA and the MSRB, consistent with Section 15A(b)(15) under the Exchange Act.¹² In addition, the proposed rule provides transparency to municipal securities brokers, municipal securities dealers, municipal advisors and investors regarding coordination between FINRA and the MSRB. FINRA also believes that the proposed amendments to Rule 0150(b) will further the purposes of the Act by better aligning the language of the rule with the relevant language in Section 15A(f) of the Exchange Act.¹³

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. Under the proposed rule change, FINRA would adopt as part of its rulebook the statutory requirements for coordination with MSRB around rulemaking and enforcement and examination actions that seek to enhance FINRA's regulatory programs and the rulemaking of the

MSRB. Given FINRA's responsibilities under the Exchange Act and the degree of coordination between FINRA and the MSRB, which reflects regulatory and market conditions, the proposed rule change is consistent with current practices and therefore would not at this time impose additional burdens or costs on FINRA or firms.

Furthermore, the proposed rule provides a benefit by providing transparency regarding coordination between FINRA and the MSRB.

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

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 after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6)¹⁵ thereunder.

FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. FINRA stated that waiver of the operative delay is appropriate as Rule 0151 will address coordination between FINRA and the MSRB, consistent with Section 15A(b)(15) under the Act.¹⁶ With respect to the proposed amendments to Rule 0150, FINRA stated that waiver of the operative delay is appropriate as the proposed amendments to Rule 0150(b) will better align the language of the rule with the relevant language in Section 15A(f) of the Exchange Act,¹⁷ and also noted that the proposed language is consistent with previously approved rule language.¹⁸ For these reasons, the Commission believes that waiving the 30-day operative delay is consistent

with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹⁹

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-FINRA-2016-004 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-2016-004. 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

¹⁹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰ In 2008, FINRA incorporated NASD Rule 0114's statement that FINRA rules are not applicable to transactions in municipal securities into NASD Rule 0116 (Application of Rules of the Association to Exempted Securities), and transferred NASD Rule 0116, as amended, into the consolidated FINRA rulebook as Rule 0150. See SR-FINRA-2008-026.

¹¹ 15 U.S.C. 78o-3(b)(6).

¹² 15 U.S.C. 78o-3(b)(15).

¹³ 15 U.S.C. 78o-3(f).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 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 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. FINRA has satisfied this requirement.

¹⁶ 15 U.S.C. 78o-3(b)(15).

¹⁷ 15 U.S.C. 78o-3(f).

¹⁸ See *supra* note 10 and accompanying text.

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 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-2016-004, and should be submitted on or before March 21, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016-04250 Filed 2-26-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77210; File No. SR-NYSEMKT-2016-27]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Sections 1206 and 1212T of the NYSE MKT Company Guide

February 23, 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 17, 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 and II below, which Items have been prepared by the self-regulatory organization. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(6)(iii) thereunder,⁵ which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Sections 1206 and 1212T of the NYSE MKT Company Guide (the “Company Guide”) to delete an outdated reference. 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 recently established a Committee for Review (“CFR”) as a subcommittee of the Regulatory Oversight Committee.⁶ As approved, the CFR was the successor to, among others, the Committee on Securities, a committee of the Exchange board of directors that reviews determinations to limit or prohibit the continued listing of an issuer’s securities on the Exchange. In connection with this filing, the Exchange made conforming amendments to Sections 1206 and 1212T of the Company Guide, among others, to replace references to the “Committee on Securities” with “Committee for Review.” As a result, two conforming references to a “Committee on Securities Council” became references to a “Committee for Review Council.”⁷ More specifically, prior to the recent amendment, Section 1206 referred to a “Committee on Securities Council.” As recently amended, Section 1206 of the Company Guide describes the process for discretionary review by the Exchange board of directors of delisting decisions

of the Committee for Review, and provides that the board of directors may, among other things, “remand the matter to the Committee for Review Council, Panel, or Staff with appropriate instructions.”⁸

Similarly, prior to the recent amendment, Section 1212T referred to a “Committee on Securities Council.” Section 1212T governs certain legacy listing applications, and provides for a discretionary review by the Exchange’s board of directors of Committee for Review determinations not to approve an issuer’s listing application.⁹ The amended language provides that a discretionary review by the Exchange board of directors can be, among other things, remanded to the “Committee for Review Council, Panel, or Staff with appropriate instructions.”¹⁰

The Exchange proposes to amend Section 1206(d) and 1212T(h)(ii) to delete the outdated reference to “Council” in both rules. The Exchange currently does not have a constituted body known as the Committee for Review Council, and did not have a Committee on Securities Council prior to the recent amendment. The reference that was in the rules to a Committee on Securities Council is a legacy reference pre-dating the acquisition of the American Stock Exchange by the NYSE in 2008.¹¹

The use of “Council” in Sections 1206 and 1212T is accordingly obsolete. A remand by the Exchange board of directors under either Section 1206(d) or 1212T(h)(ii) prior to the amendments could only have been to the Committee on Securities Panel making the contested determination or Exchange staff, and a remand under the proposed revised rules would only be to the Committee for Review Panel making the contested determination or to Exchange staff. The Exchange is, therefore, proposing to delete the outdated reference to “Council.”

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act¹² in general, and with Section 6(b)(5)¹³ 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

⁸ See Company Guide, Section 1206(e).

⁹ See Company Guide, Section 1212T(h).

¹⁰ See *id.* at (h)(ii).

¹¹ See, e.g., Securities Exchange Act Release No. 53398 (March 2, 2006), 71 FR 12738 (SR-Amex-2005-107).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6)(iii).

⁶ See Securities Exchange Act Release No. 77008 (February 1, 2016) (SR-NYSEMKT-2015-106).

⁷ See Securities Exchange Act Release No. 76638 (December 14, 2015), 80 FR 79117 (SR-NYSEMKT-2015-106).

persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, help to protect investors and the public interest. Specifically, the Exchange believes that replacing outdated references to the Committee for Review "Council" removes impediments to and perfects the mechanism of a free and open market by removing confusion that may result from having obsolete references in the Exchange's rulebook. The Exchange further believes that the proposal removes impediments to and perfects the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rulebook. The Exchange believes that eliminating obsolete references would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential confusion. Removing such obsolete references will also further the goal of transparency and add clarity to the Exchange's rules.

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 Exchange Act. The proposed rule change is not intended to address competitive issues but rather to delete obsolete references, thereby increasing transparency, reducing confusion, and making the Exchange's rules easier to understand and navigate.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of

investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹⁴

A proposed rule change filed under Rule 19b-4(f)(6)¹⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁶ 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 proposal may become operative immediately upon filing. The Commission believes that waiver of the 30-day operative delay is appropriate because the proposed rule change will reduce confusion and add clarity to the Company Guide without delay. Based on the foregoing, the Commission believes that the waiver of the operative delay is consistent with the protection of investors and the public interest.¹⁷ The Commission hereby grants the waiver and designates the proposal operative upon filing.

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)¹⁸ 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:

¹⁴ 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.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸ 15 U.S.C. 78s(b)(2)(B).

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-2016-27 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-NYSEMKT-2016-27. 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-2016-27 and should be submitted on or before March 21, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016-04248 Filed 2-26-16; 8:45 am]

BILLING CODE 8011-01-P

¹⁹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77213; File No. SR-BYX-2016-03]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Adopt an Early Trading Session and Three New Time-In Force Instructions

February 23, 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 16, 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 its rules to: (i) Create a new trading session to be known as the Early Trading Session, which will run from 7:00 a.m. to 8:00 a.m. Eastern Time; and (ii) adopt three new Time-in-Force ("TIF") instructions.³

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.

(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 its rules to: (i) Create a new trading session to be known as the Early Trading Session, which will run from 7:00 a.m. to 8:00 a.m. Eastern Time; and (ii) adopt three new TIF instructions.

Early Trading Session

The Exchange trading day is currently divided into three sessions of which a User⁴ may select their order(s) be eligible for execution: (i) The Pre-Opening Session which starts at 8:00 a.m. and ends at 9:30 a.m. Eastern Time; (ii) Regular Trading Hours which runs from 9:30 a.m. to 4:00 p.m. Eastern Time; and (iii) the After Hours Session, which runs from 4:00 p.m. to 5:00 p.m. Eastern Time. The Exchange proposes to amend its rules to create a new trading session to be known as the Early Trading Session, which will run from 7:00 a.m. to 8:00 a.m. Eastern Time.⁵ Exchange Rule 1.5 would be amended to add a new definition for the term "Early Trading Session" under new paragraph (ee). "Early Trading Session" would be defined as "the time between 7:00 a.m. and 8:00 a.m. Eastern Time."⁶

The Exchange also proposes to amend Rule 11.1(a) to account for the Early Trading Session starting at 7:00 a.m. Eastern Time. Other than the proposal to adopt an Early Trading Session starting at 7:00 a.m. Eastern Time, the Exchange does not propose to amend

the substance or operation of Rule 11.1(a).

Users currently designate when their orders are eligible for execution by selecting the desired TIF instruction under Exchange Rule 11.9(b). Orders entered between 6:00 a.m. and 8:00 a.m. Eastern Time are not eligible for execution until the start of the Pre-Opening Session, or Regular Trading Hours,⁷ depending on the TIF selected by the User. Users may enter orders in advance of the trading session they intend the order to be eligible for. For example, Users may enter orders starting at 6:00 a.m. Eastern Time with a TIF of Regular Hours Only, which designates that the order only be eligible for execution during Regular Trading Hours.⁸ As stated above, Users may enter orders as early as 6:00 a.m. Eastern Time, but those orders would not be eligible for execution until the start of the Pre-Opening Session at 8:00 a.m. Some Users have requested the ability for their orders to be eligible for execution starting at 7:00 a.m. Eastern Time. Therefore, the Exchange is proposing to adopt the Early Trading Session as discussed herein.

Order entry and execution during the Early Trading Session would operate in the same manner as it does during the Pre-Opening Session. As amended, Exchange Rule 11.1(a) would state that orders entered between 6:00 a.m. and 7:00 a.m. Eastern Time, rather than 6:00 a.m. and 8:00 a.m. Eastern Time, would not be eligible for execution until the start of the Early Trading Session, Pre-Opening Session, or Regular Trading Hours, depending on the TIF selected by the User. Exchange Rule 11.1(a) will also be amended to state that the Exchange will not accept the following orders prior to 7:00 a.m. Eastern Time, rather than 8:00 a.m.: BATS Post Only Orders,⁹ Partial Post Only at Limit Orders,¹⁰ Intermarket Sweep Orders ("ISOs"),¹¹ BATS Market Orders¹² with a TIF other than Regular Hours Only, Minimum Quantity Orders¹³ that also include a TIF of Regular Hours Only, and all orders with a TIF instruction of Immediate-or-Cancel ("IOC")¹⁴ or Fill-or-Kill ("FOK").¹⁵ At the commencement of the Early Trading Session, orders entered between 6:00

⁴ "User" is defined as "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3." See Exchange Rule 1.5(cc).

⁵ The Exchange notes that NYSE Arca, Inc. ("NYSE Arca") operates an Opening Session that starts at 4:00 a.m. Eastern Time (1:00 a.m. Pacific Time) and ends at 9:30 a.m. Eastern Time (6:30 a.m. Pacific Time). See NYSE Arca Rule 7.34(a)(1). The Nasdaq Stock Market LLC ("Nasdaq") operates a pre-market session that also opens at 4:00 a.m. and ends at 9:30 a.m. Eastern Time. See Nasdaq Rule 4701(g). See also Securities Exchange Act Release No. 69151 (March 15, 2013), 78 FR 17464 (March 21, 2013) (SR-Nasdaq-2013-033) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Pre-Market Hours of the Exchange to 4:00 a.m. EST).

⁶ An Exchange having bifurcated after hours trading sessions is not novel. For example, the Chicago Stock Exchange, Inc. ("CHX") maintains two after hours trading sessions. See CHX Article 20, Rule 1(b). See also Securities Exchange Act Release No. 60605 (September 1, 2009), 74 FR 46277 (September 8, 2009) (SR-CHX-2009-13) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adding Additional Trading Sessions).

⁷ "Regular Trading Hours" is defined as "the time between 9:30 a.m. and 4:00 p.m. Eastern Time." See Exchange Rule 1.5(w).

⁸ See Exchange Rule 11.9(b)(7).

⁹ See Exchange Rule 11.9(c)(6).

¹⁰ See Exchange Rule 11.9(c)(7).

¹¹ See Exchange Rule 11.9(d).

¹² See Exchange Rule 11.9(a)(2).

¹³ See Exchange Rule 11.9(c)(5).

¹⁴ See Exchange Rule 11.9(b)(1).

¹⁵ See Exchange Rule 11.9(b)(6).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange notes that its affiliate, BATS Exchange, Inc., ("BZX") filed a proposed rule change for immediate effectiveness with the Commission on January 7, 2016 to amend its rules to also: (i) Create a new trading session to be known as the Early Trading Session, which will run from 7:00 a.m. to 8:00 a.m. Eastern Time; and (ii) adopt identical TIF instructions. See file no. SR-BATS-2016-01 [sic].

a.m. and 7:00 a.m. Eastern Time, rather than 6:00 a.m. and 8:00 a.m. Eastern Time, will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the BATS Book,¹⁶ routed, cancelled, or executed in accordance with the terms of the order. As amended, Rule 11.1(a) would state that orders may be executed on the Exchange or routed away from the Exchange during Regular Trading Hours and during the Early Trading, Pre-Opening and After Hours Trading Sessions.

Operations. From the Members' operational perspective, the Exchange's goal is to permit trading for those that choose to trade, without imposing burdens on those that do not. Thus, for example, the Exchange will not require any Member to participate in the Early Trading Session, including not requiring registered market makers to make two-sided markets between 7:00 a.m. and 8:00 a.m., just as it does not require such participation between 8:00 a.m. and 9:30 a.m.¹⁷ The Exchange will minimize Members' preparation efforts to the greatest extent possible by allowing Members to trade beginning at 7:00 a.m. with the same equipment, connectivity, order types, and data feeds they currently use from 8:00 a.m. onwards.

Opening Process. The Exchange will offer no opening process at 7:00 a.m., just as it offers no opening process at 8:00 a.m. today. Instead, at 7:00 a.m., the System will "wake up" by loading in price/time priority all open trading interest entered after 6:00 a.m.¹⁸ Also at 7:00 a.m., the Exchange will open the execution system and accept new eligible orders, just as it currently does at 8:00 a.m. Members will be permitted to enter orders beginning at 6:00 a.m. Market Makers will be permitted but not required to open their quotes beginning at 7:00 a.m. in the same manner they open their quotes today beginning at 8:00 a.m.

Order Types. Every order type that is currently available beginning at 8:00 a.m. will be available beginning at 7:00 a.m.¹⁹ All other order types, and all order type behaviors, will otherwise remain unchanged. The Exchange will not extend the expiration times of any orders. For example, an order that is currently available from 8:00 a.m. to 4:00 p.m. will be modified to be

available from 7:00 a.m. to 4:00 p.m. An order that is available from 8:00 a.m. to 9:30 a.m. will be modified to be available from 7:00 a.m. to 9:30 a.m. Users must continue to enter a TIF instruction along with their order to indicate when the order is eligible for execution.²⁰

Routing Services. The Exchange will route orders to away markets between 7:00 a.m. and 8:00 a.m., just as it does today between 8:00 a.m. and 9:30 a.m.²¹ All routing strategies set forth in Exchange Rule 11.13 will remain otherwise unchanged, performing the same instructions they perform between 7:00 a.m. and 8:00 a.m. today.²²

Order Processing. Order processing will operate beginning at 7:00 a.m. just as it does today beginning at 8:00 a.m. There will be no changes to the ranking, display, and execution processes or rules.

Data Feeds. The Exchange will report the best bid and offer on the Exchange to the appropriate network processor, as it currently does beginning 8:00 a.m.²³ The Exchange's proprietary data feeds will be disseminated beginning at 7:00 a.m. using the same formats and delivery mechanisms with which the Exchange currently disseminates them beginning at 8:00 a.m.

Trade Reporting. Trades executed between 7:00 a.m. and 8:00 a.m. will be reported to the appropriate network processor with the ".T" modifier, just as they are reported today between 8:00 a.m. and 9:30 a.m.²⁴

Market Surveillance. The Exchange's commitment to high-quality regulation at all times will extend to 7:00 a.m. The Exchange will offer all surveillance coverage currently performed by the Exchange's surveillance systems, which will launch by the time trading starts at 7:00 a.m.

Clearly Erroneous Trade Processing. The Exchange will process trade breaks beginning at 7:00 a.m. pursuant to Exchange Rule 11.17, just as it does today beginning at 8:00 a.m.

Related changes to Rules 3.21, 11.9, 11.13, 11.17 and 14.1. The Exchange proposes to also make the following changes to Rules 3.21, 11.9, 11.13, 11.17 and 14.1 to reflect the adoption of the Early Trading Session:

- Rule 3.21, Customer Disclosures. In sum, Exchange Rule 3.21 prohibits Members from accepting an order from a customer for execution in the Pre-

Opening or After Hours Trading Session without disclosing to their customer that extended hours trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk. The Exchange proposes to amend Rule 3.21 to include the Early Trading Session as part of the Member's required disclosures to their customers.

- Rule 11.9, Orders and Modifiers. The Exchange proposes to amend the description of BATS Market Orders under Rule 11.9(a)(2), Market Maker Peg Orders under Rule 11.9(c)(16), and Supplemental Peg Orders under Rule 11.9(c)(19) to account for the Early Trading Session. BATS Market Orders are currently not eligible for execution during the Pre-Opening Session or After Hours Trading Session. Rule 11.9(a)(2) would be amended to state that BATS Market Orders would also not be eligible for execution during the Early Trading Session. Market Maker Peg Orders may currently be submitted to the Exchange starting at the beginning of the Pre-Opening Session, but the order will not be executable or automatically priced until the beginning of Regular Trading Hours. Rule 11.9(c)(16) would be amended to state that Market Maker Peg Orders may be submitted to the Exchange starting at the beginning of the Early Trading Session. Market Maker Peg Orders would continue to not be executable or automatically priced until the beginning of Regular Trading Hours. Rule 11.9(c)(19) states that Supplemental Peg Orders are eligible for execution during the Pre-Opening Session, Regular Trading Hours, and the After Hours Trading Session. Rule 11.9(c)(19) would be amended to state that Supplemental Peg Orders are also eligible for execution during the Early Trading Session. As stated above, every order type that is currently available beginning at 8:00 a.m. will be available beginning at 7:00 a.m. for inclusion in the Early Trading Session.²⁵ All other order types, and all order type behaviors, will otherwise remain unchanged. The above rules describing BATS Market Orders, Market Maker Peg Orders, and Supplemental Peg Orders specifically reference the trading sessions during which the order type is eligible for execution. Therefore, the Exchange proposes to amend the description of each order type to account for the Early Trading Session.

²⁵ See proposed amendments to Exchange Rule 11.1(a).

¹⁶ See Exchange Rule 1.5(e).

¹⁷ See Exchange Rule 11.8(d)(2) (stating that for NMS stocks (as defined in Rule 600 under Regulation NMS) a Market Maker shall adhere to the pricing obligations established by this Rule during Regular Trading Hours).

¹⁸ See Exchange Rule 11.1(a).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² See Exchange Rule 11.13(b) (Routing to Away Trading Centers).

²³ See Exchange Rule 11.14 (Trade Execution and Reporting).

²⁴ *Id.*

- Rule 11.13, Order Execution and Routing. Exchange Rule 11.13(a)(2)(B) discusses compliance with Regulation NMS and Trade Through Protections and states that the price of any execution occurring during the Pre-Opening Session or the After Hours Trading Session must be equal to or better than the highest Protected Bid or lowest Protected Offer, unless the order is marked ISO or a Protected Bid is crossing a Protected Offer. The Exchange proposes to amend Rule 11.13(a)(2)(B) to expand the rule's requirements to the Early Trading Session.

- Rule 11.17, Clearly Erroneous Executions. Exchange Rule 11.17 outlines under which conditions the Exchange may determine that an execution is clearly erroneous. The Exchange proposes to amend Rule 11.17 to include executions that occur during the Early Trading Session.²⁶ Exchange Rule 11.17(c)(1) sets forth the numerical guidelines the Exchange is to follow when determining whether an execution was clearly erroneous during Regular Trading Hours or the Pre-Opening or After Hours Trading Session. Exchange Rule 11.17(c)(3) sets forth additional factors the Exchange may consider in determining whether a transaction is clearly erroneous. These factors include Pre-Opening and After Hours Trading Session executions. The Exchange proposes to amend Rule 11.17(c)(1) and (3) to include executions occurring during the Early Trading Session.

- Rule 14.1, Unlisted Trading Privileges. The Exchange proposes to amend Rules 14.1(c)(2), and Interpretation and Policies .01(a) and (b) to account for the proposed Early Trading Session. Specifically, the Exchange proposes to amend paragraph (c)(2) to state that an information circular distributed by the Exchange prior to the commencement of trading of a UTP Derivative Security²⁷ will include the risk of trading during the Early Trading Session, in addition to the Pre-Opening Session and After Hours Trading Session. In addition, the Exchange proposes to amend Interpretation and Policies .01(a) to add Early Trading Session to the paragraph's title and to state that if a UTP Derivative Security begins trading on the Exchange in the Early Trading Session or Pre-Opening Session and subsequently a temporary interruption occurs in the calculation or wide dissemination of the Intraday Indicative Value ("IIV") or the

value of the underlying index, as applicable, to such UTP Derivative Security, by a major market data vendor, the Exchange may continue to trade the UTP Derivative Security for the remainder of the Early Trading Session and Pre-Opening Session. Lastly, the Exchange proposes to amend Interpretation and Policies .01(b) to add Early Trading Session to the paragraph's title and to amend subparagraph (ii) of that section to state that if the IIV or the value of the underlying index continues not to be calculated or widely available as of the commencement of the Early Trading Session or Pre-Opening Session on the next business day, the Exchange shall not commence trading of the UTP Derivative Security in the Early Trading Session or Pre-Opening Session that day.

TIF Instructions

The Exchange proposes to adopt three new TIF instructions under Rule 11.9(b). Under Rule 11.1(a), a User may designate when their order is eligible for execution by selecting the desired TIF instruction under Exchange Rule 11.9(b). Currently, orders entered between 6:00 a.m. and 8:00 a.m. Eastern Time are not eligible for execution until the start of the Pre-Opening Session, or Regular Trading Hours, depending on the TIF selected by the User. Users may enter orders in advance of the trading session they intend the order to be eligible for. For example, Users may enter orders starting at 6:00 a.m. Eastern Time with a TIF of Regular Hours Only, which designates that the order only be eligible for execution during Regular Trading Hours.²⁸ As stated above, Users may enter orders as early as 6:00 a.m. Eastern Time, but those orders would not be eligible for execution until the start of the Pre-Opening Session at 8:00 a.m.

As discussed above, the Exchange proposed the Early Trading Session in response to User requests for their orders to be eligible for execution starting at 7:00 a.m. Eastern Time. Some Users, however, do not wish for their orders to be executed during the Early Trading Session and have requested their orders continue to not be eligible for execution until the start of the Pre-Opening Session at 8:00 a.m. Therefore, the Exchange proposes to adopt the following three new TIF instructions under Rule 11.9(b):

- Pre-Opening Session Plus ("PRE"). A limit order that is designated for execution during the Pre-Opening Session and Regular Trading Hours. Like the current Good-'til Cancel

("GTC") TIF instruction,²⁹ any portion not executed expires at the end of Regular Trading Hours.

- Pre-Opening Session 'til Extended Day ("PTX"). A limit order that is designated for execution during the Pre-Opening Session, Regular Trading Hours, and the After Hours Session. Like the current Good-'til Extended Day ("GTX") TIF instruction,³⁰ any portion not executed expires at the end of the After Hours Session.

- Pre-Opening Session 'til Day ("PTD"). A limit order that is designated for execution during the Pre-Opening Session, Regular Trading Hours, and the After Hours Session. Like the current Good-'til Day ("GTD") TIF instruction,³¹ any portion not executed will be cancelled at the expiration time assigned to the order, which can be no later than the close of the After Hours Trading Session.

Under each proposed TIF instruction, Users may designate that their orders only be eligible for execution starting with the Pre-Opening Session. This is similar to the existing TIF of Regular Hours Only, which designates that the order only be eligible for execution during Regular Trading Hours, which starts at 9:30 a.m. Eastern Time. In such case, a User may enter orders starting at 6:00 a.m. Eastern Time, but such order would not be eligible for execution until 9:30 a.m. Eastern Time. Likewise, under each of the proposed TIF instructions, a User may continue to enter orders as early as 6:00 a.m., but such orders would not be eligible for execution until 8:00 a.m. Eastern Time, the start of the Pre-Opening Session.³² At the commencement of the Pre-Opening Session, orders entered between 6:00 a.m. and 8:00 a.m. Eastern Time with one of the proposed TIF instructions will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the BATS Book, routed, cancelled, or executed in accordance with the terms of the order.³³

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,³⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,³⁵ in particular, in that it is designed to prevent fraudulent and

²⁶ The Exchange notes that it also proposes to delete the "s" from the word "tapes" in paragraph (c)(3) of Rule 11.17.

²⁷ See Exchange Rule 14.1(c).

²⁸ See Exchange Rule 11.9(b)(7).

²⁹ See Exchange Rule 11.9(b)(3).

³⁰ See Exchange Rule 11.9(b)(5).

³¹ See Exchange Rule 11.9(b)(4).

³² Orders utilizing one of the proposed TIF instructions would not be eligible for execution during the proposed Early Trading Session.

³³ See Exchange Rule 11.1(a).

³⁴ 15 U.S.C. 78f.

³⁵ 15 U.S.C. 78f(b)(5).

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. The Exchange also believes that the proposed rule change is non-discriminatory as it would apply to all Members uniformly. The proposed rule change in whole is designed to attract more order flow to the Exchange between 7:00 a.m. and 9:30 a.m. Eastern Time. Increased liquidity during this time will lead to improved price discovery and increased execution opportunities on the Exchange, therefore, promoting just and equitable principles of trade, and removing impediments to and perfecting the mechanism of a free and open market and a national market system.

Early Trading Session

The Exchange believes its proposal to adopt the Early Trading Session promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, prevents fraudulent and manipulative acts and practices, and, in general, protects investors and the public interest. The Exchange believes that the Early Trading Session will benefit investors, the national market system, Members, and the Exchange market by increasing competition for order flow and executions, and thereby spur product enhancements and lower prices. The Early Trading Session will benefit Members and the Exchange market by increasing trading opportunities between 7:00 a.m. and 8:00 a.m. without increasing ancillary trading costs (telecommunications, data, connectivity, etc.) and, thereby, decreasing average trading costs per share. The Exchange notes that trading during the proposed Early Trading Session has been available on NYSE Arca and Nasdaq.³⁶ The Exchange believes that the availability of trading between 7:00 a.m. and 8:00 a.m. has been beneficial to market participants including investors and issuers on other markets. Introduction of the Early Trading Session on the Exchange will further expand these benefits.

Additionally, the Exchange Act's goal of creating an efficient market system includes multiple policies such as price discovery, order interaction, and competition among markets. The Exchange believes that offering a competing trading session will promote

all of these policies and will enhance quote competition, improve liquidity in the market, support the quality of price discovery, promote market transparency, and increase competition for trade executions while reducing spreads and transaction costs. Additionally, increasing liquidity during the Early Trading Session will raise investors' confidence in the fairness of the markets and their transactions, particularly due to the lower volume of trading occurring prior to opening.

Although the Exchange will be operating with bifurcated pre-opening trading sessions, the Exchange notes that having bifurcated after hours trading sessions is not novel. For example, the CHX maintains two after hours trading sessions,³⁷ the Late Trading Session, which runs from 4:00 p.m. to 4:15 p.m. Eastern Time, and the Late Crossing Session, which runs from 4:15 p.m. to 5:00 Eastern Time. As such, the Exchange does not believe that the proposed rule change will disproportionately increase the complexity of the market.

The expansion of trading hours through the creation of the Early Trading Session promotes just and equitable principles of trade by providing market participants with additional options in seeking execution on the Exchange. Order entry and execution during the Early Trading Session would operate in the same manner as it does today during the Pre-Opening Session. In addition, the Exchange will report the best bid and offer on the Exchange to the appropriate network processor, and the Exchange's proprietary data feeds will be disseminated, beginning at 7:00 a.m. The proposal will, therefore, facilitate a well-regulated, orderly, and efficient market during a period of time that is currently underserved.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because all surveillance coverage currently performed by the Exchange's surveillance systems will launch by the time trading starts at 7:00 a.m. Eastern Time. Further, the Exchange believes that the proposed rule change will protect investors and the public interest because the Exchange is updating its customer disclosure requirements to prohibit Members from accepting an order from a customer for execution in the Early Trading Session without disclosing to their customer that extended hours trading involves

material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk.

TIF Instructions

The Exchange believes its proposed TIF instructions promote just and equitable principles of trade, and remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed TIF instructions will benefit investors by providing them with greater control over their orders. The proposed TIF instructions simply provide investors with additional optionality for when their orders may be eligible for execution.

The ability to select the trading sessions or time upon which an order is to be eligible for execution is not novel and is currently available on the Exchange and other market centers. For example, on the Exchange, a User may enter an order starting at 6:00 a.m. Eastern Time and select that such order not be eligible for execution until 9:30 a.m., the start of Regular Trading Hours using TIF instructions of Regular Hours Only.³⁸ In addition, like each of the proposed TIF instructions, Nasdaq utilizes a TIF, referred to as ESCN, under which an order using its SCAN routing strategy entered prior to 8:00 a.m. Eastern Time is not eligible for execution until 8:00 a.m. Eastern Time.³⁹

The Exchange proposed the Early Trading Session discussed above in response to User requests for their orders to be eligible for execution starting at 7:00 a.m. Eastern Time. However, some Users have requested their orders continue to not be eligible for execution until the start of the Pre-Opening Session at 8:00 a.m. Therefore, the Exchange proposed the three new TIF instructions in order for Users to designate their orders as eligible for execution as of the start of the Pre-Opening Session.

Members will maintain the ability to cancel or modify the terms of their order at any time, including during the time from when the order is routed to the Exchange until the start of the Pre-Opening Session. As a result, a Member who utilizes the proposed TIF instructions, but later determines that market conditions favor execution

³⁸ See Exchange Rule 11.9(b)(7). See also Nasdaq Rule 4703(a) (outlining TIF instructions that do not activate orders until 9:30 a.m. Eastern Time).

³⁹ See Nasdaq Rule 4703(a). See also Nasdaq Rule 4703(a)(7).

³⁶ See *supra* note 5.

³⁷ See *supra* note 6.

during Early Trading Session, can cancel the order residing at the Exchange and enter a separate order to execute during the Early Trading Session. While a User must make every effort to execute a marketable customer order it receives fully and promptly,⁴⁰ doing so might not result in the best execution possible for the customer. Such Users may wish to delay the execution of their orders until the start of the Pre-Opening Session for various reasons, including the characteristics of the market for the security as well as the amount of liquidity available in the market as part of their best execution obligations.⁴¹

Specifically, FINRA Rule 5310(a)(1) provides that a Member must use reasonable diligence to ascertain the best market for a security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. And importantly, FINRA Rule 5310(a)(1)(A) states that one of the factors that will be considered in determining whether a member has used “reasonable diligence” is “the character of the market for the security (e.g., price, volatility, relative liquidity, and pressure on available communication).⁴² As such, a Member conducting “reasonable diligence” may determine that due to the character of the Early Trading Session, along with considering other relevant factors, the Member wants to utilize the proposed TIF instructions.

Members will be accustomed to this additional analysis in determining whether to participate in the Early Trading Session, Pre-Opening Session, or Regular Trading Hours. The regulatory guidance with respect to best execution anticipates the continued evolution of execution venues:

[B]est execution is a facts and circumstances determination. A broker-dealer must consider several factors affecting the quality of execution, including, for example, the opportunity for price

⁴⁰ See Supplemental Material .01 to Financial Industry Regulatory Authority, Inc. (“FINRA”) Rule 5310.

⁴¹ A Member’s best execution obligation may also include cancelling an order when market conditions deteriorate and could result in an inferior execution or informing customers where the execution of their order may be delayed intentionally as the Member utilizes reasonable diligence to ascertain the best market for the security. See FINRA Rule 5130. See also FINRA Regulatory Notice 15–46, *Best Execution. Guidance on Best Execution Obligations in Equity, Options, and Fixed Income Markets*, (November 2015).

⁴² Tellingly, these characteristics are reflected in the disclosure requirements mandated by Exchange Rule 3.21 before a Member may accept an order from a customer for execution in the Pre-Opening, After Hours, and proposed Early Trading Sessions.

improvement, the likelihood of execution . . . , the speed of execution and the trading characteristics of the security, together with other non-price factors such as reliability and service.⁴³

To the extent there may be best execution obligations at issue, they are no different than the best execution obligations faced by brokers in the current market structure,⁴⁴ including the use of the currently available Regular Trading Hours TIF instruction or SCAN/ESCN routing strategy available on Nasdaq discussed above.⁴⁵ However, similar to why a Member may utilize the Regular Trading Hours TIF instruction, a User may wish to forgo a possible execution during the Early Trading Session and/or Pre-Opening Session if they believe doing so is consistent with their best execution obligations as they anticipate that the market for the security may improve upon the start of the Pre-Opening Session and/or Regular Trading Hours.⁴⁶ Applicable best execution guidance contains no formulaic mandate as to whether or how brokers should direct orders. The optionality created by the proposed rule change simply represents one tool available to Members in order to meet their best execution obligations.

The Exchange notes that it would subject orders that are eligible for execution as of the start of the Pre-Opening Session to all of the Exchange’s standard regulatory checks, as it currently does with all orders upon entry. These checks include compliance with Regulation NMS,⁴⁷ Regulation SHO,⁴⁸ as well as relevant Exchange rules.⁴⁹

⁴³ See Securities Exchange Act Release No. 43950 (November 17, 2000), 65 FR 75414 (December 1, 2000) (“Disclosure of Order Execution and Routing Practices release”).

⁴⁴ The Commission has also indicated a User’s best execution obligation may not be satisfied simply by obtaining the best bid or offer (“BBO”). See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (“Order Executions Obligations release”). While a User may seek the most favorable terms reasonably available under the circumstances of the transaction, such terms may not necessarily in every case be the best price available. Id. See also FINRA Regulatory Notice 15–46, *Best Execution. Guidance on Best Execution Obligations in Equity, Options, and Fixed Income Markets*, (November 2015).

⁴⁵ See *supra* note 39.

⁴⁶ Exchange Rule 3.21 requires Member make certain disclosures to their customers prior to accepting an order for execution outside of Regular Trading Hours. These disclosures include, among other things, the risk of lower liquidity, higher volatility, wider spreads, and changing prices in extended hours trading as compared to regular market hours. See Exchange Rule 3.21(a)–(g).

⁴⁷ 17 CFR 242.610–611.

⁴⁸ 17 CFR 242.200–204.

⁴⁹ See, e.g., Exchange Rule 11.13(a).

Lastly, the Exchange reminds Members of their regulatory obligations when submitting an order one of the proposed TIF instructions. The Market Access Rule under Rule 15c3–5 of the Act requires broker-dealers to, among other things, implement regulatory risk management controls and procedures that are reasonably designed to prevent the entry of orders that fail to comply with regulatory requirements that apply on a pre-order entry basis.⁵⁰ These pre-trade controls must, for example, be reasonably designed to assure compliance with Exchange trading rules and Commission rules under Regulation SHO⁵¹ and Regulation NMS.⁵² In accordance with the Market Access Rule, a Member’s procedures must be reasonably designed to ensure compliance with their applicable regulatory requirements, not just at the time the order is routed to the Exchange, but also at the time the order becomes eligible for execution.

(B) Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that its proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will benefit investors, the national market system, Members, and the Exchange market by increasing competition for order flow and executions during the pre-market sessions, thereby spurring product enhancements and lowering prices. The Exchange believes the proposed Early Trading Session would enhance competition by enabling the Exchange to directly compete with NYSE Arca and Nasdaq for order flow and executions starting at 7:00 a.m., rather than 8:00 a.m. Eastern Time. In addition, the proposed TIF instructions will enhance competition by enabling the Exchange to offer functionality similar to Nasdaq.⁵³ The fact that the extending of the proposed Early Trading Session and TIF instructions are themselves a response to the competition provided by other markets is evidence of its pro-competitive nature.

⁵⁰ See Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010) (File no. S7–03–10).

⁵¹ See e.g., Question 2.6 of the Division of Trading and Markets: Response to Frequently Asked Questions Concerning Regulations SHO, available at <https://www.sec.gov/divisions/marketreg/mfaqregsho1204.htm>.

⁵² 17 CFR 240.610–611.

⁵³ See *supra* note 39.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

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-2016-03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BYX-2016-03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BYX-2016-03 and should be submitted on or before March 21, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁴

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-04251 Filed 2-26-16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77209; File No. SR-BATS-2015-94]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To List and Trade Shares of the SPDR DoubleLine Emerging Markets Fixed Income ETF of the SSgA Active Trust

February 23, 2016.

On December 28, 2015, BATS Exchange, 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 list and trade shares of the SPDR® DoubleLine® Emerging Markets Fixed Income ETF of the SSgA Active Trust under BATS Rule 14.11(i). The proposed rule change was published for comment in the **Federal Register** on January 15, 2016.³ The Commission has not received any comments on the proposal.

Section 19(b)(2) of the Act⁴ 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 29, 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 14, 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-2015-94).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-04247 Filed 2-26-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77205; File No. 4-631]

Joint Industry Plan; Notice of Filing of the Tenth Amendment to the National Market System Plan To Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

February 22, 2016.

I. Introduction

On February 19, 2016, Nasdaq, Inc., on behalf of the following parties to the National Market System Plan to Address Extraordinary Market Volatility (the

⁵⁴ 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. 76862 (Jan. 11, 2016), 81 FR 2282.

⁴ 15 U.S.C. 78s(b)(2).

⁵ *Id.*

⁶ 17 CFR 200.30-3(a)(31).

“Plan”):¹ BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc. (“FINRA”), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, National Stock Exchange, Inc., the New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc. (collectively with the FINRA, the “Participants”), filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”)² and Rule 608 thereunder,³ a proposal to amend the Plan (“Tenth Amendment”).⁴ The proposal reflects changes unanimously approved by the Participants. The Tenth Amendment proposes to extend the pilot for one year and to make one modification to the Plan, as discussed below. A copy of the Plan, as proposed to be amended is attached as Exhibit A

¹ On May 31, 2012, the Commission approved the Plan, as modified by Amendment No. 1. *See* Securities Exchange Act Release No. 67091, 77 FR 33498 (Jun. 6, 2012) (File No. 4–631) (“Approval Order”). On February 26, 2013, the Commission published for immediate effectiveness the Second Amendment to the Plan. *See* Securities Exchange Act Release No. 68953 (Feb. 20, 2013), 78 FR 13113. On April 3, 2013, the Commission approved the Third Amendment to the Plan. *See* Securities Exchange Act Release No. 69287, 78 FR 21483 (Apr. 10, 2013). On September 3, 2013, the Commission published for immediate effectiveness the Fourth Amendment to the Plan. *See* Securities Exchange Act Release No. 70273 (Aug. 27, 2013), 78 FR 54321 (Fourth Amendment). On September 26, 2013, the Commission approved the Fifth Amendment to the Plan. *See* Securities Exchange Act Release No. 70530, 78 FR 60937 (Oct. 2, 2013). On January 13, 2014, the Commission published for immediate effective the Sixth Amendment to the Plan. *See* Securities Exchange Act Release No. 71247 (Jan. 7, 2014), 79 FR 2204 (Sixth Amendment). On April 3, 2014, the Commission approved the Seventh Amendment to the Plan. *See* Securities Exchange Act Release No. 71851, 79 FR 19687 (Apr. 9, 2014). On February 19, 2015, the Commission approved the Eight Amendment to the Plan. *See* Securities Exchange Act Release No. 74323, 80 FR 10169 (Feb. 25, 2015). On October 22, 2015, the Commission approved the Ninth Amendment to the Plan. *See* Securities Exchange Act Release No. 76244, 80 FR 66099 (Oct. 28, 2015).

² 15 U.S.C. 78k–1.

³ 17 CFR 242.608.

⁴ *See* Letter from Paul Roland, Principal, U.S. Equities, Nasdaq, to Brent Fields, Secretary, Commission, dated February 18, 2016. (“Transmittal Letter”). This February letter replaces and supersedes, in its entirety, the letter dated October 22, 2015 from Christopher B. Stone, FINRA, to Brent J. Fields, Secretary, SEC, (proposing a tenth amendment to the Plan).

hereto. The Commission is publishing this notice to solicit comments from interested persons on the Tenth Amendment.⁵

II. Description of the Plan

Set forth in this Section II is the statement of the purpose and summary of the Amendment, along with the information required by Rule 608(a)(4) and (5) under the Exchange Act,⁶ prepared and submitted by the Participants to the Commission.⁷

A. Statement of Purpose and Summary of the Plan Amendment

The Participants filed the Plan on April 5, 2011, to create a market-wide Limit Up-Limit Down (“LULD”) mechanism intended to address extraordinary market volatility in NMS Stocks, as defined in Rule 600(b)(47) of Regulation NMS under the Exchange Act. The Plan sets forth procedures that provide for market-wide LULD requirements that prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands.⁸ The LULD requirements are coupled with Trading Pauses, as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves. In particular, the Participants adopted this Plan to address the type of sudden price movements that the market experienced on the afternoon of May 6, 2010.

As set forth in more detail in the Plan, all Trading Centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the requirements specified in the Plan. More specifically, the single plan processor responsible for consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act will be responsible for calculating and disseminating a Lower Price Band and Upper Price Band, as provided for in Section V of the Plan. Section VI of the

Plan sets forth the LULD requirements of the Plan, and in particular, that all Trading Centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trades at prices that are below the Lower Price Band or above the Upper Price Band for an NMS Stock, consistent with the Plan.

The Plan was initially approved for a one-year pilot period, which began on April 8, 2013.⁹ Accordingly, the pilot period was scheduled to end on April 8, 2014. As initially contemplated, the Plan would have been fully implemented across all NMS Stocks within six months of initial Plan operations, which meant there would have been full implementation of the Plan for six months before the end of the pilot period. However, pursuant to the Fourth Amendment to the Plan,¹⁰ the Participants modified the implementation schedule of Phase II of the Plan to extend the time period as to when the Plan would fully apply to all NMS Stocks. Accordingly, the Plan was not implemented across all NMS Stocks until December 8, 2013. Pursuant to the Sixth Amendment to the Plan,¹¹ which further modified the implementation schedule of Phase II of the Plan, the date for full implementation of the Plan was moved to February 24, 2014.

In addition, pursuant to the Seventh Amendment to the Plan,¹² the pilot period was extended from April 8, 2014 to February 20, 2015, and submission of the assessment of the Plan operations was accordingly extended to September 30, 2014. Without such extension, the Plan would have been in effect for the full trading day for less than two months before the end of the pilot period. The Participants believed that this short period of full implementation of the Plan would have provided insufficient time for both the Participants and the Commission to assess the impact of the Plan and determine whether the Plan should be modified prior to approval on a permanent basis.

⁹ *See* Section VIII of the Plan.

¹⁰ *See supra* note 1.

¹¹ *See id.*

¹² *See id.*

⁵ 17 CFR 242.608.

⁶ *See* 17 CFR 242.608(a)(4) and (a)(5).

⁷ *See* Transmittal Letter, *supra* note 4.

⁸ Unless otherwise specified, the terms used herein have the same meaning as set forth in the Plan.

The Commission set forth in its Approval Order a number of criteria for use in assessing the impact of the Plan and calibration of the Percentage Parameters. The Supplemental Joint Assessment prepared by Professor James J. Angel (“Angel Report”)¹³ and the various studies by the Participants were designed to address each of these criteria and provide data-driven support for any proposed recommendations. On September 29, 2014, the Participants submitted a Participant Impact Assessment,¹⁴ which provided the Commission with the Participants’ initial observations in each area required to be addressed under Appendix B to the Plan. On May 28, 2015, the Participants submitted a Supplemental Joint Assessment, in which the Participants recommended that the Plan be adopted as permanent, with certain modifications, and discussed the areas of analysis set forth in Appendix B to the Plan.¹⁵ On August 14, 2015, Commission staff communicated that the Participants must, among other things, provide additional analysis required pursuant to Appendix B.III.H of the Plan and consider alternative approaches to proposed changes.¹⁶

(1) Executive Summary

The Participants propose to amend the Plan to extend the pilot period of the Plan to April 21, 2017 with one modification to improve the operation of the Plan. Specifically, the Participants propose to modify the definition of Opening Price in cases where a security does not trade in the opening auction on the Primary Listing Exchange, which changes the manner in which the Reference Price of the day is determined.

Currently under the Plan, if a security opens on the Primary Listing Exchange with a quotation because no trade is executed in the opening auction, the first Reference Price for such security would be the bid and ask mid-point of such quotations on the Primary Listing Exchange (“BAM”). After reviewing the data obtained from multiple analyses, the Participants recommend revising the current methodology for determining the initial Reference Price to a methodology that uses the closing price

of the NMS Stock on the Primary Listing Exchange on the previous trading day, or if no such closing price exists, the last sale on the Primary Listing Exchange.

The Participants believe that this proposed modification to the manner in which the first Reference Price of the trading day is determined will improve the operation of the Plan’s Trading Pause mechanism, so that Trading Pauses remain meaningful events that are indicative of potential volatility in the paused security.

Below the Participants also present additional analyses regarding whether Trading Pauses are too long or short and whether the reopening procedures should be adjusted. The Participants are not recommending any changes to the length of Trading Pauses or to the reopening procedures at this time, as further discussed below.

Last, the Participants are proposing to reorder three defined terms under Section I, which are currently not in alphabetical order. Specifically, the term “Reference Price” currently follows the defined terms “Regular Trading Hours” and “Regulatory Halt.” In keeping with the convention of the definitions section, the Participants are placing these terms in alphabetical order.

(2) Supplementary Analysis on the Length of Trading Pauses and Reopening Procedures

As discussed above, as required by the Plan, the Participants submitted a Participant Impact Assessment and a subsequent Supplemental Joint Assessment, in which the Participants discussed the areas of analysis set forth in Appendix B.III of the Plan. The Commission staff requested that the Participants present additional analysis on the operation of the Plan, particularly regarding Item H of Section III of Appendix B, which required that the Participants assess whether the Trading Pauses are too long or short and whether the reopening procedures should be adjusted.¹⁷

To this end, the Primary Listing Exchanges undertook a study to assess the current Plan Parameters around Trading Pauses and reopenings as well as the potential for repeat pauses. The statistical evidence suggests that the

current Plan parameters around reopenings are sufficient to promote liquidity in securities following a Trading Pause under the Plan. Although most Trading Pauses end within five minutes, the Plan permits the Primary Listing Exchange to extend the Trading Pause to 10 minutes. Following the ten minute period, market participants may resume trading, even if the Primary Listing Exchange has not reopened the security and has published a non-regulatory order imbalance halt.

(a) Nasdaq-Listed Securities

The operation of LULD during reopenings reflects the same strengths and weaknesses as trading at other times of day for subject securities. Thus, active stocks that have temporary market disruptions reopen with active participation and effective price discovery as they do at the start of the trading day (and during continuous trading). Likewise, stocks experiencing extreme price uncertainty often have price variation before and after a Trading Pause and sometimes pause repeatedly. Inactive stocks that pause often lack investor trading interest, leading to insufficient participation in reopening crosses.

The majority of securities that experience Trading Pauses currently reopen without any trades occurring in the reopening cross (3,916 out of 4,726 cases in Nasdaq-listed securities from January through August 2015, or 83% (see Table 1)). Such securities typically have very low volume and relatively wide spreads, and, therefore, the BAM Reference Price is away from the last sale price. Frequently, these securities also lack an opening cross on the day on which the pause occurs.

Trading volume in these securities following a Trading Pause typically is very low, with a mean of 264 shares and a median of zero shares over the five minute-period following the pause. In about a third of cases (36%), these securities pause again within the next five minutes because they continue to have little trading interest and Reference Prices that are not indicative of the current market for the security. Price volatility for these securities is low because they infrequently trade.

¹³ See Letter from Christopher B. Stone, Vice President, FINRA, to Brent J. Fields, Secretary, SEC, dated May 28, 2015 and accompanying Supplemental Joint Assessment, prepared by Professor James Angel (the “Supplemental Joint Assessment” or “Angel Report”). This report is

available for public viewing at <http://www.sec.gov/comments/4-631/4-631.shtml>.

¹⁴ See Joint SROs letter to Brent J. Fields, Secretary, SEC, dated September 29, 2014 (“Participant Impact Assessment”).

¹⁵ See *supra* note 13.

¹⁶ See Letter from Stephen Luparello, Director, Division of Trading Markets, to Christopher B. Stone, Chairman of the Plan Operating Committee, dated August 14, 2015 (“Luparello Letter”).

¹⁷ See Luparello Letter.

Table 1: Nasdaq Listed LULD Trading Pauses

Nasdaq-listed LULD halts Jan-Aug 2015, relationship between cross size and activity within 5 minutes of re-open								
Cross Size Group	Count of halts	Pct	Percent of cases that halt again within 5 minutes	Volume within 5 minutes		Price range within 5 minutes		
				Mean	Median	Mean	Median	
0 Shares	3,916	82.9%	36.2%	264	0	2%	0%	
1 - 100 shares	199	4.2%	4.5%	318	10	2%	0%	
101 - 1,000 shares	326	6.9%	4.9%	1,309	11	4%	1%	
1,001 - 10,000 shares	168	3.6%	20.2%	21,104	2,362	8%	7%	
10,001 - 100,000 shares	105	2.2%	48.6%	349,543	182,195	16%	14%	
> 100,000 shares	12	0.3%	41.7%	1,557,825	1,355,777	11%	11%	
Total	4,726		32.4%					
Nasdaq-listed LULD halts Jan-Aug 2015, relationship between cross size and activity within 5 minutes of re-open (without Aug 24)								
Cross Size Group	Count of halts	Pct	Percent of cases that halt again within 5 minutes	Volume within 5 minutes		Price range within 5 minutes		
				Mean	Median	Mean	Median	
0 Shares	3,854	85.0%	36.3%	261	0	2%	0%	
1 - 100 shares	190	4.2%	4.2%	329	20	2%	0%	
101 - 1,000 shares	284	6.3%	3.9%	1,205	1	4%	1%	
1,001 - 10,000 shares	113	2.5%	14.2%	25,278	1,583	8%	6%	
10,001 - 100,000 shares	84	1.9%	45.2%	407,615	214,899	15%	15%	
> 100,000 shares	7	0.2%	28.6%	2,199,927	3,093,142	12%	11%	
Total	4,532		32.5%					
Nasdaq-listed LULD halts Jan-Aug 2015, relationship between cross size and activity within 5 minutes of re-open (Aug 24 only)								
Cross Size Group	Count of halts	Pct	Percent of cases that halt again within 5 minutes	Volume within 5 minutes		Price range within 5 minutes		
				Mean	Median	Mean	Median	
0 Shares	62	32.0%	30.6%	429	0	2%	0%	
1 - 100 shares	9	4.6%	11.1%	82	1	0%	0%	
101 - 1,000 shares	42	21.6%	11.9%	2,013	200	8%	8%	
1,001 - 10,000 shares	55	28.4%	32.7%	12,529	4,690	8%	7%	
10,001 - 100,000 shares	21	10.8%	61.9%	117,253	15,536	19%	12%	
> 100,000 shares	5	2.6%	60.0%	658,883	349,766	10%	6%	
Total	194		30.4%					

Securities that have small reopening crosses (*i.e.*, cross sizes up to 1,000 shares in Table 1) are less likely to pause again (less than 5% of the time during the first five minutes following a Trading Pause) than securities that reopen without a trade. These securities also have relatively stable prices despite their low volumes.

The behavior of stocks that have larger reopening crosses (*i.e.*, above 1,000 shares and especially above 10,000 shares) suggests news driven volatility. In particular, securities with a trade size of more than 1,000 shares in the reopening cross were much more

likely to halt again in the next five minutes than securities with trade sizes of 1,000 shares or less in the reopening cross. These securities are more likely to trade actively and experience greater price variation in the subsequent five minutes and, therefore, are more likely to pause again within the next five minutes, reflecting continued price uncertainty. However, reopening crosses with more than 1,000 shares are less common, making up about 6% of pauses.

i. Market Conditions

Participants also considered whether market conditions stabilized after

Trading Pauses. Nasdaq compared spreads before and after each Pause (*see* Table 2). For example, Tier 1 Nasdaq-listed securities that have a reopening cross, relative quoted spreads averaged less than 1% at the time of the Pause (63 basis points), widened after the pause, but returned to 10–20 basis points 15 minutes later (10–20 basis points is \$0.01–\$0.02 on a \$10 stock). Tier 1 securities that do not have an auction and Tier 2 stocks follow a similar pattern, but with wider average spreads. The results are consistent with the impact and recovery from a news event or temporary lack of liquidity.

Table 2: Relative Quoted Spreads around LULD Trading Pauses

Relative quoted spreads around halts, Nasdaq-listed, Jan 2 - Aug 31, 2015									
Tier	Re-opening cross	Average spread in BP				Median spread in BP			
		At halt	At re-open	After 1 minute	After 15 minutes	At halt	At re-open	After 1 minute	After 15 minutes
1	Yes	63	181	72	13	74	334	112	22
1	No	853	2,136	1,825	777	595	1,963	484	88
2	Yes	433	634	365	312	464	1,051	1,052	786
2	No	8,719	4,898	3,832	2,659	3,120	3,207	1,611	937

Relative quoted spreads around halts, Nasdaq-listed, Jan 2 - Aug 31, 2015; August 24th removed									
Tier	Re-opening cross	Average spread in BP				Median spread in BP			
		At halt	At re-open	After 1 minute	After 15 minutes	At halt	At re-open	After 1 minute	After 15 minutes
1	Yes	57	127	125	11	2	34	51	16
1	No	853	2,136	1,825	777	595	1,963	484	88
2	Yes	329	454	316	313	437	1,035	1,024	815
2	No	8,889	4,966	3,898	2,698	3,165	3,207	1,601	932

Relative quoted spreads around halts, Nasdaq-listed, August 24, 2015 only									
Tier	Re-opening cross	Average spread in BP				Median spread in BP			
		At halt	At re-open	After 1 minute	After 15 minutes	At halt	At re-open	After 1 minute	After 15 minutes
1	Yes	217	817	315	114	160	462	197	27
1	No	-	-	-	-	-	-	-	-
2	Yes	1,669	1,991	1,863	1,185	706	1,271	1,241	543
2	No	7,268	7,610	3,331	2,769	2,005	3,220	1,654	1,417

Note: Means in these tables are weighted across stocks by average daily volume.

Nasdaq also looked at how prices converge toward the national best bid-ask ("NBBO") midpoint 15 minutes after a reopening (Table 3). For example, Tier 1 stocks that have a reopening cross (not including August 24th) approached the benchmark relatively smoothly. The

reopening cross averaged within 4% of the benchmark and the NBBO midpoint a minute after reopening was within 2% of the benchmark.

Tier 1 stocks that did not have a reopening cross and Tier 2 stocks approach the benchmark more erratically. As a sign of the sustained

lack of liquidity in many of these situations, the BAM often remains far from where it will be 15 minutes after the reopen. The reopening cross price, when it occurs, is on average much closer to the benchmark than the BAM even a minute after the reopen.

Table 3: Bid-Ask Mid-Points and Reopening Price Comparison

Bid-ask midpoints and re-opening price compared, Nasdaq-listed, Jan 1 - Aug 31, 2015									
Tier	Re-opening cross	Mean difference from BAM 15 minutes after halt (basis points)				Median difference from BAM 15 minutes after halt (basis points)			
		BAM at time of halt	Re-opening cross	BAM at re-opening	BAM 1 minute after re-opening	BAM at time of halt	Re-opening cross	BAM at re-opening	BAM 1 minute after re-opening
1	Yes	876	657	631	528	841	583	635	504
1	No	506		751	470	340		774	72
2	Yes	145,455	1,653	32,080	3,775	586	613	393	161
2	No	24,586,581		24,843,028	405,303	2,080		797	34

Bid-ask midpoints and re-opening price compared, Nasdaq-listed, Jan 1 - Aug 31, 2015; August 24th removed									
Tier	Re-opening cross	Mean difference from BAM 15 minutes after halt (basis points)				Median difference from BAM 15 minutes after halt (basis points)			
		BAM at time of halt	Re-opening cross	BAM at re-opening	BAM 1 minute after re-opening	BAM at time of halt	Re-opening cross	BAM at re-opening	BAM 1 minute after re-opening
1	Yes	465	355	332	187	310	311	215	153
1	No	506		751	470	340		774	72
2	Yes	163,859	1,624	35,997	4,079	545	555	354	134
2	No	25,166,311		25,429,359	414,856	2,107		797	32

Bid-ask midpoints and re-opening price compared, Nasdaq-listed, August 24, 2015 only									
Tier	Re-opening cross	Mean difference from BAM 15 minutes after halt (basis points)				Median difference from BAM 15 minutes after halt (basis points)			
		BAM at time of halt	Re-opening cross	BAM at re-opening	BAM 1 minute after re-opening	BAM at time of halt	Re-opening cross	BAM at re-opening	BAM 1 minute after re-opening
1	Yes	1,366	1,084	1,096	915	1,257	801	872	747
1	No								
2	Yes	1,473	1,615	1,150	1,043	814	964	669	367
2	No	1,717,708		11,927	4,743	1,058		794	491

Note: Means in these tables are weighted across stocks by average daily volume.

ii. Repeat Pauses

The frequency of repeated Trading Pauses in a single stock is an area of concern. From January to August 2015, 1,532 securities representing 33% of Nasdaq-listed stocks paused within five minutes of a previous pause (Table 3). Most of the pauses were in Tier 2 stocks that had little or no trading, and the Trading Pauses frequently were caused by Reference Prices that were not indicative of the current market.

There were about 100 cases that occurred in more active Nasdaq-listed stocks. One interpretation of repeat Trading Pauses in actively-traded stocks is that it reflects continued uncertainty and price volatility that cannot be avoided. Another interpretation is that the current LULD Trading Pause process can be improved.

A possible course to address these types of occurrences would be to extend the time the Primary Listing Exchange has to complete the reopening auction beyond 10 minutes and to examine whether price volatility declines. The hope would be that, with additional time, market participants would arrive at a price level that would remain stable after the reopen.

However, the data indicates that extending the duration of a Trading Pause would be unlikely to result in additional liquidity or the elimination of price instability and repeat pauses. First, 15 out of 55 Trading Pauses in Tier 1 Nasdaq-listed stocks occurred within five minutes of the opening cross, which is a very active price discovery process lasting longer than five minutes. If the opening cross of the

day often cannot address all concerns regarding price volatility, the Participants believe it is unlikely that extending pause durations would significantly reduce volatility.

Second, Nasdaq currently extends the duration of Trading Pauses in its stocks under certain conditions (see Table 4). This occurred in 58 cases between January and August 2015. The mean and median lengths of these delays were four and one minute, respectively. During the delays, the mean and median net numbers of orders entered (new orders less cancels) were 16 and three. The mean and median net new shares were 12,310 and 2,010. Despite the delay, in 24 of these cases, there was another pause within five minutes of the delayed reopen.

Table 4: Delayed Reopening Crosses

Outcome of delayed re-opening crosses in Nasdaq-listed stocks, Jan-Aug 2015						
Number of cases	58					
Number of cases with a re-opening cross	53					
Number of cases that halt again within 5 minutes	24					
<u>Summary statistics of 58 cases:</u>						
	Minimum	1st Quartile	Median	Mean	3rd Quartile	Max
Number of minutes delay	<1	1	1	5	4	38
Number of orders entered	0	5	14	47	29	831
Number of orders cancelled	0	2	11	30	21	795
Net number of orders entered	-7	0	3	16	10	221
Number of shares entered	0	924	4,167	41,330	18,150	860,600
Number of shares cancelled	0	448	2,010	12,310	6,906	214,000
Net number of shares entered	-9,010	-70	233	29,020	8,471	674,500
Size of cross	0	100	1,000	22,160	5,841	654,400
Note: The summary statistics for orders/shares entered, cancelled and net are independently calculated from the cases and therefore do not sum across rows.						

Another course to address repeat Trading Pauses is to widen the Price Bands temporarily after reopening the stock. While this would reduce the number of repeat pauses, it works against the goal of containing volatility.

A further alternative is to widen the Price Band on the recovery side, to allow the price to return to where it was before the previous pause without pausing again. The Participants find that these adjustments to Price Bands should

be considered as part of future consideration of adjusting Price Bands to minimize volatility.

(b) NYSE-Listed Securities

Table 5: NYSE Reopenings H1:2015

Table 5a: NYSE Reopenings H1 2015										Medians: Spread Change versus pre-Halt			
Listing	Exchange	Tier	Auction	Count	Mdn. Shares	Mdn. Sprd. Prior	Mdn. Sprd. Reopen	Mdn. Sprd. 1-min	Mdn. Sprd. 15 min	Mdn. Time to Reopen	At Reopen	Post 1-min	Post 15-min
NYSE	1	Y	19	57,488	\$0.010	\$0.070	\$0.080	\$0.030	05:18	\$0.060	\$0.070	\$0.020	
NYSE	1	N	0	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
NYSE	2	Y	17	7,500	\$0.020	\$0.090	\$0.090	\$0.060	05:19	\$0.070	\$0.070	\$0.040	
NYSE	2	N	34	N/A	\$8.910	\$1.190	\$0.790	\$0.350	05:14	-\$7.720	-\$8.120	-\$8.560	

Table 5b: NYSE Reopenings August 24, 2015										Medians: Spread Change versus pre-Halt			
Listing	Exchange	Tier	Auction	Count	Mdn. Shares	Mdn. Sprd. Prior	Mdn. Sprd. Reopen	Mdn. Sprd. 1-min	Mdn. Sprd. 15 min	Mdn. Time to Reopen	At Reopen	Post 1-min	Post 15-min
NYSE	1	Y	28	4,950	\$0.110	\$0.650	\$0.230	\$0.055	06:07	\$0.540	\$0.120	-\$0.055	
NYSE	1	N	1	N/A	\$0.110	\$0.030	\$0.050	\$0.020	05:35	-\$0.080	-\$0.060	-\$0.090	
NYSE	2	Y	31	1,129	\$0.530	\$0.660	\$0.220	\$0.170	06:11	\$0.130	-\$0.310	-\$0.360	
NYSE	2	N	18	N/A	\$3.645	\$0.955	\$0.795	\$0.450	05:05	-\$2.690	-\$2.850	-\$3.195	

Table 5 above shows the record of Trading Pauses and reopenings on the NYSE during the first half of 2015 and on August 24, 2015. The data excludes pauses in the last 10 minutes of trading, where the only trade possible was the closing auction trade executed pursuant to established closing procedures.

Throughout the first half of 2015, there were 19 Trading Pauses in Tier 1 NYSE-listed securities and 51 in Tier 2 NYSE-listed securities. All of the pauses in Tier 1 securities resulted in a reopening auction, but only 1/3 of pauses in Tier 2 securities resulted in a reopening auction.

On August 24, 2015, 28 of the 29 pauses in Tier 1 NYSE-listed securities reopened with an auction. This included NYSE opening auctions that followed a Trading Pause at 9:35 a.m.¹⁸ which NYSE categorizes as a regular open, but is a reopening from a Plan perspective. Some of these opens

occurred following a subsequent order imbalance halt. An analysis of the pauses in Tier 1 securities would be unhelpful because it is not possible to obtain statistical significance comparing the market quality of the 28 securities that executed a reopening auction to the one security that did not.

Tier 2 NYSE-listed securities that entered a Trading Pause during the first half of 2015 reopened with an auction 1/3 of the time. Many of the Tier 2 securities that were subjected to a pause were extremely illiquid (*e.g.*, preferred and when-issued securities), with very wide spreads prior to the pause, indicative of data outliers. The data do show that spreads narrowed for Tier 2 securities within 15 minutes after reopening regardless of whether the security reopened with an auction.

In addition, the data for the first half of 2015 show that the median time to reopen Tier 2 securities after a pause

were not appreciably different than the median time to reopen Tier 1 securities, all of which opened with an auction (Table 6). The Tier 2 securities that reopened without an auction following a pause were generally extremely illiquid. As shown in Table 6 below, the median number of days these symbols traded on the NYSE was 79 out of 124 trading days in the first half of 2015, and the median number of trades per day on the NYSE was only 7.4 trades with a median NYSE average daily volume of 2,281 shares. The Participants do not believe that extending the auction time for such illiquid securities would be likely to attract additional trading interest. Nevertheless, when there is a substantial order imbalance, waiting longer than five minutes may be useful, as would issuing an order imbalance halt after 10 minutes if deemed necessary.

Table 6: Trading Summary of Tier 2 Securities without Reopening Auctions H1:2015

Distinct Symbols	Halts	Median Days Eligible to Trade	Median Days Traded	Median NYSE Avg. Daily Trades	Median NYSE Avg. Daily Volume
24	27	124	79	7.4	2,281

Of the 49 pauses in Tier 2 securities on August 24, 2015, 31 securities reopened with an auction (some of which were categorized by NYSE as regular opening auctions). Three very high-priced Tier 2 securities partially skew the results, as well as several

preferred stocks. If such securities are excluded, the median pre-pause spread in the remaining nine securities was \$0.76, while the reopening, one-minute and 15-minute spreads were \$0.80, \$0.65 and \$0.54, respectively. This data shows continued tightening following

the reopening, and the Participants reiterate that extending the time to reopen would be unlikely to significantly alter the results.

NYSE Arca-Listed Securities

¹⁸ All times refer to Eastern Standard Time unless otherwise noted.

Table 7: NYSE Arca Reopenings H1:2015

Table 7a NYSE Arca Reopenings: H1 2015										Medians:		
Listing										Spread Change versus pre-Halt		
Exchange	Tier	Auction	Count	Mdn. Shares	Mdn. Sprd. Prior	Mdn. Sprd. Reopen	Mdn. Sprd. 1-min	Mdn. Sprd. 15 min	Mdn. Time to Reopen	At Reopen	Post 1-min	Post 15-min
NYSE Arca	1	Y	0	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
NYSE Arca	1	N	18	N/A	\$0.815	\$0.100	\$0.060	\$0.050	05:39	-\$0.715	-\$0.755	-\$0.765
NYSE Arca	2	Y	29	100	\$2.410	\$1.300	\$0.790	\$0.250	05:11	-\$1.110	-\$1.620	-\$2.160
NYSE Arca	2	N	1469	N/A	\$2.100	\$0.840	\$0.130	\$0.110	05:45	-\$1.260	-\$1.970	-\$1.990

Table 7b NYSE Arca Reopenings: August 24, 2015										Medians:		
Listing										Spread Change versus pre-Halt		
Exchange	Tier	Auction	Count	Mdn. Shares	Mdn. Sprd. Prior	Mdn. Sprd. Reopen	Mdn. Sprd. 1-min	Mdn. Sprd. 15 min	Mdn. Time to Reopen	At Reopen	Post 1-min	Post 15-min
NYSE Arca	1	Y	635	2,604	\$0.600	\$1.600	\$3.295	\$1.360	05:43	\$1.000	\$2.695	\$0.760
NYSE Arca	1	N	65	N/A	\$1.680	\$2.020	\$2.635	\$0.990	05:38	\$0.340	\$0.955	-\$0.690
NYSE Arca	2	Y	118	304	\$1.795	\$3.155	\$4.990	\$2.680	05:38	\$1.360	\$3.195	\$0.885
NYSE Arca	2	N	181	N/A	\$2.910	\$3.280	\$3.065	\$1.695	05:38	\$0.370	\$0.155	-\$1.215

During the first half of 2015, there were 27 pauses in NYSE Arca-listed Tier 1 ETPs. Table 7a, however, only includes data from 18 Tier 1 NYSE Arca-listed ETPs because the Participants excluded nine pauses that occurred on March 31, 2015 in the UTG to ZSML range, as NYSE Arca had quoting and reopening issues in those securities that day. These 18 Tier 1 ETPs have very low volume and are only categorized as Tier 1 securities because of a few high volume days.

With regard to the 1,498 Tier 2 NYSE Arca-listed ETPs that were paused during the first half of 2015, over 98% did not reopen with an auction. However, such Tier 2 ETPs that did not reopen with an auction saw spreads tighten more quickly than those Tier 2 ETPs that did reopen with an auction.

The inability of a security to reopen with an auction may be due to a lack of interest in these very illiquid securities. Table 7a shows that Tier 2 securities that had no auction exhibited tighter median spreads pre-pause, at reopen, post one-minute and post 15-minutes than those Tier 2 securities that did reopen with an auction.

Based on this data, there is little basis for a proposal to extend the pause time beyond the current maximum of 10 minutes. Finally, many of the pauses in Tier 2 ETPs occurred early in the trading session and may have been caused by skewed BAM Reference Prices, as illustrated in the discussion of the proposed amendment relating to the methodology for determining the first

Reference Price of the trading day. Accordingly, certain of these pauses may have been avoided with the application of a different initial Reference Price methodology.

On August 24, 2015, trading volumes were much higher than normal, contributing to the ability to reopen substantially more paused securities using auctions. Early in the trading session, several NYSE Arca-listed ETPs paused multiple times in a short period, which may have led ETP liquidity providers to delay entering the market until after 10:00 a.m. The fact that only 150 of the 635 pauses in Tier 1 NYSE Arca-listed securities occurred after 10:00 a.m., and only 36 pauses occurred after 10:15 a.m., appears to reflect the withdrawal of such liquidity providers (see Table 7b).

On August 24, 2015, median spreads following reopening for NYSE Arca-listed ETPs that reopened with an auction continued to be wider than the median pre-pause spreads, even 15 minutes after those paused securities had reopened. However, it should be noted that some securities had more than one pause during the 15-minute period after reopening following the initial pause, which may have impacted median spread data at the post 15-minute mark.

Multiple pauses within 15 minutes of reopening after the initial pause may indicate that some of the median spreads noted in the post 15-minute column actually represent the spread for a pause that occurred shortly after a

secondary pause. This may have impacted the post 15-minute median spread calculation, as it would represent a quote only minutes following the secondary pause (but that was 15 minutes after the initial pause). However, spreads for all NYSE Arca-listed ETPs were substantially tighter at post 15-minutes compared to the spreads at reopening, and the securities that reopened without an auction also had tighter spreads at post 15 minutes compared to pre-pause spreads.

Additional Data—NYSE MKT and BATS

During the first half of 2015 and on August 24, 2015, neither NYSE MKT-listed nor BATS-listed securities experienced a large sample of pauses, making any conclusions based on data from these markets of limited value. NYSE MKT did not have pauses in any Tier 1 securities¹⁹ during the first half of 2015, and averaged only two pauses per month in Tier 2 securities (for a total of 13 pauses, seven of which reopened with auctions). On August 24, 2015, four NYSE MKT securities experienced pauses, with three securities reopening with an auction. BATS-listed securities were paused seven times in the first half of 2015, five of which occurred immediately after the LULD bands narrowed at 9:45 a.m. On August 24, 2015, BATS-listed ETPs were paused three times.

The data from these small samples are inconclusive, but are represented below in Table 8 for completeness:

¹⁹NYSE MKT lists one Tier 1 security. Five of BATS' ETPs are categorized as Tier 1. All BATS-listed securities are ETPs.

Table 8: NYSE MKT Reopenings H1:2015

Table 8a: NYSE MKT Reopenings: H1 2015										Medians: Spread Change versus pre-Halt		
Listing Exchange	Tier	Auction	Count	Mdn. Shares	Mdn. Sprd. Prior	Mdn. Sprd. Reopen	Mdn. Sprd. 1-min	Mdn. Sprd. 15 min	Mdn. Time to Reopen	At Reopen	Post 1-min	Post 15-min
NYSE MKT	1	Y	0	N/A	N/A	N/A	N/A	N/A	N/A			
NYSE MKT	1	N	0	N/A	N/A	N/A	N/A	N/A	N/A			
NYSE MKT	2	Y	7	2,100	\$0.050	\$0.030	\$0.100	\$0.070	05:13	-\$0.020	\$0.050	\$0.020
NYSE MKT	2	N	6	N/A	\$0.245	\$0.325	\$0.330	\$0.220	05:10	\$0.080	\$0.085	-\$0.025

Table 8b: NYSE MKT Reopenings: August 24, 2015										Spread Change versus pre-Halt		
Listing Exchange	Tier	Auction	Count	Mdn. Shares	Mdn. Sprd. Prior	Mdn. Sprd. Reopen	Mdn. Sprd. 1-min	Mdn. Sprd. 15 min	Mdn. Time to Reopen	At Reopen	Post 1-min	Post 15-min
NYSE MKT	1	Y	0	N/A	N/A	N/A	N/A	N/A	N/A			
NYSE MKT	1	N	0	N/A	N/A	N/A	N/A	N/A	N/A			
NYSE MKT	2	Y	3	1,350	\$0.560	\$0.380	\$0.400	\$0.250	05:33	-\$0.180	-\$0.160	-\$0.310
NYSE MKT	2	N	1	N/A	\$0.630	\$0.900	\$0.200	\$0.200	05:18	\$0.270	-\$0.430	-\$0.430

(c) Participant's Conclusion on the Length of Trading Pauses and Reopening Procedures

The current LULD rules already permit the Primary Listing Exchange to extend the initial five-minute Trading Pause to 10 minutes. The Participants' data prepared by Nasdaq and NYSE provide no indication that extending Trading Pauses beyond 10 minutes would prevent repeat pauses. Currently, Primary Listing Exchanges may extend the pause duration to 10 minutes in order to optimize the exchange reopening cross process and the Participants believe that this option to extend pause durations should remain part of the Primary Listing Exchange reopening process. However, absent clear evidence that longer pauses have resulted in better post-reopen market quality, the Participants recommend no change to the reopening process as it relates to LULD.

The Primary Listing Exchange may wish to consider extending the reopening auction process following a pause beyond the initial five minutes on a more frequent basis and, in rare cases, may wish to consider calling a non-regulatory Imbalance Halt if the Primary Listing Exchange determines that reopening would add to volatility.²⁰

(3) Modification to Initial Reference Price Methodology

The Plan provides that the first Reference Price for a trading day is the Opening Price on the Primary Listing Exchange if such Opening Price occurs less than five minutes after the start of Regular Trading Hours. However, if the

Primary Listing Exchange opens with quotations, the first Reference Price for a trading day is the BAM.²¹

When the Participants proposed the Plan, several comment letters expressed concern that the application of Price Bands during the opening and closing could be disruptive to price discovery.²² The Participants have assessed the impact of Trading Pauses as well as the quality of trading around Trading Pauses. While the Participants' assessment of the impact of Trading Pauses indicates that the Plan has reduced the frequency of price dislocations in stocks, the Participants also found extensive evidence showing that the vast majority of Trading Pauses that currently occur are in stocks that did not trade at or near the time of the Trading Pause.

The Participants found that the use of the Primary Listing Exchange's BAM often produced a skewed initial Reference Price when trading interest is extremely thin or non-existent, rendering a security illiquid. This scenario occurs when the opening bid-ask quotes are wide or skewed and not indicative of the current market for the security. Back-testing analysis showed that nearly all of these Trading Pauses likely would not have occurred if the first Reference Price for the day was determined using the Primary Listing Exchange's previous closing price instead of the BAM because the BAM of the first quote may not represent fair value in less liquid securities. Therefore, the Participants recommend

revising the current Plan methodology for determining the initial Reference Price to a methodology that uses the closing price of the security on the Primary Listing Exchange on the previous trading day, and if no such closing price exists, the last sale on the Primary Listing Exchange reported to the Processor.

Although market makers do not have obligations prior to a security opening, they will often bracket the market around what they believe to be the fair value of a security. For example, the market maker may determine that a security is likely to open around \$10 and would, before the market opens, enter a bid of \$7 and an offer of \$13. If no other orders enter the market prior to the open, the mid-point would then be \$10, and, even if there is no opening trade, the exchange would establish a valid open Reference Price.

However, if a market participant were to enter an aggressive bid prior to the open for such security at \$10, then the mid-point would become skewed; in this example, the mid-point would be set at \$11.50 for a security with a fair value of \$10. If this were a Tier 2 security, the initial lower limit would be 20% below \$11.50, or \$9.20 (assuming it is not a leveraged ETP), and the upper limit would be set at \$13.80. At 9:45 a.m., the bands would narrow to 10%, which would put the lower band at \$10.35 and the Upper Price Band at \$12.65. If the security should be trading near \$10, this would immediately result in a Trading Pause as the offer attempted to decline below the Lower Price Band of \$10.35.

Another example illustrating the impact of using BAM as the first Reference Price when quotes are not indicative of the security's trading price

²⁰ While other markets may resume trading after 10 minutes, most markets wait until the Primary Listing Exchange has reopened.

²¹ If such trade or quote has not occurred by 9:35 a.m., the open reference price for the trading day is the arithmetic mean price of eligible reported transactions for such price over the preceding five minute time period.

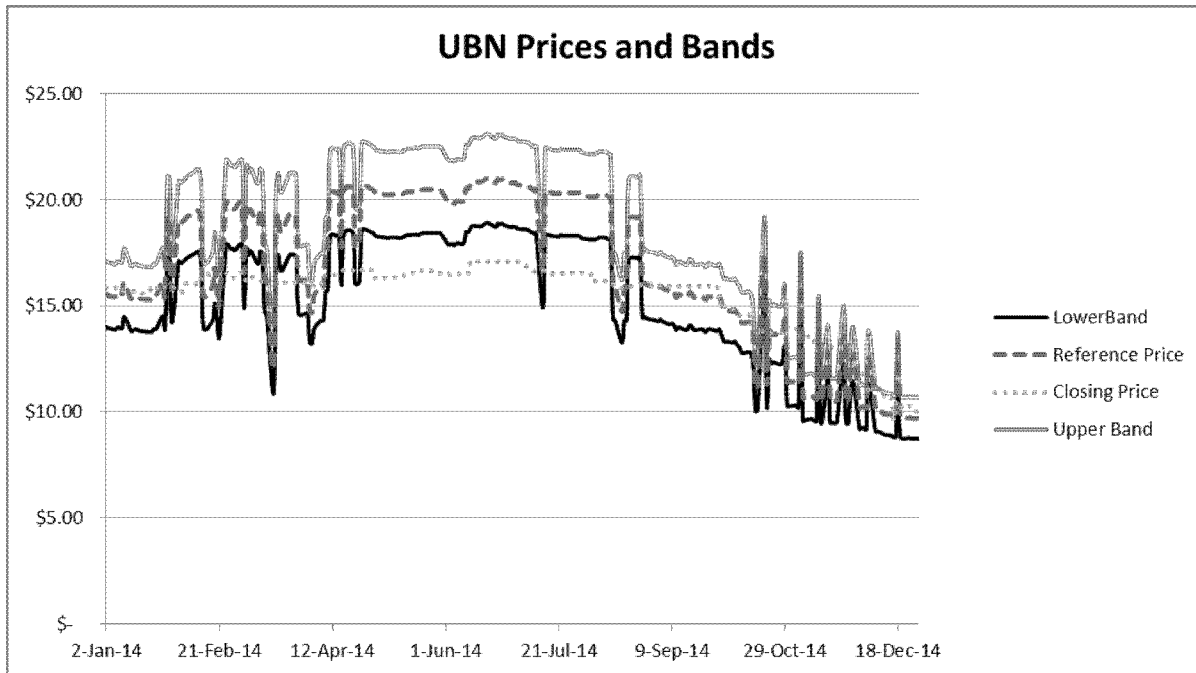
²² See Approval Order, *supra* note 1.

is depicted in the following example and graph (Chart 1).²³ As an example of the BAM deviating from the Reference Price, Professor James J. Angel studied, the UBS ETRACS CMCI Energy Total Return ETN (UBN). Chart 1 below shows the Upper and Lower Price

Bands, with the reference and closing price of the day to display the imbalance between the intraday bands and the closing price. For an extended duration in 2014, the opening Lower Price Band was frequently above the security's closing price. The ETN

experienced 111 Trading Pauses in 2014. The majority of the pauses occurred at 9:45 a.m., just as the Price Bands narrowed from double-wide (20%) to single-wide (10%).

Chart 1: Deviation of BAM from Reference Price



The analysis performed in the Angel Report also directly supports the Participants' observations regarding the need to adjust the procedure for determining an initial Reference Price when there is no trading interest in the opening auction.²⁴ In such cases, the Participants believe the previous closing price generally is a better indication of the current market than a Reference Price based on the BAM. Participants also note that a small number of securities are responsible for a vast majority of Limit States and Straddle States. For example, from the inception of LULD in April 2013 through December 31, 2014, there were approximately two million Limit States, 4.8 million Straddle States and 8,500 Trading Pauses. Approximately 91% of the two million Limit States are accounted for by 50 securities that relied on a Reference Price that was calculated based on the BAM. Further, these securities also were responsible

for as many as 81% of Straddle States and 30% of Trading Pauses.²⁵

The Participants believe that the disproportionately high number of Trading Pauses in stocks that did not trade in the opening cross can reduce market participant attention to Trading Pauses. On volatile days, Trading Pauses in stocks that have not traded distract attention from the smaller number of stocks that are in Limit State or paused because of significant order imbalances. The distraction necessitates an unnecessary filtering requirement that could discourage submission of offsetting trading interest during the Limit State and the reopening auction.

In addition to the analysis contained in the Angel Report, the Participants performed the following data analysis to support the proposed recommendations intended to address the current use of the BAM as the first Reference Price for illiquid securities. Back-testing of securities listed on Nasdaq and NYSE

trading venues has shown that, in stocks that have no opening cross, the previous closing price results in fewer Trading Pauses than the BAM.²⁶

(a) Nasdaq-Listed Securities

Between the start of LULD in 2013 and September 22, 2015, 9,118 Trading Pauses occurred in Nasdaq-listed stocks before they had a trade. In the majority of those cases (5,404), after the Trading Pause was lifted, there were no trades at any point in the entire trading day for the security, which further supports that the pauses were uninformative because they were caused by lack of trading interest, rather than price volatility (Table 9).

Of the cases where there was trading later in the day in the security, in the vast majority of cases, the closing price that day was closer to the previous day's close than the opening BAM. The rows highlighted in red in Table 9 are those where the difference matters most

²³ Analysis and graph provided by Professor James J. Angel.

²⁴ See Angel Report, Section V: The Opening Reference Price Problem.

²⁵ See Angel Report, Table 3: Impact of Bad Reference Prices on Numbers of Observations at page 17.

²⁶ The data was analyzed based on venue to account for differences in the availability and formats of the data from NYSE and Nasdaq.

because the previous close and the opening BAM were very different.

Table 9: Nasdaq Trading Pauses with No Previous Trade

Nasdaq-listed stocks with LULD pauses when there is no previous trade on the day, 2013 - Aug 31, 2015				
Difference between BAM and previous close	Count	No trade for the entire day	Which reference price option is nearer to closing price on the day	
			BAM	Previous close
A 0%-10%	532	251	32	249
B >10%-25%	3,149	1,614	48	1,487
C >25%-50%	1,084	613	16	455
D >50%-100%	314	192	5	117
E >100%	3,820	2,515	1	1,304
F Missing	219	219	0	0
Total	9,118	5,404	102	3,612

The argument against using the previous closing price is that the BAM is determined in real time and reflects the latest information. This is true when there is trading interest in a stock, but demonstrably not true in the thousands of cases each year when there is no trading interest and quotes are wide. Furthermore, when there is trading interest, stocks are more likely to have an opening cross, which obviates the need to use either the previous closing price or BAM in calculating the initial Reference Price. For example, during 2015 through August 23, approximately 550 Nasdaq-listed stocks opened without an opening cross trade, but on August 24, 2015 there were only 250 such stocks.

Participants undertook back-tests to simulate the impact of the proposed change to the first Reference Price on the number of pauses in Nasdaq-listed securities that were not trading (see Table 10).²⁷

Participants used results for 182 trading days in all Nasdaq-listed LULD-eligible securities that did not have an opening cross (which averaged 526 stocks per day) from January to September 2015. For each stock and trading day, the test lasted from 9:30 a.m. until there was either a trade or a pause in that stock. The Participants tested for Limit States using two alternative Reference Prices: (i) The Reference Price based on the current Plan parameters; and (ii) the Reference Price based on the Primary Listing

Exchange previous close. For this approach there were four possible comparative outcomes: (i) Both resulted in a Limit State and Trading Pause; (ii) neither resulted in a Limit State or Trading Pause; (iii) the current bands resulted in a Limit State and Trading Pause, but the previous close bands did not; and (iv) the previous close bands resulted in a Limit State and Trading Pause, but the current bands did not. Generally, the Participants expected to find that (i) and (ii) cases would be indicative of both Reference Prices having worked equally well and that excessive (iii) and (iv) cases would be indicative of poorly functioning Reference Prices under one alternative or the other.

²⁷ See Appendix A for details on how the back-testing was done.

Table 10: Back Test of Trading Pauses in Stocks with No Opening Cross

Back-test of halts in stocks without an opening cross, Nasdaq-listed stocks, January 2 - September 22, 2015	
Days	182
Total cases (each case is one LULD stock that did not have an opening cross)	95,655
Average cases / day	525.6
<u>Results:</u>	
Average number of cases per day where neither benchmark would result in a pause	512.7
Average number of cases per day where both benchmarks would result in a pause	0.8
Average number of cases where the BAM Reference Price resulted in a pause, but the previous close would not	10.7
Average number of cases where the previous close may have resulted in a pause, but the BAM Reference Price did not	1.3
<u>Overall:</u>	
Current average number of stocks with pauses after opening on a quote (using BAM)	12.9
Expected average number of stocks with pauses after opening on a quote (using previous close)	2.1
Reduction in daily stocks with pauses after opening on a quote	83%

On average, 512.7 stocks per day would not pause with the Reference Price determined by either BAM or the previous close. An average of 0.8 stocks per day would have paused with the Reference Price determined by either method. An average of 10.7 stocks per day pause using the current BAM Reference Price, but would not pause using the previous close Reference Price. Finally, an average of 1.3 stocks per day may pause using the previous close Reference Price but would not using the BAM Reference Price.

Participants believe that, for Nasdaq-listed securities, the 10.7 stocks per day in which the current Price Bands paused, but the previous close bands would not pause, could have been avoided if Price Bands based on the previous close were used in cases where there is no opening auction for a stock. This would represent an 83% reduction in the number of stocks pausing after opening on a quote.

(b) NYSE-Listed Securities

The methodology that NYSE used for its analyses tested the NBBO first and continued to use the BAM as the initial Reference Price if the width of the quote was less than or equal to one-half of the applicable Price Band width, but if outside of such parameters, the previous closing price was instead utilized (the "NYSE Methodology"). The differences in results between the methodology

applied by Nasdaq in subsection (a) above (*i.e.*, using the previous closing price only rather than checking the mid-quote first) and the NYSE Methodology were not substantial and are discussed further in subsection (d) below.

NYSE's analyses applied the NYSE Methodology to all LULD Price Bands until there was either a trade in the security or until a pause was signaled in actual trading. The analyses considered a new pause any time a security hit a simulated Limit State based on the revised bands under the NYSE Methodology. Note, however, that this tends to overestimate pauses because, according to Nasdaq's analysis, only approximately five of every eight securities that hit a Limit State would ultimately enter a pause.

NYSE Arca Results

Participants analyzed data from the first half of 2015, as well as for August 24, 2015, and found that the NYSE Methodology would have substantially reduced the number of pauses due to skewed quotes. NYSE defined a skewed quote as an opening quote for which the bid and offer were wide and for which an aggressive buyer or seller posted an order that resulted in a mid-point far from the security's market value. The NYSE simulation used the last sale on the Primary Listing Exchange whenever the Reference Price would have been based on such a skewed quote.

As shown in Table 11, below, during the first half of 2015, NYSE Arca had a daily average of 14 Tier 1 securities and 432 Tier 2 securities that opened on a quote. Of these, two Tier 1 and 119 Tier 2 securities typically used initial Reference Prices that were based on skewed quotes. However, most Tier 1 securities execute an opening auction, or have an initial quote that is tight enough to allow for the use of the mid-quote as a valid Reference Price. On average, each day, 0.1 Tier 1 and 10.9 Tier 2 securities were paused when their Reference Prices were based on skewed quotes (compared to 0.01 Tier 1 securities and 0.02 Tier 2 securities with good first Reference Prices that were paused during the same period). Application of the revised NYSE Methodology would have prevented all Tier 1 pauses and an average of 9.8 of 10.9 daily Tier 2 pauses (*i.e.*, a reduction of 90.5%).

Participants have determined that it is critical that revising the initial Reference Price methodology does not cause pauses that would not otherwise have occurred using the current methodology. The data shows that application of the NYSE Methodology would have resulted in no such pauses in Tier 1 securities and 0.07 such pauses in Tier 2 securities per day.

Participants also reviewed the simulation data (*see* Table 11) to determine if any securities that actually

experienced a pause using the current methodology would have experienced a pause earlier in the same trading day if the NYSE Methodology had been applied. Participants found that there

was an average of one such pause per day that would have occurred for Tier 2 securities and there were no such occurrences for Tier 1 securities. However, the Participants do not

consider this to be an issue, as these securities would have been subject to pauses already; the NYSE Methodology merely resulted in a pause occurring earlier in the trading session.

Table 11: NYSE Arca Open Reference Price Analysis

	Securities Opening on a Quote		Securities Using Last Sale (Skewed Reference)		Securities With Halt Good Reference		Securities With Halt Skewed		Skewed Reference Halts Prevented		Securities With Potential Halt and Skewed Reference Where Potential Halt Occurs Earlier		Securities With Potential New Halt and Skewed Reference Price	
	Tier 1	Tier 2	Tier 1	Tier 2	Tier 1	Tier 2	Tier 1	Tier 2	Tier 1	Tier 2	Tier 1	Tier 2	Tier 1	Tier 2
H1 2015														
Average	13.8	431.7	2.4	118.8	0.01	0.02	0.1	10.9	0.1	9.8	0.0	1.0	0.00	0.07
Median	14	437.5	2.0	118.0	0.0	0.0	0.0	10.0	0.0	9.0	0.0	1.0	0.0	0.0
Minimum	6	285.0	0.0	88.0	0.0	0.0	0.0	4.0	0.0	3.0	0.0	0.0	0.0	0.0
Maximum	24	525.0	6.0	171.0	1.0	1.0	2.0	23.0	2.0	21.0	0.0	4.0	0.0	1.0
Aug. 24, 2015	6.0	318.0	5.0	204.0	0.0	1.0	2.0	45.0	2.0	44.0	0.0	1.0	0.0	1.0

NYSE Results

Application of the NYSE Methodology during the first half of 2015 for NYSE-listed securities would

have prevented a total of 31 pauses, all in Tier 2 securities; on August 24, 2015, seven pauses would have been prevented (see Table 12). Participants estimate that a maximum of three

pauses would have been caused by the NYSE Methodology that would not have occurred using the current methodology, all in Tier 2 securities.

Table 12: NYSE Open Reference Price Analysis

	Securities Opening on a Quote		Securities Using Last Sale (Skewed Reference)		Securities With Halt Good Reference		Securities With Halt Skewed		Skewed Reference Halts Prevented		Securities With Potential Halt and Skewed Reference Where Potential Halt Occurs Earlier		Securities With Potential New Halt and Skewed Reference Price	
	Tier 1	Tier 2	Tier 1	Tier 2	Tier 1	Tier 2	Tier 1	Tier 2	Tier 1	Tier 2	Tier 1	Tier 2	Tier 1	Tier 2
H1 2015														
Average	1.4	474.8	0.5	48.1	0.00	0.02	0.0	0.3	0.00	0.25	0.00	0.02	0.00	0.02
Median	1	476.5	0.0	47.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Minimum	0	346.0	0.0	31.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Maximum	5	560.0	2.0	81.0	0.0	1.0	0.0	3.0	0.0	3.0	0.0	1.0	0.0	1.0
Aug. 24, 2015	0.0	240.0	0.0	54.0	0.0	0.0	0.0	8.0	0.0	7.0	0.0	1.0	0.0	1.0

NYSE MKT Results

Application of the NYSE Methodology had no substantive impact on NYSE MKT-listed securities. For the

first half of 2015, two pauses would have been avoided, and there would have been no pauses caused by the NYSE Methodology that would

otherwise not have occurred using the current methodology. There would have been no impact on pauses on August 24, 2015 (Table 13).

Table 13: NYSE MKT Open Reference Price Analysis

	Securities Opening on a Quote		Securities Using Last Sale (Skewed Reference)		Securities With Halt Good Reference		Securities With Halt Skewed		Securities With Skewed Reference Halts Prevented		Securities With Potential Halt and Skewed Reference Where Potential Halt Occurs Earlier		Securities With Potential New Halt and Skewed Reference Price	
	Tier 1	Tier 2	Tier 1	Tier 2	Tier 1	Tier 2	Tier 1	Tier 2	Tier 1	Tier 2	Tier 1	Tier 2	Tier 1	Tier 2
H1 2015														
Average	0.0	141.9	0.0	56.7	0.00	0.00	0.0	0.0	0.0	0.02	0.0	0.0	0.00	0.00
Median	0	144.5	0.0	55.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Minimum	0	94.0	0.0	30.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Maximum	0	168.0	0.0	85.0	0.0	0.0	0.0	1.0	0.0	1.0	0.0	0.0	0.0	0.0
Aug. 24, 2015	0.0	93.0	0.0	37.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Table 14: NYSE and NYSE MKT September 2013 Analysis of Alternate Open Reference Price Methods

ROLLED OUT NYSE + NYSE MKT						NOT ROLLED OUT NYSE + NYSE MKT					
Possible Limit States or Halts Using*						Possible Limit States or Halts Using*					
Date	Actual Halts Before Trade	Most Recent Trade	LULD Ref Price	Previous Day		Date	Actual Halts Before Trade	Most Recent Trade	LULD Ref Price	Previous Day	
				us Day	Openin					us Day	Openin
				BAM	g BAM				BAM	g BAM	
8/5/2013	0	0	0	0	0	8/5/2013	0	0	0	0	0
8/6/2013	0	0	0	0	0	8/6/2013	0	0	0	0	1
8/7/2013	0	0	0	0	0	8/7/2013	0	0	0	0	0
8/8/2013	0	0	0	0	0	8/8/2013	0	0	0	0	1
8/9/2013	0	0	0	0	0	8/9/2013	0	0	0	0	1
8/12/2013	0	0	0	0	0	8/12/2013	0	0	0	0	0
8/13/2013	0	0	0	0	0	8/13/2013	0	0	0	0	0
8/14/2013	0	0	0	0	0	8/14/2013	0	0	0	0	0
8/15/2013	0	0	0	0	0	8/15/2013	0	0	0	0	0
8/16/2013	0	0	0	0	0	8/16/2013	0	0	0	0	0
8/19/2013	0	0	0	0	0	8/19/2013	0	0	0	0	0
8/20/2013	0	1	0	0	0	8/20/2013	0	0	0	0	1
8/21/2013	1	0	0	0	1	8/21/2013	0	0	0	0	0
8/22/2013	0	0	0	0	0	8/22/2013	0	0	0	0	0
8/23/2013	0	0	0	0	0	8/23/2013	0	0	0	0	0
8/26/2013	1	0	0	0	0	8/26/2013	0	0	0	0	0
8/27/2013	0	0	0	0	1	8/27/2013	0	0	0	0	0
8/28/2013	0	0	0	0	0	8/28/2013	0	0	0	0	0
8/29/2013	0	0	0	0	0	8/29/2013	0	0	0	0	1
8/30/2013	1	0	0	0	1	8/30/2013	0	0	0	0	0
9/3/2013	0	0	0	0	0	9/3/2013	0	0	0	0	0
9/4/2013	2	0	0	0	2	9/4/2013	0	0	0	0	0
9/5/2013	0	0	0	0	0	9/5/2013	0	0	0	0	0
9/6/2013	1	0	0	0	1	9/6/2013	0	0	0	0	0
9/9/2013	0	0	0	0	0	9/9/2013	0	0	0	0	0
Total	6	1	0	0	6	Total	0	0	0	0	5

(c) Participants' Conclusion on First Reference Price

The Participants find that the vast majority of Trading Pauses occur when the current Plan methodology results in inappropriate Reference Prices. This occurs most often in low volume securities when there is no opening cross on the Primary Listing Exchange

and the NBBO is wide or far from most recent last sale price of the security.²⁸

The Participants explored and back-tested multiple options for fixing the problem and recommend that the Plan be amended to change the first Reference Price when there is no

²⁸ When there is no opening trade and the Primary Listing Exchange does not have a previous closing price for a security (such as on its first day of trading or due to a technical problem), the Primary Listing Exchange BAM will be the Reference Price.

opening trade from the BAM to the Primary Listing Exchange previous closing price.

The Participants believe that the proposed amendments are consistent with Section 11A of the Exchange Act and Rule 608, of Regulation NMS thereunder,²⁹ which authorizes the Participants to act jointly in preparing,

²⁹ 17 CFR 242.608.

filing and implementing national market system plans.

(d) Alternative Approaches To Establishing the First Reference Price

The Commission staff requested that Participants consider alternative approaches to establishing the initial Reference Price when a security does not open on a trade. Under the current Plan, the Primary Listing Exchange determines the first Reference Price using BAM when no trade is executed in the opening auction, which the Participants believe results in unnecessary and avoidable trading pauses.

i. Utilize the mid-point of the prior day's last NBBO and the last LULD Reference Price:

In 2013 the Participants considered utilizing the mid-point of the prior day's

last NBBO and the prior day's last LULD Reference Price to determine the open reference price. The Participants found that, while these simulations also resulted in a reduction of pauses, such alternative methods were not as effective in reducing the number of pauses as using the most recent last sale eligible execution on the Primary Listing Exchange.

The results of those analyses are shown in Table 14, above, and Table 15, below. Results in Table 14 reflect those results for securities on NYSE and NYSE MKT that were subject to LULD at the time of the analyses. Results in Table 15 include those for the NYSE Arca-listed securities that were subject to LULD at the time of the analyses. These tables compare the number of securities subject to LULD that had been

paused before a trade had been executed with the estimated number of securities that would have been paused if the following methods had instead been implemented:

- a. Most recent prior day trade;
- b. Prior day's final LULD Reference Price;
- c. Final regular hours NBBO mid-point; and
- d. First NBBO mid-point.

The Participants also reviewed, for securities that were not yet subject to LULD at the time of the analyses, theoretical possible pauses using these same methods. The results showed that using the most recent prior day's last sale or the prior day's final LULD Reference Price resulted in far fewer pauses than the current methodology utilizing the BAM.

Table 15: NYSE Arca September 2013 Analysis of Alternate Open Reference Price Methods

ROLLED OUT NYSE ARCA						NOT ROLLED OUT NYSE ARCA					
Possible Limit States or Halts Using*						Possible Limit States or Halts Using*					
Date	Actual	Most	Previous	Previous	Opening	Date	Actual	Most	Previous	Previous	Opening
	Halts Before Trade	Recent Trade	Day LULD Ref Price	Day BAM			Halts Before Trade	Recent Trade	Day LULD Ref Price	Day BAM	
8/5/2013	0	0	0	0	0	8/5/2013	0	1	0	1	44
8/6/2013	0	0	0	0	0	8/6/2013	0	0	0	1	39
8/7/2013	1	0	0	0	0	8/7/2013	0	0	0	2	40
8/8/2013	0	0	0	0	0	8/8/2013	0	0	0	0	41
8/9/2013	0	0	0	0	0	8/9/2013	0	0	0	1	39
8/12/2013	2	0	0	1	5	8/12/2013	0	1	0	1	32
8/13/2013	0	0	0	0	3	8/13/2013	0	0	0	0	35
8/14/2013	5	0	0	1	6	8/14/2013	0	0	0	1	44
8/15/2013	1	0	0	0	3	8/15/2013	0	2	0	2	32
8/16/2013	3	0	0	0	4	8/16/2013	0	2	0	2	50
8/19/2013	47	2	0	4	49	8/19/2013	0	0	0	0	0
8/20/2013	11	2	2	5	17	8/20/2013	0	0	0	0	0
8/21/2013	4	3	0	0	9	8/21/2013	0	0	0	0	0
8/22/2013	10	0	0	1	15	8/22/2013	0	0	0	0	0
8/23/2013	5	2	0	3	9	8/23/2013	0	0	0	0	0
8/26/2013	7	1	1	1	12	8/26/2013	0	0	0	0	0
8/27/2013	10	2	1	3	18	8/27/2013	0	0	0	0	0
8/28/2013	0	1	0	2	11	8/28/2013	0	0	0	0	0
8/29/2013	1	0	0	0	1	8/29/2013	0	3	0	1	9
8/30/2013	0	0	0	0	0	8/30/2013	0	1	0	2	14
9/3/2013	2	0	0	0	2	9/3/2013	0	0	0	0	12
9/4/2013	1	0	0	0	1	9/4/2013	0	0	0	0	10
9/5/2013	0	0	0	0	0	9/5/2013	0	1	0	1	5
9/6/2013	1	0	0	0	2	9/6/2013	0	0	0	0	10
9/9/2013	1	0	0	0	0	9/9/2013	0	0	0	0	14
Total	112	13	4	21	167	Total	0	11	0	15	470

ii. Delay the Establishing of the Open Reference Price

The Participants also considered a delay in establishing the open Reference

Price until 9:32 a.m., but noted that such a delay would result in a period during which there was no LULD protection after the Primary Listing

Exchange had already opened the security (Table 16).

Table 16: NYSE Arca Spread Change From Open to 9:32AM, October 2013

	Open	9:32	Change
Average	9.32%	3.11%	66.67%
Median	1.88%	0.74%	60.82%
92nd %tile	34.09%	5.84%	82.88%

Also, to review the feasibility of using such a delay, an analysis of spread changes in NYSE Arca ETPs between 9:30 a.m. and 9:32 a.m. was conducted for October 2013. This analysis used the percentage of NYSE Arca securities in the first half of 2015 that would have employed the most recent last sale eligible execution as the initial Reference Price, which was 7.94%,³⁰ to establish the appropriate threshold to use in determining which spreads should be included in the analysis. The analysis applied 7.94% to the percentile rank of spreads at the open and at 9:32 a.m. (*i.e.*, $100\% - 7.94\% = 92.06$ percentile). As shown in Table 16 above, securities in this percentile typically had a spread greater than 34% at the open, and the spread still remained relatively wide, at 5.84%, at 9:32 a.m. The risk posed by leaving securities without LULD protection for two minutes in addition to the risk that the mid-quotes may still be skewed two minutes after opening led to the Participants' determination that delaying until 9:32 a.m. to determine the open Reference Price was not a viable alternative.

iii. Pause Trading Until the NBBO Meets Some Standard of Quality

Another alternative suggestion would be pausing trading on stocks until the NBBO meets some standard of quality.

The Participants find that it is unnecessarily disruptive to put stocks into a Trading Pause when there is little trading interest. In fact, the purpose of the recommended change in the initial Reference Price calculation methodology is to reduce unnecessary Trading Pauses. Instead, it should be recognized that when the NBBO in a stock is wider than the LULD bands, the stock is in a temporary form of Trading Pause because trades cannot occur at bids and offers outside the LULD bands (a trade may occur if non-displayed orders meet at prices within the Price Bands). Trading may resume smoothly when limit orders return within the

³⁰ There was an average of 118.8 securities per day that would have used last sale as the open reference price as represented in Table 16 above. The average daily count of NYSE Arca-listed securities in the first half of 2015 was 1,493.

Price Bands. Market participants also may move their orders to the Limit State and force an auction if they believe the appropriate price is not within the Price Bands.

iv. Test the Opening NBBO

Another alternative suggestion is to test the NBBO and continue to use the BAM as the first reference price if the width of the quote is less than or equal to one-half of the applicable Price Band width, but if outside of such parameters, the previous closing price would be utilized. NYSE found that including this mid-quote check would have prevented, in the first half of 2015, an additional 54 pauses in NYSE Arca Tier 2 securities, three pauses in NYSE Arca Tier 1 securities, two pauses in NYSE Tier 1 securities and seven pauses in NYSE-listed Tier 2 securities (NYSE MKT and BATS results were not tested without the mid-quote check). However, a substantial number of such pauses were in a limited number of securities, most of which rarely traded.

Therefore, the Participants believe that at this time the added complexity and potential for continuing to have inappropriate Reference Prices from such an approach would outweigh any incremental benefits. First, the complexity added by undertaking the test in every security that does not have a trade may further delay establishing the LULD Price Bands and adds a point of failure to the Price Band calculation. Second, in some cases the NBBO is narrow, but at prices far from the security's fundamental value. Third, there is no research available to justify any particular standard of how narrow the NBBO should be before it is acceptable. Finally, Nasdaq back-testing demonstrates that, at most, one Nasdaq-listed security will pause each day because of switching from the BAM to the previous closing price, but that is not a pause that should not have happened. The fact that the price has moved away from the previous close is an indication of news.

v. Alternatives External to the LULD Plan

The Participants considered an alternative external to the LULD Plan to

mitigate wide or skewed opening quotes resulting in an inaccurate midpoint—*i.e.*, the imposition of enhanced or tighter market maker quoting obligations. Current market maker obligations generally require market makers to quote a designated percentage away from the NBBO or the last reported sale, but are not applicable until the stock has opened for trading. Thus, simply narrowing quoting obligations would be insufficient where there are no price references off which to measure, and would require a new structure to be effective prior to or upon the opening.

Noting that the purpose of the pilot period and study is to correct unintended consequences of the Plan design, the Participants believe it is not necessary to create new regulatory obligations and attendant surveillances, enforcement and penalties in order to fix a design flaw created by the Participants when the recommended system changes can fix the mid-point issue in a more targeted manner.

Other broader external solutions designed to mitigate fragmentation around the opening are beyond the scope of this study and the Participants.

(4) Discussion of Additional Potential Measures To Increase Liquidity and Promote Market Stability

Trading venues undertake a range of activities to encourage deep liquidity and stable markets. In addition to the Plan, exchanges and non-exchange trading venues compete with innovative information products, order types, and pricing to attract and promote market making. The Participants also have rules that set standards and requirements for market maker quoting, market-wide circuit breakers, clearly erroneous trades and aberrant trades.

All of these rules are interrelated, and any changes to the Plan may also affect the impact of other rules on the market. This section discusses alternatives Participants considered to promote liquidity provision and rule changes, in addition to the Plan, that the Participants believe could promote market stability.

(a) Market Maker Quoting Standards

Notwithstanding current SRO requirements for market makers, liquidity demand sometimes overwhelms supply and prices can move without a fundamental change in the value of the asset. The Participants considered alternative ways to enhance liquidity or limit such temporary price dislocations.

Specifically, Participants considered suggestions that market maker incentives and obligations could be enhanced to encourage or require greater liquidity provision near the price of the asset. Such additional depth could be expected to absorb liquidity-taking orders that would otherwise push the price away from its fundamental value. Several exchanges have implemented innovative ways for issuers to compensate market makers for enhanced market making in certain securities. Participants believe that the SEC should encourage such innovation. Participants find that efforts to increase market maker obligations without compensation are untenable in the current fragmented market structure because market makers can avoid exchange-level quoting obligations by moving market making activities to a non-exchange venue that does not share the requirements. Participants find that future market structure considerations should be given to the benefits of reducing fragmentation in certain situations, particularly in trading of illiquid stocks.

Furthermore, current market maker obligations generally require market makers to quote a designated percentage away from the NBBO or the last reported sale, but are not applicable until the stock has opened for trading. Thus, simply narrowing quoting obligations would be insufficient where there are no price references off of which to measure, and would require a new structure to be effective prior to or upon the opening.

Several industry members have also recommended that to help increase the likelihood of a successful auction, and to improve price discovery, consideration should be given to routing of all orders to the Primary Listing Exchange during a halt. Auctions provide an opportunity to aggregate liquidity, and routing to the primary exchange could reduce fragmentation and may preclude a run-off of standing orders that could have been more efficiently handled by the Primary Listing Exchange's reopening auction.

(b) Market Orders and Stop Market Orders

To limit the risk that retail investors receive executions at prices substantially different than those they expected to receive, particularly during periods of high volatility, the Participants believe consideration should be given to eliminating stop loss market orders. In addition, Participants recommend that market participants be provided the opportunity to consider and comment on proposals to limit or eliminate the use of market orders.

(c) Additional Alternatives

Additional items that warrant further consideration in this context include possibly requiring the routing of all orders to the Primary Listing Exchange during the reopening auction process. Market participants and regulators may also consider providing ETP issuers the option of waiting until 9:45 a.m. to open their securities on volatile days. This may require a specific industry rule with respect to the definition of "volatile." Finally, consideration should be given to incorporating indicative valuations into the set of criteria used to invoke auction reopenings.

B. Governing or Constituent Documents

The governing documents of the Processor, as defined in Section I(P) of the Plan, will not be affected by the Plan, but once the Plan is implemented, the Processor's obligations will change, as set forth in detail in the Plan.

C. Implementation of Plan

The initial date of the Plan operations was April 8, 2013.

D. Development and Implementation Phases

The Plan was initially implemented as a one-year pilot program in two Phases, consistent with Section VIII of the Plan: Phase I of Plan implementation began on April 8, 2013 and was completed on May 3, 2013. Implementation of Phase II of the Plan began on August 5, 2013 and was completed on February 24, 2014. Pursuant to the Ninth Amendment, the Participants extended the Pilot until April 22, 2016.³¹ Pursuant to the instant proposal, the Plan would be extended until April 21, 2017 with the proposed modifications described herein. The amendments would be implemented three months after SEC approval of Amendment No. 10.

³¹ See *supra* note 1.

E. Analysis of Impact on Competition

The proposed amendment to the Plan does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Participants do not believe that the proposed Plan introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Exchange Act.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in the Plan

The Participants have no written understandings or agreements relating to interpretation of the Plan. Section II(C) of the Plan sets forth how any entity registered as a national securities exchange or national securities association may become a Participant.

G. Approval of Amendment of the Plan

Each of the Plan's Participants has executed a written amended Plan.

H. Terms and Conditions of Access

Section II(C) of the Plan provides that any entity registered as a national securities exchange or national securities association under the Exchange Act may become a Participant by: (1) Becoming a participant in the applicable Market Data Plans, as defined in Section I(F) of the Plan; (2) executing a copy of the Plan, as then in effect; (3) providing each then-current Participant with a copy of such executed Plan; and (4) effecting an amendment to the Plan as specified in Section III(B) of the Plan.

I. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

J. Method and Frequency of Processor Evaluation

Not applicable.

K. Dispute Resolution

Section III(C) of the Plan provides that each Participant shall designate an individual to represent the Participant as a member of an Operating Committee. No later than the initial date of the Plan, the Operating Committee shall designate one member of the Operating Committee to act as the Chair of the Operating Committee. Any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, shall be submitted to the Commission as a request for an amendment to the Plan initiated by the Commission under Rule 608.

On February 17, 2016, the Operating Committee, duly constituted and chaired by Mr. Paul Roland, Nasdaq, met and voted unanimously to amend the Plan as set forth herein in accordance with Section III(C) of the Plan. The Plan Advisory Committee was notified in connection with the Tenth Amendment and was in favor.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Tenth Amendment is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number 4–631 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. All submissions should refer to File Number 4–631. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the Plan that are filed with the Commission, and all written communications relating to the Plan between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission’s Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of

10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the Participants’ principal offices. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–631 and should be submitted on or before March 21, 2016.

By the Commission.
Robert W. Errett,
Deputy Secretary.

Appendix A

Proposed new language is *italicized*; proposed deletions are in [brackets].

PLAN TO ADDRESS EXTRAORDINARY MARKET VOLATILITY SUBMITTED TO THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 608 OF REGULATION NMS UNDER THE SECURITIES EXCHANGE ACT OF 1934

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Preamble

The Participants submit to the SEC this Plan establishing procedures to address extraordinary volatility in NMS Stocks. The procedures provide for market-wide limit up-limit down requirements that prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands. These limit up-limit down requirements are coupled with Trading Pauses to accommodate more fundamental price moves. The Plan procedures are designed, among other things, to protect investors and promote fair and orderly markets. The Participants developed this Plan pursuant to Rule 608(a)(3) of Regulation NMS under the Exchange Act, which authorizes the Participants to act jointly in preparing, filing, and implementing national market system plans.

I. Definitions

(A) “Eligible Reported Transactions” shall have the meaning prescribed by the Operating Committee and shall generally

mean transactions that are eligible to update the last sale price of an NMS Stock.

(B) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(C) “Limit State” shall have the meaning provided in Section VI of the Plan.

(D) “Limit State Quotation” shall have the meaning provided in Section VI of the Plan.

(E) “Lower Price Band” shall have the meaning provided in Section V of the Plan.

(F) “Market Data Plans” shall mean the effective national market system plans through which the Participants act jointly to disseminate consolidated information in compliance with Rule 603(b) of Regulation NMS under the Exchange Act.

(G) “National Best Bid” and “National Best Offer” shall have the meaning provided in Rule 600(b)(42) of Regulation NMS under the Exchange Act.

(H) “NMS Stock” shall have the meaning provided in Rule 600(b)(47) of Regulation NMS under the Exchange Act.

(I) “Opening Price” shall mean the price of a transaction that opens trading on the Primary Listing Exchange[, or,] [i]f the

Primary Listing Exchange opens with quotations, the “Opening Price” shall mean the closing price of the NMS Stock on the Primary Listing Exchange on the previous trading day, or if no such closing price exists, the last sale on the Primary Listing Exchange [midpoint of those quotations].

(J) “Operating Committee” shall have the meaning provided in Section III(C) of the Plan.

(K) “Participant” means a party to the Plan.

(L) “Plan” means the plan set forth in this instrument, as amended from time to time in accordance with its provisions.

(M) “Percentage Parameter” shall mean the percentages for each tier of NMS Stocks set forth in Appendix A of the Plan.

(N) “Price Bands” shall have the meaning provided in Section V of the Plan.

(O) “Primary Listing Exchange” shall mean the Participant on which an NMS Stock is listed. If an NMS Stock is listed on more than one Participant, the Participant on which the NMS Stock has been listed the longest shall be the Primary Listing Exchange.

(P) "Processor" shall mean the single plan processor responsible for the consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act.

(Q) "Pro-Forma Reference Price" shall have the meaning provided in Section V(A)(2) of the Plan.

(R) "Reference Price" shall have the meaning provided in Section V of the Plan.

(S)(R) "Regular Trading Hours" shall have the meaning provided in Rule 600(b)(64) of Regulation NMS under the Exchange Act. For purposes of the Plan, Regular Trading Hours can end earlier than 4:00 p.m. ET in the case of an early scheduled close.

(T)(S) "Regulatory Halt" shall have the meaning specified in the Market Data Plans.

(T) "Reference Price" shall have the meaning provided in Section V of the Plan.]

(U) "Reopening Price" shall mean the price of a transaction that reopens trading on the Primary Listing Exchange following a Trading Pause or a Regulatory Halt, or, if the Primary Listing Exchange reopens with quotations, the midpoint of those quotations.

(V) "SEC" shall mean the United States Securities and Exchange Commission.

(W) "Straddle State" shall have the meaning provided in Section VII(A)(2) of the Plan.

(X) "Trading center" shall have the meaning provided in Rule 600(b)(78) of Regulation NMS under the Exchange Act.

(Y) "Trading Pause" shall have the meaning provided in Section VII of the Plan.

(Z) "Upper Price Band" shall have the meaning provided in Section V of the Plan.

II. Parties

(A) List of Parties

The parties to the Plan are as follows:

- (1) BATS Exchange, Inc., 8050 Marshall Drive, Lenexa, Kansas 66214
- (2) BATS Y-Exchange, Inc., 8050 Marshall Drive, Lenexa, Kansas 66214
- (3) Chicago Stock Exchange, Inc., 440 South LaSalle Street, Chicago, Illinois 60605
- (4) EDGA Exchange, Inc., 8050 Marshall Drive, Lenexa, Kansas 66214
- (5) EDGX Exchange, Inc., 8050 Marshall Drive, Lenexa, Kansas 66214
- (6) Financial Industry Regulatory Authority, Inc., 1735 K Street, NW, Washington, DC 20006
- (7) NASDAQ OMX BX, Inc., One Liberty Plaza, New York, New York 10006
- (8) NASDAQ OMX PHLX LLC, 1900 Market Street, Philadelphia, Pennsylvania 19103
- (9) The Nasdaq Stock Market LLC, 1 Liberty Plaza, 165 Broadway, New York, NY 10006
- (10) National Stock Exchange, Inc., 101 Hudson, Suite 1200, Jersey City, NJ 07302
- (11) New York Stock Exchange LLC, 11 Wall Street, New York, New York 10005
- (12) NYSE MKT LLC, 11 Wall Street, New York, New York 10005
- (13) NYSE Arca, Inc., 11 Wall Street, New York, New York 10005

(B) Compliance Undertaking

By subscribing to and submitting the Plan for approval by the SEC, each Participant

agrees to comply with and to enforce compliance, as required by Rule 608(c) of Regulation NMS under the Exchange Act, by its members with the provisions of the Plan. To this end, each Participant shall adopt a rule requiring compliance by its members with the provisions of the Plan, and each Participant shall take such actions as are necessary and appropriate as a participant of the Market Data Plans to cause and enable the Processor for each NMS Stock to fulfill the functions set forth in this Plan.

(C) New Participants

The Participants agree that any entity registered as a national securities exchange or national securities association under the Exchange Act may become a Participant by:

- (1) becoming a participant in the applicable Market Data Plans;
- (2) executing a copy of the Plan, as then in effect;
- (3) providing each then-current Participant with a copy of such executed Plan; and
- (4) effecting an amendment to the Plan as specified in Section III (B) of the Plan.

(D) Advisory Committee

(1) *Formation.* Notwithstanding other provisions of this Plan, an Advisory Committee to the Plan shall be formed and shall function in accordance with the provisions set forth in this section.

(2) *Composition.* Members of the Advisory Committee shall be selected for two-year terms as follows:

(A) *Advisory Committee Selections.* By affirmative vote of a majority of the Participants, the Participants shall select at least one representatives from each of the following categories to be members of the Advisory Committee: (1) a broker-dealer with a substantial retail investor customer base; (2) a broker-dealer with a substantial institutional investor customer base; (3) an alternative trading system; (4) a broker-dealer that primarily engages in trading for its own account; and (5) an investor.

(3) *Function.* Members of the Advisory Committee shall have the right to submit their views to the Operating Committee on Plan matters, prior to a decision by the Operating Committee on such matters. Such matters shall include, but not be limited to, proposed material amendments to the Plan.

(4) *Meetings and Information.* Members of the Advisory Committee shall have the right to attend meetings of the Operating Committee and to receive any information concerning Plan matters; provided, however, that the Operating Committee may meet in executive session if, by affirmative vote of a majority of the Participants, the Operating Committee determines that an item of Plan business requires confidential treatment.

III. Amendments to Plan

(A) General Amendments

Except with respect to the addition of new Participants to the Plan, any proposed change in, addition to, or deletion from the Plan shall be effected by means of a written amendment to the Plan that: (1) sets forth the change, addition, or deletion; (2) is executed on behalf of each Participant; and, (3) is approved by the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act, or otherwise becomes effective under Rule

608 of Regulation NMS under the Exchange Act.

(B) New Participants

With respect to new Participants, an amendment to the Plan may be effected by the new national securities exchange or national securities association executing a copy of the Plan, as then in effect (with the only changes being the addition of the new Participant's name in Section II(A) of the Plan) and submitting such executed Plan to the SEC for approval. The amendment shall be effective when it is approved by the SEC in accordance with Rule 608 of Regulation NMS under the Exchange Act or otherwise becomes effective pursuant to Rule 608 of Regulation NMS under the Exchange Act.

(C) Operating Committee

(1) Each Participant shall select from its staff one individual to represent the Participant as a member of an Operating Committee, together with a substitute for such individual. The substitute may participate in deliberations of the Operating Committee and shall be considered a voting member thereof only in the absence of the primary representative. Each Participant shall have one vote on all matters considered by the Operating Committee. No later than the initial date of Plan operations, the Operating Committee shall designate one member of the Operating Committee to act as the Chair of the Operating Committee.

(2) The Operating Committee shall monitor the procedures established pursuant to this Plan and advise the Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate. The Operating Committee shall establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of this Plan and the Appendixes thereto. With respect to matters in this paragraph, Operating Committee decisions shall be approved by a simple majority vote.

(3) Any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, shall be submitted to the SEC as a request for an amendment to the Plan initiated by the Commission under Rule 608 of Regulation NMS.

IV. Trading Center Policies and Procedures

All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up—limit down requirements specified in Sections VI of the Plan, and to comply with the Trading Pauses specified in Section VII of the Plan.

V. Price Bands

(A) Calculation and Dissemination of Price Bands

(1) The Processor for each NMS stock shall calculate and disseminate to the public a Lower Price Band and an Upper Price Band during Regular Trading Hours for such NMS

Stock. The Price Bands shall be based on a Reference Price for each NMS Stock that equals the arithmetic mean price of Eligible Reported Transactions for the NMS stock over the immediately preceding five-minute period (except for periods following openings and reopenings, which are addressed below). If no Eligible Reported Transactions for the NMS Stock have occurred over the immediately preceding five-minute period, the previous Reference Price shall remain in effect. The Price Bands for an NMS Stock shall be calculated by applying the Percentage Parameter for such NMS Stock to the Reference Price, with the Lower Price Band being a Percentage Parameter below the Reference Price, and the Upper Price Band being a Percentage Parameter above the Reference Price. The Price Bands shall be calculated during Regular Trading Hours. Between 9:30 a.m. and 9:45 a.m. ET, and 3:35 p.m. and 4:00 p.m. ET, or in the case of an early scheduled close, during the last 25 minutes of trading before the early scheduled close, the Price Bands shall be calculated by applying double the Percentage Parameters set forth in Appendix A. If a Reopening Price does not occur within ten minutes after the beginning of a Trading Pause, the Price Band, for the first 30 seconds following the reopening after that Trading Pause, shall be calculated by applying triple the Percentage Parameters set forth in Appendix A.

(2) The Processor shall calculate a Pro-Forma Reference Price on a continuous basis during Regular Trading Hours, as specified in Section V(A)(1) of the Plan. If a Pro-Forma Reference Price has not moved by 1% or more from the Reference Price currently in effect, no new Price Bands shall be disseminated, and the current Reference Price shall remain the effective Reference Price. When the Pro-Forma Reference Price has moved by 1% or more from the Reference Price currently in effect, the Pro-Forma Reference Price shall become the Reference Price, and the Processor shall disseminate new Price Bands based on the new Reference Price; provided, however, that each new Reference Price shall remain in effect for at least 30 seconds.

(B) Openings

(1) Except when a Regulatory Halt is in effect at the start of Regular Trading Hours, the first Reference Price for a trading day shall be the Opening Price on the Primary Listing Exchange in an NMS Stock if such Opening Price occurs less than five minutes after the start of Regular Trading Hours. During the period less than five minutes after the Opening Price, a Pro-Forma Reference Price shall be updated on a continuous basis to be the arithmetic mean price of Eligible Reported Transactions for the NMS Stock during the period following the Opening Price (including the Opening Price), and if it differs from the current Reference Price by 1% or more shall become the new Reference Price, except that a new Reference Price shall remain in effect for at least 30 seconds. Subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(2) If the Opening Price on the Primary Listing Exchange in an NMS Stock does not occur within five minutes after the start of

Regular Trading Hours, the first Reference Price for a trading day shall be the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the preceding five minute time period, and subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(C) Reopenings

(1) Following a Trading Pause in an NMS Stock, and if the Primary Listing Exchange has not declared a Regulatory Halt, the next Reference Price shall be the Reopening Price on the Primary Listing Exchange if such Reopening Price occurs within ten minutes after the beginning of the Trading Pause, and subsequent Reference Prices shall be determined in the manner prescribed for normal openings, as specified in Section V(B)(1) of the Plan. If such Reopening Price does not occur within ten minutes after the beginning of the Trading Pause, the first Reference Price following the Trading Pause shall be equal to the last effective Reference Price before the Trading Pause. Subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(2) Following a Regulatory Halt, the next Reference Price shall be the Opening or Reopening Price on the Primary Listing Exchange if such Opening or Reopening Price occurs within five minutes after the end of the Regulatory Halt, and subsequent Reference Prices shall be determined in the manner prescribed for normal openings, as specified in Section V(B)(1) of the Plan. If such Opening or Reopening Price has not occurred within five minutes after the end of the Regulatory Halt, the Reference Price shall be equal to the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the preceding five minute time period, and subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

VI. Limit Up-Limit Down Requirements

(A) Limitations on Trades and Quotations Outside of Price Bands

(1) All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trades at prices that are below the Lower Price Band or above the Upper Price Band for an NMS Stock. Single-priced opening, reopening, and closing transactions on the Primary Listing Exchange, however, shall be excluded from this limitation. In addition, any transaction that both (i) does not update the last sale price (except if solely because the transaction was reported late or because the transaction was an odd-lot sized transaction), and (ii) is excepted or exempt from Rule 611 under Regulation NMS shall be excluded from this limitation.

(2) When a National Best Bid is below the Lower Price Band or a National Best Offer is above the Upper Price Band for an NMS Stock, the Processor shall disseminate such National Best Bid or National Best Offer with an appropriate flag identifying it as non-executable. When a National Best Offer is equal to the Lower Price Band or a National

Best Bid is equal to the Upper Price Band for an NMS Stock, the Processor shall distribute such National Best Bid or National Best Offer with an appropriate flag identifying it as a "Limit State Quotation".

(3) All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processor shall disseminate an offer below the Lower Price Band or bid above the Upper Price Band that may be submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; provided, however, that any such bid or offer shall not be included in National Best Bid or National Best Offer calculations.

(B) Entering and Exiting a Limit State

(1) All trading for an NMS Stock shall immediately enter a Limit State if the National Best Offer equals the Lower Price Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Price Band and does not cross the National Best Offer.

(2) When trading for an NMS Stock enters a Limit State, the Processor shall disseminate this information by identifying the relevant quotation (*i.e.*, a National Best Offer that equals the Lower Price Band or a National Best Bid that equals the Upper Price Band) as a Limit State Quotation. At this point, the Processor shall cease calculating and disseminating updated Reference Prices and Price Bands for the NMS Stock until either trading exits the Limit State or trading resumes with an opening or re-opening as provided in Section V.

(3) Trading for an NMS Stock shall exit a Limit State if, within 15 seconds of entering the Limit State, the entire size of all Limit State Quotations are executed or cancelled.

(4) If trading for an NMS Stock exits a Limit State within 15 seconds of entry, the Processor shall immediately calculate and disseminate updated Price Bands based on a Reference Price that equals the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the immediately preceding five-minute period (including the period of the Limit State).

(5) If trading for an NMS Stock does not exit a Limit State within 15 seconds of entry, the Limit State will terminate when the Primary Listing Exchange declares a Trading Pause pursuant to Section VII of the Plan or at the end of Regular Trading Hours.

VII. Trading Pauses

(A) Declaration of Trading Pauses

(1) If trading for an NMS Stock does not exit a Limit State within 15 seconds of entry during Regular Trading Hours, then the Primary Listing Exchange shall declare a Trading Pause for such NMS Stock and shall notify the Processor.

(2) The Primary Listing Exchange may also declare a Trading Pause for an NMS Stock when an NMS Stock is in a Straddle State, which is when National Best Bid (Offer) is

below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State, and trading in that NMS Stock deviates from normal trading characteristics such that declaring a Trading Pause would support the Plan's goal to address extraordinary market volatility. The Primary Listing Exchange shall develop policies and procedures for determining when it would declare a Trading Pause in such circumstances. If a Trading Pause is declared for an NMS Stock under this provision, the Primary Listing Exchange shall notify the Processor.

(3) The Processor shall disseminate Trading Pause information to the public. No trades in an NMS Stock shall occur during a Trading Pause, but all bids and offers may be displayed.

(B) Reopening of Trading During Regular Trading Hours

(1) Five minutes after declaring a Trading Pause for an NMS Stock, and if the Primary Listing Exchange has not declared a Regulatory Halt, the Primary Listing Exchange shall attempt to reopen trading using its established reopening procedures. The Trading Pause shall end when the Primary Listing Exchange reports a Reopening Price.

(2) The Primary Listing Exchange shall notify the Processor if it is unable to reopen trading in an NMS Stock for any reason other than a significant order imbalance and if it has not declared a Regulatory Halt. The Processor shall disseminate this information to the public, and all trading centers may begin trading the NMS Stock at this time.

(3) If the Primary Listing Exchange does not report a Reopening Price within ten minutes after the declaration of a Trading Pause in an NMS Stock, and has not declared a Regulatory Halt, all trading centers may begin trading the NMS Stock.

(4) When trading begins after a Trading Pause, the Processor shall update the Price Bands as set forth in Section V(C)(1) of the Plan.

(C) Trading Pauses Within Ten Minutes of the End of Regular Trading Hours

(1) If a Trading Pause for an NMS Stock is declared in the last ten minutes of trading before the end of Regular Trading Hours, the Primary Listing Exchange shall not reopen trading and shall attempt to execute a closing transaction using its established closing procedures. All trading centers may begin trading the NMS Stock when the Primary Listing Exchange executes a closing transaction.

(2) If the Primary Listing Exchange does not execute a closing transaction within five minutes after the end of Regular Trading Hours, all trading centers may begin trading the NMS Stock.

VIII. Implementation

The initial date of Plan operations shall be April 8, 2013.

(A) Phase I

(1) On the initial date of Plan operations, Phase I of Plan implementation shall begin in select symbols from the Tier 1 NMS Stocks identified in Appendix A of the Plan.

(2) Three months after the initial date of Plan operations, or such earlier date as may

be announced by the Processor with at least 30 days notice, the Plan shall fully apply to all Tier 1 NMS Stocks identified in Appendix A of the Plan.

(3) During Phase I, the first Price Bands for a trading day shall be calculated and disseminated 15 minutes after the start of Regular Trading Hours as specified in Section (V)(A) of the Plan. No Price Bands shall be calculated and disseminated and therefore trading shall not enter a Limit State less than 30 minutes before the end of Regular Trading Hours.

(B) Phase II—Full Implementation

Phase II.A.: Eight months after the initial date of Plan operations, or such earlier date as may be announced by the Processor with at least 30 days notice, the Plan shall fully apply (i) to all NMS Stocks; and (ii) beginning at 9:30 a.m. ET, and ending at 3:45 p.m. ET each trading day, or earlier in the case of an early scheduled close.

Phase II.B.: By February 24, 2014, or such earlier date as may be announced by the Processor with at least 30 days notice, the Plan shall fully apply (i) to all NMS Stocks; and (ii) beginning at 9:30 a.m. ET, and ending at 4:00 p.m. ET each trading day, or earlier in the case of an early scheduled close.

(C) Pilot

The Plan shall be implemented on a pilot basis set to end on April 21[2], 2017[6].

IX. Withdrawal from Plan

If a Participant obtains SEC approval to withdraw from the Plan, such Participant may withdraw from the Plan at any time on not less than 30 days' prior written notice to each of the other Participants. At such time, the withdrawing Participant shall have no further rights or obligations under the Plan.

X. Counterparts and Signatures

The Plan may be executed in any number of counterparts, no one of which need contain all signatures of all Participants, and as many of such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

IN WITNESS THEREOF, this Plan has been executed as of the [31st] 18th day of [July] February 2016[5] by each of the parties hereto.

BATS EXCHANGE, INC.

BY: _____

CHICAGO STOCK EXCHANGE, INC.

BY: _____

EDGX EXCHANGE, INC.

BY: _____

NASDAQ OMX BX, INC.

BY: _____

THE NASDAQ STOCK MARKET LLC

BY: _____

NEW YORK STOCK EXCHANGE LLC

BY: _____

NYSE ARCA, INC.

BY: _____

BATS Y-EXCHANGE, INC.

BY: _____

EDGA EXCHANGE, INC.

BY: _____

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

BY: _____

NASDAQ OMX PHLX LLC

BY: _____

NATIONAL STOCK EXCHANGE, INC.

BY: _____

NYSE MKT LLC

BY: _____

Appendix A—Percentage Parameters

I. Tier 1 NMS Stocks

(1) Tier 1 NMS Stocks shall include all NMS Stocks included in the S&P 500 Index, the Russell 1000 Index, and the exchange-traded products ("ETP") [listed on] *identified as Schedule 1 to this Appendix*. Schedule 1 to the Appendix will be reviewed and updated semi-annually based on the fiscal year by the Primary Listing Exchange to add ETPs that meet the criteria, or delete ETPs that are no longer eligible. To determine eligibility for an ETP to be included as a Tier 1 NMS Stock, all ETPs across multiple asset classes and issuers, including domestic equity, international equity, fixed income, currency, and commodities and futures will be identified. Leveraged ETPs will be excluded and the list will be sorted by notional consolidated average daily volume ("CADV"). The period used to measure CADV will be from the first day of the previous fiscal half year up until one week before the beginning of the next fiscal half year. Daily volumes will be multiplied by closing prices and then averaged over the period. ETPs, including inverse ETPs, that trade over \$2,000,000 CADV will be eligible to be included as a Tier 1 NMS Stock. The semi-annual updates to Schedule 1 do not require an amendment to the Plan. The Primary Listing Exchanges will maintain the updated Schedule 1 on their respective Web sites.

(2) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price more than \$3.00 shall be 5%.

(3) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price equal to \$0.75 and up to and including \$3.00 shall be 20%.

(4) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price less than \$0.75 shall be the lesser of (a) \$0.15 or (b) 75%.

(5) The Reference Price used for determining which Percentage Parameter shall be applicable during a trading day shall be based on the closing price of the NMS Stock on the Primary Listing Exchange on the previous trading day, or if no closing price exists, the last sale on the Primary Listing Exchange reported by the Processor.

II. Tier 2 NMS Stocks

(1) Tier 2 NMS Stocks shall include all NMS Stocks other than those in Tier 1, provided, however, that all rights and warrants are excluded from the Plan.

(2) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price more than \$3.00 shall be 10%.

(3) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price equal to

\$0.75 and up to and including \$3.00 shall be 20%.

(4) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price less than \$0.75 shall be the lesser of (a) \$0.15 or (b) 75%.

(5) Notwithstanding the foregoing, the Percentage Parameters for a Tier 2 NMS

Stock that is a leveraged ETP shall be the applicable Percentage Parameter set forth in clauses (2), (3), or (4) above, multiplied by the leverage ratio of such product.

(6) The Reference Price used for determining which Percentage Parameter shall be applicable during a trading day shall be based on the closing price of the NMS

Stock on the Primary Listing Exchange on the previous trading day, or if no closing price exists, the last sale on the Primary Listing Exchange reported by the Processor.

APPENDIX A—SCHEDULE 1
(AS OF JANUARY 4, 2016)

Ticker	ETP name	Exchange
AAXJ	iShares MSCI All Country Asia ex Japan ETF	NASDAQ
ACWI	iShares MSCI ACWI ETF	NASDAQ
ACWV	iShares MSCI All Country World Minimum Volatility ETF	NYSE Arca
ACWX	iShares MSCI ACWI ex US ETF	NASDAQ
AGG	iShares Core U.S. Aggregate Bond ETF	NYSE Arca
AGZ	iShares Agency Bond ETF	NYSE Arca
AMJ	JPMorgan Alerian MLP Index ETN	NYSE Arca
AML	Alerian MLP ETF	NYSE Arca
AMU	ETRACS Alerian MLP Index ETN	NYSE Arca
AOA	iShares Core Aggressive Allocation ETF	NYSE Arca
AOK	iShares Core Conservative Allocation ETF	NYSE Arca
AOM	iShares Core Moderate Allocation ETF	NYSE Arca
AOR	iShares Core Growth Allocation ETF	NYSE Arca
ASHR	Deutsche X-trackers Harvest CSI 300 China A-Shares ETF	NYSE Arca
ASHS	Deutsche X-trackers Harvest CSI 500 China A-Shares ETF	NYSE Arca
ATMP	Barclays ETN+ Select MLP ETNs	NYSE Arca
BAB	PowerShares Build America Bond Portfolio	NYSE Arca
BBH	Market Vectors Biotech ETF	NYSE Arca
BIL	SPDR Barclays 1–3 Month T-Bill	NYSE Arca
BIV	Vanguard Intermediate-Term Bond ETF	NYSE Arca
BKLN	PowerShares Senior Loan Portfolio	NYSE Arca
BLV	Vanguard Long-Term Bond ETF	NYSE Arca
BND	Vanguard Total Bond Market ETF	NYSE Arca
BNDX	SPDR Barclays Aggregate Bond ETF	NYSE Arca
BOND	Vanguard Total International Bond ETF	NASDAQ
BSCG	PIMCO Total Return Active Exchange-Traded Fund	NYSE Arca
BSCJ	Guggenheim BulletShares 2016 Corporate Bond ETF	NYSE Arca
BSCB	Guggenheim BulletShares 2017 Corporate Bond ETF	NYSE Arca
BSCI	Guggenheim BulletShares 2018 Corporate Bond ETF	NYSE Arca
BSCJ	Guggenheim BulletShares 2019 Corporate Bond ETF	NYSE Arca
BSCK	Guggenheim BulletShares 2020 Corporate Bond ETF	NYSE Arca
BSJF	Guggenheim BulletShares 2015 High Yield Corporate Bond ETF	NYSE Arca
BSJG	Guggenheim BulletShares 2016 High Yield Corporate Bond ETF	NYSE Arca
BSJH	Guggenheim BulletShares 2017 High Yield Corporate Bond ETF	NYSE Arca
BSJI	Guggenheim BulletShares 2018 High Yield Corporate Bond ETF	NYSE Arca
BSJJ	Guggenheim BulletShares 2019 High Yield Corporate Bond ETF	NYSE Arca
BSV	Vanguard Short-Term Bond ETF	NYSE Arca
BTAL	QuantShares US Market Neutral Anti-Beta Fund	NYSE Arca
BWX	SPDR Barclays International Treasury Bond ETF	NYSE Arca
CHAD	Direxion Daily CSI 300 China A Share Bear 1x Shares	NYSE Arca
CIU	iShares Intermediate Credit Bond ETF	NYSE Arca
CLY	iShares 10+ Year Credit Bond ETF	NYSE Arca
CMBS	iShares CMBS ETF	NYSE Arca
CMF	iShares California AMT-Free Muni Bond ETF	NYSE Arca
CNXT	Market Vectors China AMC SME-ChiNext ETF	NYSE Arca
CORP	PIMCO Investment Grade Corporate Bond Index Exchange-Traded Fund	NYSE Arca
CRED	iShares Core US Credit Bond ETF	NYSE Arca
CSD	Guggenheim Spin-Off ETF	NYSE Arca
CSJ	iShares 1–3 Year Credit Bond ETF	NYSE Arca
CSM	ProShares Large Cap Core Plus	BATS
CVY	Guggenheim Multi-Asset Income ETF	NYSE Arca
CWB	SPDR Barclays Convertible Securities ETF	NYSE Arca
CWI	SPDR MSCI ACWI ex-US ETF	NYSE Arca
DBA	PowerShares DB Agriculture Fund	NYSE Arca
DBC	PowerShares DB Commodity Index Tracking Fund	NYSE Arca
DBEF	Deutsche X-trackers MSCI EAFE Hedged Equity ETF	NYSE Arca
DBEM	Deutsche X-trackers MSCI Emerging Markets Hedged Equity ETF	NYSE Arca
DBEU	Deutsche X-trackers MSCI Europe Hedged Equity ETF	NYSE Arca
DBGH	Deutsche X-trackers MSCI Germany Hedged Equity ETF	NYSE Arca
DBJP	Deutsche X-trackers MSCI Japan Hedged Equity ETF	NYSE Arca
DBKO	Deutsche X-trackers MSCI South Korea Hedged Equity ETF	NYSE Arca
DBO	PowerShares DB Oil Fund	NYSE Arca

APPENDIX A—SCHEDULE 1—Continued
(AS OF JANUARY 4, 2016)

Ticker	ETP name	Exchange
DEM	WisdomTree Emerging Markets High Dividend Fund	NYSE Arca
DES	WisdomTree SmallCap Dividend Fund	NYSE Arca
DFE	WisdomTree Europe SmallCap Dividend Fund	NYSE Arca
DFJ	WisdomTree Japan SmallCap Dividend Fund	NYSE Arca
DGRO	iShares Core Dividend Growth ETF	NYSE Arca
DGRW	WisdomTree U.S. Quality Dividend Growth Fund	NASDAQ
DGS	WisdomTree Emerging Markets SmallCap Dividend Fund	NYSE Arca
DHS	WisdomTree High Dividend Fund	NYSE Arca
DIA	SPDR Dow Jones Industrial Average ETF Trust	NYSE Arca
DJP	iPath Bloomberg Commodity Index Total Return ETN	NYSE Arca
DLN	WisdomTree LargeCap Dividend Fund	NYSE Arca
DLS	WisdomTree International SmallCap Dividend Fund	NYSE Arca
DOG	ProShares Short Dow30	NYSE Arca
DOL	WisdomTree International LargeCap Dividend Fund	NYSE Arca
DON	WisdomTree MidCap Dividend Fund	NYSE Arca
DSI	iShares MSCI KLD 400 Social ETF	NYSE Arca
DTD	WisdomTree Total Dividend Fund	NYSE Arca
DTN	WisdomTree Dividend Ex-Financials Fund	NYSE Arca
DVY	iShares Select Dividend ETF	NYSE Arca
DWAS	PowerShares DWA SmallCap Momentum Portfolio	NYSE Arca
DWM	WisdomTree International Equity Fund	NYSE Arca
DWTR	PowerShares DWA Tactical Sector Rotation Portfolio	NASDAQ
DWX	SPDR S&P International Dividend ETF	NYSE Arca
DXGE	WisdomTree Germany Hedged Equity Fund	NASDAQ
DXJ	WisdomTree Japan Hedged Equity Fund	NYSE Arca
DXJS	WisdomTree Japan Hedged SmallCap Equity Fund	NASDAQ
ECH	iShares MSCI Chile Capped ETF	NYSE Arca
ECON	EGShares Emerging Markets Consumer ETF	NYSE Arca
EDIV	SPDR S&P Emerging Markets Dividend ETF	NYSE Arca
EDV	Vanguard Extended Duration Treasury ETF	NYSE Arca
EELV	PowerShares S&P Emerging Markets Low Volatility Portfolio	NYSE Arca
EEM	iShares MSCI Emerging Markets ETF	NYSE Arca
EEMA	iShares MSCI Emerging Markets Asia ETF	NASDAQ
EEMS	iShares MSCI Emerging Markets Small-Cap ETF	NYSE Arca
EEMV	iShares MSCI Emerging Markets Minimum Volatility ETF/Dup	NYSE Arca
EFA	iShares MSCI EAFE ETF	NYSE Arca
EFAV	iShares MSCI EAFE Minimum Volatility ETF	NYSE Arca
EFG	iShares MSCI EAFE Growth ETF	NYSE Arca
EFV	iShares MSCI EAFE Value ETF	NYSE Arca
EFZ	ProShares Short MSCI EAFE	NYSE Arca
EIDO	iShares MSCI Indonesia ETF	NYSE Arca
EIRL	iShares MSCI Ireland Capped ETF	NYSE Arca
EIS	iShares MSCI Israel Capped ETF	NYSE Arca
ELD	WisdomTree Emerging Markets Local Debt Fund	NYSE Arca
EMB	iShares JP Morgan USD Emerging Markets Bond ETF	NYSE Arca
EMHY	iShares Emerging Markets High Yield Bond ETF	BATS
EMLC	Market Vectors J.P. Morgan EM Local Currency Bond ETF	NYSE Arca
EMLP	First Trust North American Energy Infrastructure Fund	NYSE Arca
EPHE	iShares MSCI Philippines ETF	NYSE Arca
EPI	WisdomTree India Earnings Fund	NYSE Arca
EPOL	iShares MSCI Poland Capped ETF	NYSE Arca
EPP	iShares MSCI Pacific ex Japan ETF	NYSE Arca
EPU	iShares MSCI All Peru Capped ETF	NYSE Arca
ERUS	iShares MSCI Russia Capped ETF	NYSE Arca
EUFN	iShares MSCI Europe Financials ETF	NASDAQ
EUM	ProShares Short MSCI Emerging Markets	NYSE Arca
EUSC	WisdomTree Europe Hedged SmallCap Equity Fund	NYSE Arca
EWA	iShares MSCI Australia ETF	NYSE Arca
EWC	iShares MSCI Canada ETF	NYSE Arca
EWD	iShares MSCI Sweden ETF	NYSE Arca
EWG	iShares MSCI Germany ETF	NYSE Arca
EWH	iShares MSCI Hong Kong ETF	NYSE Arca
EWI	iShares MSCI Italy Capped ETF	NYSE Arca
EWJ	iShares MSCI Japan ETF	NYSE Arca
EWK	iShares MSCI Belgium Capped ETF	NYSE Arca
EWL	iShares MSCI Switzerland Capped ETF	NYSE Arca
EWM	iShares MSCI Malaysia ETF	NYSE Arca
EWN	iShares MSCI Netherlands ETF	NYSE Arca
EWP	iShares MSCI Spain Capped ETF	NYSE Arca
EWQ	iShares MSCI France ETF	NYSE Arca
EWS	iShares MSCI Singapore ETF	NYSE Arca

APPENDIX A—SCHEDULE 1—Continued
(AS OF JANUARY 4, 2016)

Ticker	ETP name	Exchange
EWT	iShares MSCI Taiwan ETF	NYSE Arca
EWU	iShares MSCI United Kingdom ETF	NYSE Arca
EWV	iShares MSCI Mexico Capped ETF	NYSE Arca
EWX	SPDR S&P Emerging Markets SmallCap ETF	NYSE Arca
EWY	iShares MSCI South Korea Capped ETF	NYSE Arca
EWZ	iShares MSCI Brazil Capped ETF	NYSE Arca
EZA	iShares MSCI South Africa ETF	NYSE Arca
EZM	WisdomTree MidCap Earnings Fund	NYSE Arca
EZU	iShares MSCI Eurozone ETF	NYSE Arca
FBT	First Trust NYSE Arca Biotechnology Index Fund	NYSE Arca
FCG	First Trust ISE-Revere Natural Gas Index Fund	NYSE Arca
FDIS	Fidelity MSCI Consumer Discretionary Index ETF	NYSE Arca
FDL	First Trust Morningstar Dividend Leaders Index	NYSE Arca
FDN	First Trust Dow Jones Internet Index Fund	NYSE Arca
FEM	First Trust Emerging Markets AlphaDEX Fund	NASDAQ
FENY	Fidelity MSCI Energy Index ETF	NYSE Arca
FEP	First Trust Europe AlphaDEX Fund	NASDAQ
FEX	First Trust Large Cap Core AlphaDEX Fund	NYSE Arca
FEZ	SPDR EURO STOXX 50 ETF	NYSE Arca
FGD	First Trust DJ Global Select Dividend Index Fund	NYSE Arca
FHLC	Fidelity MSCI Health Care Index ETF	NYSE Arca
FIDU	Fidelity MSCI Industrials Index ETF	NYSE Arca
FJP	First Trust Japan AlphaDEX Fund	NASDAQ
FKU	First Trust United Kingdom AlphaDEX Fund	NASDAQ
FLOT	iShares Floating Rate Bond ETF	NYSE Arca
FLTB	Fidelity Ltd Term Bond ETF	NYSE Arca
FM	iShares MSCI Frontier 100 ETF JDR	NYSE Arca
FMAT	Fidelity MSCI Materials Index ETF	NYSE Arca
FNCL	Fidelity MSCI Financials Index ETF	NYSE Arca
FNDA	Schwab Fundamental U.S. Small Company Index	NYSE Arca
FNDC	Schwab Fundamental International Small Cap Company Index	NYSE Arca
FNDE	Schwab Fundamental Emerging Markets Large Company Index ETF	NYSE Arca
FNDF	Schwab Fundamental International Large Company Index	NYSE Arca
FNDX	Schwab Fundamental U.S. Large Company Index	NYSE Arca
FNX	First Trust Mid Cap Core AlphaDEX Fund	NYSE Arca
FPE	First Trust Preferred Securities and Income ETF	NYSE Arca
FPX	First Trust US IPO Index Fund	NYSE Arca
FSTA	Fidelity MSCI Consumer Staples Index ETF	NYSE Arca
FTA	First Trust Large Cap Value AlphaDEX Fund	NYSE Arca
FTC	First Trust Large Cap Growth AlphaDEX Fund	NYSE Arca
FTEC	Fidelity MSCI Information Technology Index ETF	NYSE Arca
FTGC	First Trust Global Tactical Commodity Strategy Fund	NASDAQ
FTSL	First Trust Senior Loan ETF	NASDAQ
FTSM	First Trust Enhanced Short Maturity ETF	NASDAQ
FUTY	Fidelity MSCI Utilities Index ETF	NYSE Arca
FV	First Trust Dorsey Wright Focus 5 ETF	NASDAQ
FVD	First Trust Value Line Dividend Index Fund	NYSE Arca
FXA	CurrencyShares Australian Dollar Trust	NYSE Arca
FXB	CurrencyShares British Pound Sterling Trust	NYSE Arca
FXC	CurrencyShares Canadian Dollar Trust	NYSE Arca
FXD	First Trust Consumer Discretionary AlphaDEX Fund	NYSE Arca
FXE	CurrencyShares Euro Trust	NYSE Arca
FXG	First Trust Consumer Staples AlphaDEX Fund	NYSE Arca
FXH	First Trust Health Care AlphaDEX Fund	NYSE Arca
FXI	iShares China Large-Cap ETF	NYSE Arca
FXL	First Trust Technology AlphaDEX Fund	NYSE Arca
FXN	First Trust Energy AlphaDEX Fund	NYSE Arca
FXO	First Trust Financial AlphaDEX Fund	NYSE Arca
FXR	First Trust Industrials/Producer Durables AlphaDEX Fund	NYSE Arca
FXU	First Trust Utilities AlphaDEX Fund	NYSE Arca
FXY	CurrencyShares Japanese Yen Trust	NYSE Arca
FXZ	First Trust Materials AlphaDEX Fund	NYSE Arca
FYX	First Trust Small Cap Core AlphaDEX Fund	NYSE Arca
GBF	iShares Government/Credit Bond ETF	NYSE Arca
GDX	Market Vectors Gold Miners ETF	NYSE Arca
GDXJ	Market Vectors Junior Gold Miners ETF	NYSE Arca
GEM	Goldman Sachs ActiveBeta Emerging Markets Equity ETF	NYSE Arca
GLD	SPDR Gold Shares	NYSE Arca
GMF	SPDR S&P Emerging Asia Pacific ETF	NYSE Arca
GMM	SPDR S&P Emerging Markets ETF	NYSE Arca
GNR	SPDR S&P Global Natural Resources ETF	NYSE Arca

APPENDIX A—SCHEDULE 1—Continued
(AS OF JANUARY 4, 2016)

Ticker	ETP name	Exchange
GOVT	iShares Core US Treasury Bond ETF	NYSE Arca
GREK	Global X FTSE Greece 20 ETF	NYSE Arca
GSG	iShares S&P GSCI Commodity Indexed Trust	NYSE Arca
GSLC	Goldman Sachs ActiveBeta U.S. Large Cap Equity ETF	NYSE Arca
GSY	Guggenheim Enhanced Short Duration ETF	NYSE Arca
GUNR	FlexShares Global Upstream Natural Resources Index Fund	NYSE Arca
GVI	iShares Intermediate Government/Credit Bond ETF	NYSE Arca
GWL	SPDR S&P World ex-US ETF	NYSE Arca
GWX	SPDR S&P International Small Cap ETF	NYSE Arca
GXC	SPDR S&P China ETF	NYSE Arca
GYLD	Arrow Dow Jones Global Yield ETF	NYSE Arca
HACK	PureFunds ISE Cyber Security ETF	NYSE Arca
HAO	Guggenheim China Small Cap ETF	NYSE Arca
HDGE	AdvisorShares Ranger Equity Bear ETF	NYSE Arca
HDV	iShares High Dividend ETF JDR	NYSE Arca
HEDJ	WisdomTree Europe Hedged Equity Fund	NYSE Arca
HEEM	iShares Currency Hedged MSCI Emerging Markets ETF	NYSE Arca
HEFA	iShares Currency Hedged MSCI EAFE ETF	NYSE Arca
HEWG	iShares Currency Hedged MSCI Germany ETF	NYSE Arca
HEWJ	iShares Currency Hedged MSCI Japan ETF	NYSE Arca
HEZU	iShares Currency Hedged MSCI Eurozone ETF	NYSE Arca
HYD	Market Vectors High Yield Municipal Index ETF	NYSE Arca
HYEM	Market Vectors Emerging High Yield Bond ETF	NYSE Arca
HYG	iShares iBoxx \$ High Yield Corporate Bond ETF	NYSE Arca
HYLD	Peritus High Yield ETF	NYSE Arca
HYLS	First Trust Exchange-Traded Fund IV First Trust Tactical High Yield ETF	NASDAQ
HYMB	SPDR Nuveen S&P High Yield Municipal Bond ETF	NYSE Arca
HYS	PIMCO 0–5 Year High Yield Corporate Bond Index Exchange-Traded Fund	NYSE Arca
IAGG	iShares International Aggregate Bond Fund	BATS
IAI	iShares U.S. Broker-Dealers & Securities Exchanges ETF	NYSE Arca
IAT	iShares US Regional Banks ETF	NYSE Arca
IAU	iShares Gold Trust	NYSE Arca
IBB	iShares Nasdaq Biotechnology ETF	NASDAQ
ICF	iShares Cohen & Steers REIT ETF	NYSE Arca
IDLB	PowerShares FTSE International Low Beta Equal Weight Portfolio	NASDAQ
IDLV	PowerShares S&P International Developed Low Volatility Portfolio	NYSE Arca
IDU	iShares US Utilities ETF	NYSE Arca
IDV	iShares International Select Dividend ETF	NYSE Arca
IEF	iShares 7–10 Year Treasury Bond ETF	NYSE Arca
IEFA	iShares Core MSCI EAFE ETF	NYSE Arca
IEI	iShares 3–7 Year Treasury Bond ETF	NYSE Arca
IEMG	iShares Core MSCI Emerging Markets ETF JDR	NYSE Arca
IEO	iShares U.S. Oil & Gas Exploration & Production ETF	NYSE Arca
IEUR	iShares Core MSCI Europe ETF	NYSE Arca
IEV	iShares Europe ETF	NYSE Arca
IEZ	iShares U.S. Oil Equipment & Services ETF	NYSE Arca
IFGL	iShares International Developed Real Estate ETF	NASDAQ
IFV	First Trust Dorsey Wright International Focus 5 ETF	NASDAQ
IGE	iShares North American Natural Resources ETF	NYSE Arca
IGF	iShares Global Infrastructure ETF	NYSE Arca
IGM	iShares North American Tech ETF	NYSE Arca
IGOV	iShares International Treasury Bond ETF	NASDAQ
IGV	iShares North American Tech-Software ETF	NYSE Arca
IHDG	WisdomTree International Hedged Quality Dividend Growth Fund	NYSE Arca
IHE	iShares US Pharmaceuticals ETF	NYSE Arca
IHF	iShares U.S. Healthcare Providers ETF	NYSE Arca
IHI	iShares U.S. Medical Devices ETF	NYSE Arca
IJH	iShares Core S&P Mid-Cap ETF	NYSE Arca
IJJ	iShares S&P Mid-Cap 400 Value ETF	NYSE Arca
IJK	iShares S&P Mid-Cap 400 Growth ETF	NYSE Arca
IJR	iShares Core S&P Small-Cap ETF	NYSE Arca
IJS	iShares S&P Small-Cap 600 Value ETF	NYSE Arca
IJT	iShares S&P Small-Cap 600 Growth ETF	NYSE Arca
ILF	iShares Latin America 40 ETF	NYSE Arca
IMLP	iPath S&P MLP ETN	NYSE Arca
INDA	iShares MSCI India ETF	BATS
INDY	iShares India 50 ETF	NASDAQ
IOO	iShares Global 100 ETF	NYSE Arca
IPAC	iShares Core MSCI Pacific ETF	NYSE Arca
IQDF	FlexShares International Quality Dividend Index Fund	NYSE Arca
ISTB	iShares Core 1–5 Year USD Bond ETF	NYSE Arca

APPENDIX A—SCHEDULE 1—Continued
(AS OF JANUARY 4, 2016)

Ticker	ETP name	Exchange
ITA	iShares US Aerospace & Defense ETF	NYSE Arca
ITB	iShares U.S. Home Construction ETF	NYSE Arca
ITE	SPDR Barclays Intermediate Term Treasury ETF	NYSE Arca
ITM	Market Vectors Intermediate Municipal ETF	NYSE Arca
ITOT	iShares Core S&P Total US Stock Market ETF	NYSE Arca
ITR	SPDR Barclays Intermediate Term Corporate Bond ETF	NYSE Arca
IUSG	iShares Core US Growth ETF	NYSE Arca
IUSV	iShares Core US Value ETF	NYSE Arca
IVE	iShares S&P 500 Value ETF	NYSE Arca
IVV	iShares Core S&P 500 ETF	NYSE Arca
IVW	iShares S&P 500 Growth ETF	NYSE Arca
IWB	iShares Russell 1000 ETF	NYSE Arca
IWC	iShares Micro-Cap ETF	NYSE Arca
IWD	iShares Russell 1000 Value ETF	NYSE Arca
IWF	iShares Russell 1000 Growth ETF	NYSE Arca
IWM	iShares Russell 2000 ETF	NYSE Arca
IWN	iShares Russell 2000 Value ETF	NYSE Arca
IWO	iShares Russell 2000 Growth ETF	NYSE Arca
IWP	iShares Russell Mid-Cap Growth ETF	NYSE Arca
IWR	iShares Russell Mid-Cap ETF	NYSE Arca
IWS	iShares Russell Mid-Cap Value ETF	NYSE Arca
IWV	iShares Russell 3000 ETF	NYSE Arca
IWY	iShares Russell Top 200 Growth ETF	NYSE Arca
IXC	iShares Global Energy ETF	NYSE Arca
IXG	iShares Global Financials ETF	NYSE Arca
IXJ	iShares Global Healthcare ETF	NYSE Arca
IXN	iShares Global Tech ETF	NYSE Arca
IXP	iShares Global Telecom ETF	NYSE Arca
IXUS	iShares Core MSCI Total International Stock ETF	NYSE Arca
IYC	iShares U.S. Consumer Services ETF	NYSE Arca
IYE	iShares U.S. Energy ETF	NYSE Arca
IYF	iShares US Financials ETF	NYSE Arca
IYG	iShares U.S. Financial Services ETF	NYSE Arca
IYH	iShares U.S. Healthcare ETF	NYSE Arca
IYJ	iShares U.S. Industrials ETF	NYSE Arca
IYK	iShares US Consumer Goods ETF	NYSE Arca
IYM	iShares U.S. Basic Materials ETF	NYSE Arca
IYR	iShares U.S. Real Estate ETF	NYSE Arca
IYT	iShares Transportation Average ETF	NYSE Arca
IYW	iShares US Technology ETF	NYSE Arca
IYY	iShares Dow Jones U.S. ETF	NYSE Arca
IYZ	iShares US Telecommunications ETF	NYSE Arca
JKD	iShares Morningstar Large-Cap ETF	NYSE Arca
JKE	iShares Morningstar Large-Cap Growth ETF	NYSE Arca
JKG	iShares Morningstar Mid-Cap ETF	NYSE Arca
JNK	SPDR Barclays High Yield Bond ETF	NYSE Arca
JO	iPath Bloomberg Coffee Subindex Total Return ETN	NYSE Arca
KBE	SPDR S&P Bank ETF	NYSE Arca
KBWB	PowerShares KBW Bank Portfolio	NYSE Arca
KIE	SPDR S&P Insurance ETF	NYSE Arca
KRE	SPDR S&P Regional Banking ETF	NYSE Arca
KWEB	KraneShares CSI China Internet ETF	NASDAQ
KXI	iShares Global Consumer Staples ETF	NYSE Arca
LEMB	iShares Emerging Markets Local Currency Bond ETF	NYSE Arca
LQD	iShares iBoxx \$ Investment Grade Corporate Bond ETF	NYSE Arca
LWC	SPDR Barclays Long Term Corporate Bond ETF	NYSE Arca
MBB	iShares MBS ETF	NYSE Arca
MCHI	iShares MSCI China ETF	NYSE Arca
MDIV	First Trust Multi-Asset Diversified Income Index Fund	NASDAQ
MDY	SPDR S&P MidCap 400 ETF Trust	NYSE Arca
MDYG	SPDR S&P 400 Mid Cap Growth ETF	NYSE Arca
MGC	Vanguard Mega Cap ETF	NYSE Arca
MGK	Vanguard Mega Cap Growth ETF	NYSE Arca
MGV	Vanguard Mega Cap Value ETF	NYSE Arca
MINT	PIMCO Enhanced Short Maturity Active Exchange-Traded Fund	NYSE Arca
MLPA	Global X MLP ETF	NYSE Arca
MLPI	ETRACS Alerian MLP Infrastructure Index ETN	NYSE Arca
MLPN	Credit Suisse X-Links Cushing MLP Infrastructure ETNs due April 20, 2020	NYSE Arca
MLPX	Global X MLP & Energy Infrastructure ETF	NYSE Arca
MOAT	Market Vectors Morningstar Wide Moat ETF	NYSE Arca
MOO	Market Vectors Agribusiness ETF	NYSE Arca

APPENDIX A—SCHEDULE 1—Continued
(AS OF JANUARY 4, 2016)

Ticker	ETP name	Exchange
MTUM	iShares MSCI USA Momentum Factor ETF	NYSE Arca
MUB	iShares National AMT-Free Muni Bond ETF	NYSE Arca
MXI	iShares Global Materials ETF	NYSE Arca
NANR	SPDR S&P North American Natural Resources ETF	NYSE Arca
NEAR	iShares Short Maturity Bond ETF	BATS
NFLT	Virtus Newfleet Multi-Sector Unconstrained Bond ETF	NYSE Arca
NFRA	FlexShares STOXX Global Broad Infrastructure Index Fund	NYSE Arca
NOBL	ProShares S&P 500 Dividend Aristocrats ETF	NYSE Arca
OEF	iShares S&P 100 ETFJDR	NYSE Arca
OIH	Market Vectors Oil Service ETF	NYSE Arca
OIL	iPath Goldman Sachs Crude Oil Total Return Index ETN	NYSE Arca
ONEO	SPDR Russell 1000 Momentum Focus ETF	NYSE Arca
ONEQ	Fidelity NASDAQ Composite Index Tracking Stock ETF	NASDAQ
ONEV	SPDR Russell 1000 Low Volatility Focus ETF	NYSE Arca
ONEY	SPDR Russell 1000 Yield Focus ETF	NYSE Arca
PALL	ETFS Physical Palladium Shares	NYSE Arca
PBE	Powershares Dynamic Biotechnology & Genome Portfolio	NYSE Arca
PBJ	Powershares Dynamic Food & Beverage Portfolio	NYSE Arca
PBP	PowerShares S&P 500 BuyWrite Portfolio	NYSE Arca
PCEF	PowerShares CEF Income Composite Portfolio	NYSE Arca
PCY	PowerShares Emerging Markets Sovereign Debt Portfolio	NYSE Arca
PDP	PowerShares DWA Momentum Portfolio	NYSE Arca
PEK	Market Vectors ChinaAMC A-Share ETF	NYSE Arca
PEY	PowerShares High Yield Equity Dividend Achievers Portfolio	NYSE Arca
PEZ	PowerShares DWA Consumer Cyclical Momentum Portfolio	NYSE Arca
PFF	iShares US Preferred Stock ETF	NYSE Arca
PGF	PowerShares Financial Preferred Portfolio	NYSE Arca
PGX	PowerShares Preferred Portfolio	NYSE Arca
PHB	PowerShares Fundamental High Yield Corporate Bond Portfolio	NYSE Arca
PHDG	PowerShares S&P 500 Downside Hedged Portfolio	NYSE Arca
PHO	PowerShares Water Resources Portfolio	NYSE Arca
PHYS	Sprott Physical Gold Trust	NYSE Arca
PID	PowerShares International Dividend Achievers Portfolio	NYSE Arca
PIE	PowerShares DWA Emerging Markets Momentum Portfolio	NYSE Arca
PIN	PowerShares India Portfolio	NYSE Arca
PIZ	PowerShares DWA Developed Markets Momentum Portfolio	NYSE Arca
PJP	Powershares Dynamic Pharmaceuticals Portfolio	NYSE Arca
PKW	PowerShares Buyback Achievers Portfolio	NYSE Arca
PLW	PowerShares 1–30 Laddered Treasury Portfolio	NYSE Arca
PNQI	PowerShares NASDAQ Internet Portfolio	NASDAQ
PPH	Market Vectors Pharmaceutical ETF	NYSE Arca
PPLT	ETFS Physical Platinum Shares	NYSE Arca
PRF	Powershares FTSE RAFI US 1000 Portfolio	NYSE Arca
PRFZ	PowerShares FTSE RAFI US 1500 Small-Mid Portfolio	NASDAQ
PRN	PowerShares Dynamic Industrials Sector Portfolio	NYSE Arca
PSCH	PowerShares S&P SmallCap Health Care Portfolio	NASDAQ
PSCT	PowerShares S&P SmallCap Information Technology Portfolio	NASDAQ
PSK	SPDR Wells Fargo Preferred Stock ETF	NYSE Arca
PSL	PowerShares DWA Consumer Staples Momentum Portfolio	NYSE Arca
PSLV	Sprott Physical Silver Trust	NYSE Arca
PSP	PowerShares Global Listed Private Equity Portfolio	NYSE Arca
PSQ	ProShares Short QQQ	NYSE Arca
PTF	PowerShares DWA Technology Momentum Portfolio	NYSE Arca
PTH	PowerShares DWA Healthcare Momentum Portfolio	NYSE Arca
PTLC	Pacer Trendpilot 750 ETF	BATS
PWV	PowerShares Dynamic Large Cap Value Portfolio	NYSE Arca
PXF	PowerShares FTSE RAFI Developed Markets ex-U.S. Portfolio	NYSE Arca
PXH	PowerShares FTSE RAFI Emerging Markets Portfolio	NYSE Arca
PZA	PowerShares National AMT-Free Municipal Bond Portfolio	NYSE Arca
QABA	First Trust NASDAQ ABA Community Bank Index Fund	NASDAQ
QAI	IndexIQ ETF Trust—IQ Hedge Multi-Strategy Tracker ETF	NYSE Arca
QDF	FlexShares Quality Dividend Index Fund	NYSE Arca
QLTA	iShares Aaa—A Rated Corporate Bond ETF	NYSE Arca
QQEW	First Trust NASDAQ-100 Equal Weighted Index Fund	NASDAQ
QQQ	Powershares QQQ Trust Series 1	NASDAQ
QUAL	iShares MSCI USA Quality Factor ETF	NYSE Arca
RCD	Guggenheim S&P 500 Equal Weight Consumer Discretionary ETF	NYSE Arca
REM	iShares Mortgage Real Estate Capped ETF	NYSE Arca
REZ	iShares Residential Real Estate Capped ETF	NYSE Arca
RFG	Guggenheim S&P Midcap 400 Pure Growth ETF	NYSE Arca
RHS	Guggenheim S&P 500 Equal Weight Consumer Staples ETF	NYSE Arca

APPENDIX A—SCHEDULE 1—Continued
(AS OF JANUARY 4, 2016)

Ticker	ETP name	Exchange
RIGS	Riverfront Strategic Income Fund	NYSE Arca
RJI	ELEMENTS Linked to the Rogers International Commodity Index—Total Return	NYSE Arca
RPG	Guggenheim S&P 500 Pure Growth ETF	NYSE Arca
RPV	Guggenheim S&P 500 Pure Value ETF	NYSE Arca
RSP	Guggenheim S&P 500 Equal Weight ETF	NYSE Arca
RSX	Market Vectors Russia ETF	NYSE Arca
RTH	Market Vectors Retail ETF	NYSE Arca
RWM	ProShares Short Russell 2000	NYSE Arca
RWO	SPDR Dow Jones Global Real Estate ETF	NYSE Arca
RWR	SPDR Dow Jones REIT ETF	NYSE Arca
RWX	SPDR Dow Jones International Real Estate ETF	NYSE Arca
RXI	iShares Global Consumer Discretionary ETF	NYSE Arca
RYE	Guggenheim S&P 500 Equal Weight Energy ETF	NYSE Arca
RYF	Guggenheim S&P 500 Equal Weight Financials ETF	NYSE Arca
RYH	Guggenheim S&P 500 Equal Weight Healthcare ETF	NYSE Arca
RYT	Guggenheim S&P 500 Equal Weight Technology ETF	NYSE Arca
RZG	Guggenheim S&P Smallcap 600 Pure Growth ETF	NYSE Arca
SBIO	ALPS Medical Breakthroughs ETF	NYSE Arca
SCHA	Schwab US Small-Cap ETF	NYSE Arca
SCHB	Schwab US Broad Market ETF	NYSE Arca
SCHC	Schwab International Small-Cap Equity ETF	NYSE Arca
SCHD	Schwab US Dividend Equity ETF	NYSE Arca
SCHS	Schwab Emerging Markets Equity ETF	NYSE Arca
SCHF	Schwab International Equity ETF	NYSE Arca
SCHG	Schwab U.S. Large-Cap Growth ETF	NYSE Arca
SCHH	Schwab U.S. REIT ETF	NYSE Arca
SCHM	Schwab U.S. Mid-Cap ETF	NYSE Arca
SCHO	Schwab Short-Term U.S. Treasury ETF	NYSE Arca
SCHP	Schwab US TIPs ETF	NYSE Arca
SCHR	Schwab Intermediate-Term U.S. Treasury ETF	NYSE Arca
SCHV	Schwab U.S. Large-Cap Value ETF	NYSE Arca
SCHX	Schwab US Large-Cap ETF	NYSE Arca
SCHZ	Schwab U.S. Aggregate Bond ETF	NYSE Arca
SCIF	Market Vectors India Small-Cap Index ETF	NYSE Arca
SCJ	iShares MSCI Japan Small-Cap ETF	NYSE Arca
SCPB	SPDR Barclays Short Term Corporate Bond ETF	NYSE Arca
SCZ	iShares MSCI EAFE Small-Cap ETF	NYSE Arca
SDIV	Global X SuperDividend ETF	NYSE Arca
SDOG	ALPS Sector Dividend Dogs ETF	NYSE Arca
SDY	SPDR S&P Dividend ETF	NYSE Arca
SGOL	ETFS Physical Swiss Gold Shares	NYSE Arca
SH	ProShares Short S&P500	NYSE Arca
SHM	SPDR Nuveen Barclays Short Term Municipal Bond ETF	NYSE Arca
SHV	iShares Short Treasury Bond ETF	NYSE Arca
SHY	iShares 1–3 Year Treasury Bond ETF	NYSE Arca
SHYG	iShares 0–5 Year High Yield Corporate Bond ETF	NYSE Arca
SJB	ProShares Short High Yield	NYSE Arca
SJNK	SPDR Barclays Short Term High Yield Bond ETF	NYSE Arca
SKYY	First Trust ISE Cloud Computing Index Fund	NASDAQ
SLV	iShares Silver Trust	NYSE Arca
SLYG	SPDR S&P 600 Small Cap Growth ETF	NYSE Arca
SLYV	SPDR S&P 600 Small Cap Value ETF	NYSE Arca
SMH	Market Vectors Semiconductor ETF	NYSE Arca
SNLN	Highland/iBoxx Senior Loan ETF	NYSE Arca
SOXX	iShares PHLX Semiconductor ETF	NASDAQ
SPHD	PowerShares S&P 500 High Dividend Low Volatility Portfolio	NYSE Arca
SPHQ	PowerShares S&P 500 High Quality Portfolio	NYSE Arca
SPLV	PowerShares S&P 500 Low Volatility Portfolio	NYSE Arca
SPY	SPDR S&P 500 ETF Trust	NYSE Arca
SPYG	SPDR S&P 500 Growth ETF	NYSE Arca
SPYX	SPDR S&P 500 Fossil Fuel Free ETF	NYSE Arca
SRLN	SPDR Blackstone/GSO Senior Loan ETF	NYSE Arca
STIP	iShares 0–5 Year TIPS Bond ETF	NYSE Arca
STPZ	PIMCO 1–5 Year U.S. TIPS Index Exchange-Traded Fund	NYSE Arca
SUB	iShares Short-Term National AMT-Free Muni Bond ETF	NYSE Arca
SVXY	ProShares Short VIX Short-Term Futures ETF	NYSE Arca
TAN	Guggenheim Solar ETF	NYSE Arca
TBF	ProShares Short 20+ Year Treasury	NYSE Arca
TDIV	First Trust NASDAQ Technology Dividend Index Fund	NASDAQ
TDDT	FlexShares iBoxx 3-Year Target Duration TIPS Index Fund	NYSE Arca
TFI	SPDR Nuveen Barclays Municipal Bond ETF	NYSE Arca

APPENDIX A—SCHEDULE 1—Continued
(AS OF JANUARY 4, 2016)

Ticker	ETP name	Exchange
THD	iShares MSCI Thailand Capped ETF	NYSE Arca
TIP	iShares TIPS Bond ETF	NYSE Arca
TLH	iShares 10–20 Year Treasury Bond ETF	NYSE Arca
TLO	SPDR Barclays Long Term Treasury ETF	NYSE Arca
TLT	iShares 20+ Year Treasury Bond ETF	NYSE Arca
TLTD	FlexShares Morningstar Developed Markets ex-US Factor Tilt Index Fund	NYSE Arca
LTLE	FlexShares Morningstar Emerging Markets Factor Tilt Index Fund	NYSE Arca
TOTL	SPDR Doubleline Total Return Tactical ETF	NYSE Arca
TUR	iShares MSCI Turkey ETF	NYSE Arca
UNG	United States Natural Gas Fund LP	NYSE Arca
URTH	iShares MSCI World ETF	NYSE Arca
USCI	United States Commodity Index Fund	NYSE Arca
USDU	WisdomTree Bloomberg U.S. Dollar Bullish Fund	NYSE Arca
USLB	PowerShares Russell Low Beta Equal Weight Portfolio	NASDAQ
USMV	iShares MSCI USA Minimum Volatility ETF	NYSE Arca
USO	United States Oil Fund LP	NYSE Arca
UUP	PowerShares DB US Dollar Index Bullish Fund	NYSE Arca
VAW	Vanguard Materials ETF	NYSE Arca
VB	Vanguard Small-Cap ETF	NYSE Arca
VBK	Vanguard Small-Cap Growth ETF	NYSE Arca
VBR	Vanguard Small-Cap Value ETF	NYSE Arca
VCIT	Vanguard Intermediate-Term Corporate Bond ETF	NASDAQ
VCLT	Vanguard Long-Term Corporate Bond ETF	NASDAQ
VCR	Vanguard Consumer Discretionary ETF	NYSE Arca
VCSH	Vanguard Short-Term Corporate Bond ETF	NASDAQ
VDC	Vanguard Consumer Staples ETF	NYSE Arca
VDE	Vanguard Energy ETF	NYSE Arca
VEA	Vanguard FTSE Developed Markets ETF	NYSE Arca
VEU	Vanguard FTSE All-World ex-US ETF	NYSE Arca
VFH	Vanguard Financials ETF	NYSE Arca
VGIT	Vanguard Intermediate-Term Government Bond ETF	NASDAQ
VGK	Vanguard FTSE Europe ETF	NYSE Arca
VGLT	Vanguard Long-Term Government Bond ETF	NASDAQ
VGSH	Vanguard Short-Term Government Bond ETF	NASDAQ
VGT	Vanguard Information Technology ETF	NYSE Arca
VHT	Vanguard Health Care ETF	NYSE Arca
VIDI	Vident International Equity Fund	NASDAQ
VIG	Vanguard Dividend Appreciation ETF	NYSE Arca
VIIX	VelocityShares VIX Short Term ETN	NASDAQ
VIS	Vanguard Industrials ETF	NYSE Arca
VIXY	ProShares VIX Short-Term Futures ETF	NYSE Arca
VMBS	Vanguard Mortgage-Backed Securities ETF	NASDAQ
VNM	Market Vectors Vietnam ETF	NYSE Arca
VNQ	Vanguard REIT ETF	NYSE Arca
VNQI	Vanguard Global ex-U.S. Real Estate ETF	NASDAQ
VO	Vanguard Mid-Cap ETF	NYSE Arca
VOE	Vanguard Mid-Cap Value ETF	NYSE Arca
VONE	Vanguard Russell 1000	NASDAQ
VONG	Vanguard Russell 1000 Growth ETF	NASDAQ
VONV	Vanguard Russell 1000 Value	NASDAQ
VOO	Vanguard S&P 500 ETF	NYSE Arca
VOOG	Vanguard S&P 500 Growth ETF	NYSE Arca
VOT	Vanguard Mid-Cap Growth ETF	NYSE Arca
VOX	Vanguard Telecommunication Services ETF	NYSE Arca
VPL	Vanguard FTSE Pacific ETF	NYSE Arca
VPU	Vanguard Utilities ETF	NYSE Arca
VQT	Barclays ETN+ ETNs Linked to the S&P 500 Dynamic VEQTORTM Total Return Index	NYSE Arca
VRP	PowerShares Variable Rate Preferred Portfolio	NYSE Arca
VSS	Vanguard FTSE All World ex-US Small-Cap ETF	NYSE Arca
VT	Vanguard Total World Stock ETF	NYSE Arca
VTEB	Vanguard Tax-Exempt Bond Index ETF	NYSE Arca
VTI	Vanguard Total Stock Market ETF	NYSE Arca
VTIP	Vanguard Short-Term Inflation-Protected Securities ETF	NASDAQ
VTV	Vanguard Value ETF	NYSE Arca
VTWO	Vanguard Russell 2000	NASDAQ
VUG	Vanguard Growth ETF	NYSE Arca
VUSE	Vident Core US Equity ETF	NASDAQ
VV	Vanguard Large-Cap ETF	NYSE Arca
VWO	Vanguard FTSE Emerging Markets ETF	NYSE Arca
VWOB	Vanguard Emerging Markets Government Bond ETF	NASDAQ
VXF	Vanguard Extended Market ETF	NYSE Arca

APPENDIX A—SCHEDULE 1—Continued
(AS OF JANUARY 4, 2016)

Ticker	ETP name	Exchange
VXUS	Vanguard Total International Stock ETF	NASDAQ
VXX	iPATH S&P 500 VIX Short-Term Futures ETN	NYSE Arca
VXZ	iPATH S&P 500 VIX Mid-Term Futures ETN	NYSE Arca
VYM	Vanguard High Dividend Yield ETF	NYSE Arca
WIP	SPDR DB International Government Inflation-Protected Bond ETF	NYSE Arca
XBI	SPDR S&P Biotech ETF	NYSE Arca
XES	SPDR S&P Oil & Gas Equipment & Services ETF	NYSE Arca
XHB	SPDR S&P Homebuilders ETF	NYSE Arca
XHS	SPDR S&P Health Care Services ETF	NYSE Arca
XIV	VelocityShares Daily Inverse VIX Short Term ETN	NASDAQ
XLB	Materials Select Sector SPDR Fund	NYSE Arca
XLE	Energy Select Sector SPDR Fund	NYSE Arca
XLF	Financial Select Sector SPDR Fund	NYSE Arca
XLG	Guggenheim Russell Top 50 Mega Cap ETF	NYSE Arca
XLI	Industrial Select Sector SPDR Fund	NYSE Arca
XLK	Technology Select Sector SPDR Fund	NYSE Arca
XLP	Consumer Staples Select Sector SPDR Fund	NYSE Arca
XLU	Utilities Select Sector SPDR Fund	NYSE Arca
XLV	Health Care Select Sector SPDR Fund	NYSE Arca
XLY	Consumer Discretionary Select Sector SPDR Fund	NYSE Arca
XME	SPDR S&P Metals & Mining ETF	NYSE Arca
XOP	SPDR S&P Oil & Gas Exploration & Production ETF	NYSE Arca
XPH	SPDR S&P Pharmaceuticals ETF	NYSE Arca
XRT	SPDR S&P Retail ETF	NYSE Arca
XSD	SPDR S&P Semiconductor ETF	NYSE Arca
XTN	SPDR S&P Transportation ETF	NYSE Arca
ZIV	VelocityShares Daily Inverse VIX Medium Term ETN	NASDAQ
ZROZ	PIMCO 25+ Year Zero Coupon U.S. Treasury Index Exchange-Traded Fund	NYSE Arca

Appendix B—Data

Unless otherwise specified, the following data shall be collected and transmitted to the SEC in an agreed-upon format on a monthly basis, to be provided 30 calendar days following month end. Unless otherwise specified, the Primary Listing Exchanges shall be responsible for collecting and transmitting the data to the SEC. Data collected in connection with Sections II(E)—(G) below shall be transmitted to the SEC with a request for confidential treatment under the Freedom of Information Act, 5 U.S.C. 552, and the SEC's rules and regulations thereunder.

I. Summary Statistics

- A. Frequency with which NMS Stocks enter a Limit State. Such summary data shall be broken down as follows:
- Partition stocks by category
 - Tier 1 non-ETP issues > \$3.00
 - Tier 1 non-ETP issues >= \$0.75 and <=\$3.00
 - Tier 1 non-ETP issues < \$0.75
 - Tier 1 non-leveraged ETPs in each of above categories
 - Tier 1 leveraged ETPs in each of above categories
 - Tier 2 non-ETPs in each of above categories
 - Tier 2 non-leveraged ETPs in each of above categories
 - Tier 2 leveraged ETPs in each of above categories
 - Partition by time of day
 - Opening (prior to 9:45 a.m. ET)
 - Regular (between 9:45 a.m. ET and 3:35 p.m. ET)
 - Closing (after 3:35 p.m. ET)

- Within five minutes of a Trading Pause re-open or IPO open
 - Track reasons for entering a Limit State, such as:
 - Liquidity gap—price reverts from a Limit State Quotation and returns to trading within the Price Bands
 - Broken trades
 - Primary Listing Exchange manually declares a Trading Pause pursuant to Section (VII)(2) of the Plan
 - Other
- B. Determine (1), (2) and (3) for when a Trading Pause has been declared for an NMS Stock pursuant to the Plan.

II. Raw Data (all Participants, except A–E, which are for the Primary Listing Exchanges only)

- A. Record of every Straddle State.
- Ticker, date, time entered, time exited, flag for ending with Limit State, flag for ending with manual override.
 - Pipe delimited with field names as first record.
- B. Record of every Price Band
- Ticker, date, time at beginning of Price Band, Upper Price Band, Lower Price Band
 - Pipe delimited with field names as first record
- C. Record of every Limit State
- Ticker, date, time entered, time exited, flag for halt
 - Pipe delimited with field names as first record
- D. Record of every Trading Pause or halt
- Ticker, date, time entered, time exited, type of halt (*i.e.*, regulatory halt, non-regulatory halt, Trading Pause pursuant to the Plan, other)
- E. Data set or orders entered into reopening auctions during halts or Trading Pauses
- Arrivals, Changes, Cancels, # shares, limit/market, side, Limit State side
 - Pipe delimited with field name as first record
- F. Data set of order events received during Limit States
- G. Summary data on order flow of arrivals and cancellations for each 15-second period for discrete time periods and sample stocks to be determined by the SEC in subsequent data requests. Must indicate side(s) of Limit State.
- Market/marketable sell orders arrivals and executions
 - Count
 - Shares
 - Shares executed
 - Market/marketable buy orders arrivals and executions
 - Count
 - Shares
 - Shares executed
 - Count arriving, volume arriving and shares executing in limit sell orders above NBBO mid-point
 - Count arriving, volume arriving and shares executing in limit sell orders at or below NBBO mid-point (non-marketable)
 - Count arriving, volume arriving and shares executing in limit buy orders at or above NBBO mid-point (non-marketable)
 - Count arriving, volume arriving and shares executing in limit buy orders below NBBO mid-point

7. Count and volume arriving of limit sell orders priced at or above NBBO mid-point plus \$0.05
8. Count and volume arriving of limit buy orders priced at or below NBBO mid-point minus \$0.05
9. Count and volume of (3–8) for cancels
10. Include: ticker, date, time at start, time of Limit State, all data item fields in 1, last sale prior to 15-second period (null if no trades today), range during 15-second period, last trade during 15-second period

III. On May 28, 2015, Participants provided to the SEC a supplemental joint assessment relating to the impact of the Plan and calibration of the Percentage Parameters as follows:

- A. Assess the statistical and economic impact on liquidity of approaching Price Bands.
- B. Assess the statistical and economic impact of the Price Bands on erroneous trades.
- C. Assess the statistical and economic impact of the appropriateness of the Percentage Parameters used for the Price Bands.
- D. Assess whether the Limit State is the appropriate length to allow for liquidity replenishment when a Limit State is reached because of a temporary liquidity gap.
- E. Evaluate concerns from the options markets regarding the statistical and economic impact of Limit States on liquidity and market quality in the options markets. (Participants that operate options exchange should also prepare such assessment reports.)
- F. Assess whether the process for entering a Limit State should be adjusted and whether Straddle States are problematic.
- G. Assess whether the process for exiting a Limit State should be adjusted.
- H. Assess whether the Trading Pauses are too long or short and whether the reopening procedures should be adjusted.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77222; File No. SR-BATS-2016-17]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend Its Rules Regarding the Auction Process for Securities Subject to an Initial Public Offering

February 24, 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, BATS Exchange, Inc. (the “Exchange” or “BATS”) 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. On February 22, 2016, the Exchange filed Amendment No. 1 to the proposal.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, 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 Exchange Rule 11.23 entitled “Auctions” to: (i) Modify the definition of the term “Eligible Auction Order” under paragraph (a)(8) to refine the types of orders that may participate in an auction for a BATS listed corporate security⁴ in an initial public offering (“IPO”) on the Exchange (“IPO Auction”) and make a related change to Exchange Rule 11.1, Hours of Trading and Trading Days; (ii) extend the Quote-Only Period⁵ under paragraph (d)(1)(A); (iii) state that the Quote-Only Period may be extended in the event of an Exchange technical or systems issue under proposed paragraph (d)(2)(B)(iv); and (iv) make technical changes to paragraphs (b)(1)(A), (c)(1)(A), and (d)(2).

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.

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 Exchange Rule 11.23 entitled “Auctions” to: (i) Modify the definition of the term “Eligible Auction Order” under paragraph (a)(8) to refine the types of orders that may participate in an IPO Auction and make a related change to Exchange Rule 11.1, Hours of Trading and Trading Days; (ii) extend the Quote-Only Period under paragraph (d)(1)(A); (iii) state that the Quote-Only Period may be extended in the event of an Exchange technical or systems issue under proposed paragraph (d)(2)(B)(iv); and (iv) make technical changes to paragraphs (b)(1)(A), (c)(1)(A), and (d)(2).

Eligible Auction Orders

The Exchange proposes to refine the types of orders that may participate in an IPO Auction for a BATS listed corporate security by amending the definition of Eligible Auction Orders under Exchange Rule 11.23(a)(8) to either reject, convert, or ignore certain types of orders, as set forth below. As proposed, Limit Orders⁶ and BATS Market Orders,⁷ the two main types of orders offered by the Exchange, would be allowed to participate in an IPO Auction for a BATS listed corporate security. The Exchange does not propose to amend the types of Eligible Auction Orders that may participate in an auction for a newly listed Exchange Traded Product.⁸ The Exchange believes refining the types of orders processed in an IPO Auction and/or placed onto the BATS Book⁹ following such IPO Auction would simplify and reduce the complexity of the IPO Auction for BATS listed corporate securities. The Exchange believes doing so would aid in ensuring a robust but streamlined IPO Auction process for a newly listed corporate securities.

Types of Orders to be Accepted or Rejected. The term Eligible Auction Order is currently defined under Exchange Rule 11.23(a)(8) as any Market-On-Open (“MOO”),¹⁰ Limit-On-

³ In Amendment No. 1, the Exchange proposes to correct a technical error regarding incorrect terminology used in a footnote and to clarify a sentence regarding an order with a time-in-force of RHO that would be converted to an order with a time-in-force of Day under the proposed rule change.

⁴ A BATS listed corporate security is a security listed on the Exchange pursuant to Chapter 14 of the Exchange’s Rules that is not an Exchange Traded Product (“ETP”) listed on the Exchange pursuant to Exchange Rule 14.11. See also *infra* note 7.

⁵ See Exchange Rule 11.23(a)(17).

⁶ See Exchange Rule 11.9(a)(1).

⁷ See Exchange Rule 11.9(a)(2).

⁸ An Exchange Traded Product is a security that is listed on the Exchange pursuant to Rule 14.11.

⁹ See Exchange Rule 1.5(e).

¹⁰ See Exchange Rule 11.23(a)(16).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Open (“LOO”),¹¹ Late-Limit-On-Open (“LLOO”),¹² Market-On-Close (“MOC”),¹³ Limit-On-Close (“LOC”),¹⁴ or Late-Limit-On-Close (“LLOC”) ¹⁵ order that is entered in compliance with its respective cutoff for an Opening or Closing Auction,¹⁶ any Regular Hours Only (“RHO”) ¹⁷ order prior to the Opening Auction, any Limit or Market Order not designated to exclusively participate in the Closing Auction entered during the Quote-Only Period of an IPO Auction,¹⁸ and any Limit or Market Order not designated to exclusively participate in the Opening or Closing Auction entered during the Quote-Only Period of a Halt Auction.¹⁹ The Exchange proposes to amend the definition of Eligible Auction Orders to refine the types of orders that may participate in an IPO Auction for a BATS listed corporate security.

As is currently the case, Limit Orders and BATS Market Orders entered during the Quote-Only Period would be allowed to participate in an IPO Auction for a BATS listed corporate security provided they do not also include one or more of the modifiers described below that would result in rejection. Specifically, the Exchange proposes to exclude under proposed subparagraph (a)(8)(A) to Rule 11.23 the following types of orders from participation in an IPO Auction and to reject such orders: Stop Orders ²⁰ and Stop Limit Orders; ²¹ Pegged Orders, ²² Mid-Point Peg Orders, ²³ Market Maker Peg Orders ²⁴ and Supplemental Peg Orders; ²⁵ Minimum Quantity Orders ²⁶ and Discretionary Orders; ²⁷ MOC, LOC and LLOC orders; and orders with a time-in-force of Fill-or-Kill (“FOK”) ²⁸ and orders with a time-in-force of Good-til-Day (“GTD”) with an expiration time earlier than 4:00 p.m. Eastern Time.²⁹

Such orders entered to participate in an IPO Auction would be rejected.

The Exchange believes it is reasonable to reject orders with the above characteristics from participating in the IPO Auction because doing so will aid in reducing systems complexity and risk associated both with completing the IPO Auction and with transferring any unexecuted portion of such orders to the BATS Book once the auction is complete. These orders are also not commonly utilized as compared to other types of orders and the rejection of such orders should not have a significant impact on Members. In addition, the Exchange believes these types of orders contain certain attributes that are not compatible with the process of an IPO Auction. For example, Stop Orders and Stop Limit Orders are not eligible for execution until their stop price is triggered by an execution, which is an attribute that is not compatible with the IPO Auction process, as that process will result in the first execution for an IPO Security. In addition, Pegged Orders, Mid-Point Peg Orders, Market Maker Peg Orders, and Supplemental Peg Orders are priced in relation to the National Best Bid or Offer (“NBBO”). An NBBO is not established until after the IPO Auction is complete and secondary trading begins. Therefore, the participation of these orders is also incompatible with the IPO Auction process.

The Exchange also proposes to reject Minimum Quantity Orders and Discretionary Orders entered to participate in an IPO Auction. In sum, Minimum Quantity Orders will only execute if a minimum number of shares can be obtained while a Discretionary Order includes both a displayed price and a non-displayed discretionary price. Orders entered to participate in an IPO Auction need to represent the full trading interest for the security subject to the IPO Auction because that auction relies on matching buy and sell orders based on their displayed price and full displayed size. Therefore, the Exchange believes it is reasonable to reject Discretionary Orders and Minimum Quantity Orders entered to participate in the IPO Auction as these types of orders contain variables (*i.e.*, minimum execution size or a non-displayed discretionary price) that are not compatible with the IPO Auction process.

The Exchange also believes it is reasonable to reject orders with a time-in-force of FOK, a time-in-force of GTD with an expiration time earlier than 4:00 p.m. Eastern Time, as well as MOC, LOC, and LLOC orders that are entered to participate in an IPO Auction. Orders

with a time-in-force of FOK require that they be executed in full or will be cancelled upon receipt by the Exchange. Orders with a time-in-force of FOK are therefore not compatible with the IPO Auction process as orders participating in the IPO Auction process may not be fully executed in the auction and seeking to honor the intent of the instruction would complicate the processing of the IPO Auction. The Exchange also believes it is reasonable to reject GTD Orders with an expiration time earlier than 4:00 p.m. Eastern Time entered to participate in an IPO Auction. Doing so would prevent the possibility of entry of GTD Orders with an expiration time either prior to, during or immediately following the IPO Auction, thereby reducing system complexity associated with processing such orders. Lastly, the Exchange also believes it is reasonable to reject MOC, LOC, and LLOC orders entered to participate in an IPO Auction because the terms of those orders require that they participate in the Exchange’s closing auction process. The Exchange notes that such orders are already excluded from an IPO Auction based on the definition of Eligible Auction Order, however, the Exchange believes it is reasonable to include such orders in the list with other rejected types of orders to avoid potential confusion.

Types of Orders to be Converted. The Exchange also proposes to adopt subparagraph (a)(8)(B) to Rule 11.23, which would set forth the types of orders that would be converted by the Exchange for purposes of participating in the IPO Auction for a BATS listed corporate security. First, orders with a time-in-force of Immediate-or-Cancel (“IOC”) ³⁰ will be converted as follows: A Market Order with a time-in-force of IOC will be converted to a MOO and a Limit Order with a time-in-force of IOC will be converted to a LOO. Second, orders with a time-in-force of RHO will be converted to orders with a time-in-force of Day. Third, any orders eligible to be routed will be converted to a BATS Only Order.³¹ Upon completion of the IPO Auction, any remainder not executed in the auction will be placed on the BATS Book, executed, cancelled or routed away in accordance with the converted terms of the order. Such orders would not revert back to the original type modifier the User included with the order.

As stated above, the types of orders entered to participate in the IPO Auction that the Exchange proposes to reject under proposed Rule

³⁰ See Exchange Rule 11.9(c)(4).

³¹ See Exchange Rule 11.9(b)(1).

¹¹ See Exchange Rule 11.23(a)(14).

¹² See Exchange Rule 11.23(a)(12).

¹³ See Exchange Rule 11.23(a)(15).

¹⁴ See Exchange Rule 11.23(a)(13).

¹⁵ See Exchange Rule 11.23(a)(11).

¹⁶ The Opening and Closing Auction processes are described in Exchange Rules 11.23(b) and (c).

¹⁷ See Exchange Rule 11.9(b)(7).

¹⁸ See Exchange Rules 11.23(d)(1)(A).

¹⁹ *Id.* The Exchange also proposes to amend Rule 11.1 to make clear that it will not accept BATS Market Orders that are not Eligible Auction Orders prior to 8:00 a.m. Eastern Time.

²⁰ See Exchange Rule 11.9(c)(17).

²¹ See Exchange Rule 11.9(c)(18).

²² See Exchange Rule 11.9(c)(8).

²³ See Exchange Rule 11.9(c)(9).

²⁴ See Exchange Rule 11.9(c)(16).

²⁵ See Exchange Rule 11.9(c)(19).

²⁶ See Exchange Rule 11.9(c)(5).

²⁷ See Exchange Rule 11.9(b)(10) [sic].

²⁸ See Exchange Rule 11.9(c)(6) [sic].

²⁹ See Exchange Rule 11.9(b)(4).

11.23(a)(8)(A) are less commonly used and the rejection of such orders should not have a significant impact on Members. In contrast, the types of orders the Exchange proposes to convert into other types of orders are more commonly used by Members. Also, the types of orders that the Exchange proposes to convert to do not materially deviate from the type of order that was originally entered. The Exchange believes it is reasonable to convert rather than reject the above types of orders because it would accommodate those Members that have automated their systems to send orders to the Exchange without significantly altering the operation of the order from what the Member originally instructed. Such Members may also not be able to re-submit a rejected order with the correct modifier in time to participate in the IPO Auction. Therefore, the Exchange is concerned that rejecting, rather than converting those types of orders as proposed, would inappropriately burden those Members and deter their participation in an IPO Auction.

First, the Exchange believes it is reasonable to convert Market Orders with a time-in-force of IOC to MOOs and Limit Orders with a time-in-force of IOC to LOOs and notes that each of these orders would operate in substantially similar ways. Each of the above orders would be eligible for execution in the IPO Auction and any remainder would be cancelled once the IPO Auction is complete. Second, the Exchange also believes that converting the time-in-force of RHO to the time-in-force of Day is also reasonable based on the similarity between these times-in-force. For instance, both orders with a time-in-force of RHO and orders with a time-in-force of Day are ineligible for execution until the start of Regular Trading Hours³² at 9:30 a.m.³³ and are cancelled at 4:00 p.m. Eastern Time.³⁴ By converting the order, however, the Exchange is able to reduce the number of types of orders that will be handled in an IPO Auction and/or placed on the BATS Book following such IPO Auction. Lastly, the Exchange also believes it is reasonable to convert routable orders to BATS Only Orders because there would be no other markets to route orders to from the time of the IPO Auction until secondary

trading commences. Any remainder of a routable order that is converted to a BATS Only Order would be posted to the BATS Book upon completion of an IPO Auction. At that time, the Member could cancel the order and resubmit a routable order if such Member wished to do so.

Modifiers to be Ignored. The Exchange also proposes to adopt subparagraph (a)(8)(C) to Rule 11.23, which would set forth the modifiers on an order that has been entered to participate in an IPO Auction that would be ignored for purposes of completing the IPO Auction. Such modifiers would be permanently ignored with respect to an order, including after placement on the BATS Book, unless otherwise specified in the proposed Rule. First, as proposed, Match Trade Prevention (“MTP”) modifiers³⁵ will not be applied until the IPO Auction is complete but will be applied in the event any unexecuted portion is placed on the BATS Book. Pursuant to Rule 11.9(f), any incoming order designated with an MTP modifier will normally be prevented from executing against a resting opposite side order also designated with an MTP modifier and originating from the same User. However, during an IPO Auction the MTP Modifier would be ignored and such orders may be matched against each other. Upon completion of the IPO Auction, an MTP modifier will be recognized and any remainder not executed in the auction will be placed on the BATS Book and executed or cancelled in accordance with the original MTP modifier appended to the order. The Exchange believes it is reasonable to ignore an MTP modifier during the IPO Auction as preventing such a Member’s orders from executing against each other during an IPO Auction would add unnecessary complexity. Most Members that utilize MTP modifiers have configured their connectivity to the Exchange to add the MTP Modifier to all of their orders. If the Exchange were to reject orders with a MTP modifier it would impose an inappropriate burden on Members who utilize such modifiers, thereby impairing their ability to participate in the IPO Auction. The Exchange notes that any remainder not executed in the IPO Auction will be executed or cancelled in accordance with the original MTP modifier.

Second, an instruction to treat an order as an Attributable Order will be ignored, meaning that any such order’s execution will be displayed

anonymously.³⁶ The Exchange believes it is reasonable to ignore such instructions as orders entered into an IPO Auction as not displayed individually but instead as aggregated interest in the Exchange’s data feeds.

Third, an ISO instruction or a Post Only instruction included with a Limit Order will also be ignored during the IPO Auction. The Exchange believes it is reasonable to ignore an ISO instruction are such instructions are incompatible with an IPO Auction. For instance, an ISO instruction informs the Exchange that the sender simultaneously routed one or more additional limit orders, as necessary, to execute against the full displayed size of any protected bid or offer with a price that is superior to the limit price of the limit order identified as an ISO. The Exchange is the sole market for a security subject to an IPO Auction up until the time secondary trading commences and the ISO designation is therefore incompatible with the IPO Auction. Similarly, BATS Post Only Order is an order that instructs the Exchange not to remove liquidity from the BATS Book, provided that BATS Post Only Orders do remove liquidity under certain circumstances outlined in Rule 11.9(c)(6). In an IPO Auction, orders are matched and there is no true “adder” or “remover” of liquidity. Accordingly, a Post Only instruction is incompatible with the IPO Auction. In contrast to orders under proposed Rule 11.23(a)(8)(A) discussed above, which the Exchange proposes to reject, the Exchange believes that it is reasonable to ignore an ISO instruction or a Post Only instruction on an order rather than to reject such orders because such orders are sufficiently common and may require additional programming by Members in order to avoid sending such instructions solely for an IPO Auction.

Lastly, the Maximum Remove Percentage of a Partial Post Only at Limit Order³⁷ as well as the replenishment range of a Reserve Order with a Random Replenishment instruction will be ignored during the IPO Auction.³⁸ The Exchange also

³⁶ See also Nasdaq Stock Market LLC (“Nasdaq”) Rule 4753(b)(4) (stating that orders executed as part of the Nasdaq Halt Cross shall be trade reported anonymously).

³⁷ See Exchange Rule 11.9(c)(7). In sum, the Maximum Remove Percentage enables a User to enter a Partial Post Only at Limit Order instructing the Exchange to also remove liquidity from the BATS Book at the order’s limit price up to a designated percentage of the remaining size of the order after any execution pursuant to paragraph (A) of Rule 11.9(c)(7). See Exchange Rule 11.9(c)(7)(B).

³⁸ Random Replenishment is an instruction that a User may attach to an order with Reserve Quantity

³² See Exchange Rule 1.5(w).

³³ An IPO Auction will only occur after 9:30 a.m. Eastern Time.

³⁴ The Exchange notes that any portion of a market order with a time-in-force of RHO will be cancelled immediately following any auction in which it is not executed. See Exchange Rule 11.9(c)(7). The Exchange does not accept market orders with a time-in-force of Day.

³⁵ See Exchange Rule 11.9(f).

believes it is reasonable to ignore these order instructions for the same reason it proposes to reject Discretionary Orders and Minimum Quantity Order under proposed Rule 11.23(a)(8)(A) discussed above. Orders entered to participate in an IPO Auction need to represent the full trading interest for the security subject to the IPO Auction because that auction relies on matching buy and sell orders based on their displayed prices and full displayed size. Therefore, the Exchange believes it is reasonable to ignore the Maximum Remove Percentage of a Partial Post Only at Limit Order and the replenishment range of a Reserve Order with a Random Replenishment instruction entered to participate in the IPO Auction as these types of order instructions contain variables (*i.e.*, maximum remove requirements or non-displayed size) that are not compatible with the IPO Auction process. In contrast to Discretionary Orders and Minimum Quantity Orders under proposed Rule 11.23(a)(8)(A) discussed above, which the Exchange proposes to reject, the Exchange believes that it is reasonable to ignore the Maximum Remove Percentage of a Partial Post Only at Limit Order and the replenishment range of a Reserve Order with a Random Replenishment instruction rather than to reject such orders because such orders can still be handled consistent with the overall intent of the order.

With the exception of MTP modifiers discussed above, all modifiers listed under proposed Rule 11.23(a)(8)(C) will not be further considered with respect to an order upon completion of the IPO Auction. Any remainder not executed in the auction will be placed on the BATS Book, executed, cancelled or routed away in accordance with the modified terms of the order.

Extension of Quote-Only Period

The Exchange proposes to extend the Quote-Only Period for an IPO Auction under Exchange Rule 11.23(d)(1)(A). The Quote-Only Period is the designated period of time prior to a Halt Auction, a Volatility Closing Auction, or an IPO Auction during which Users may

where replenishment quantities for the order are randomly determined by the System within a replenishment range established by the User. In particular, the User entering an order into the System subject to the Random Replenishment instruction must select a replenishment value and a Max Floor. The initial Display Quantity will be the Max Floor. The Display Quantity of an order when replenished will be determined by the System randomly selecting a round lot number of shares within a replenishment range that is between: (i) the Max Floor minus the replenishment value; and (ii) the Max Floor plus the replenishment value. See Exchange Rule 11.9(c)(1)(A).

submit orders to the Exchange for participation in the auction.³⁹ With regard to an IPO Auction, the Quote-Only Period currently begins fifteen (15) minutes plus a short random period prior to such Auction.⁴⁰ The Exchange proposes to amend Rule 11.23(d)(1)(A) to extend the Quote-Only Period for an ETP such that it commences at 8:00 a.m., which is the beginning of the Exchange's Pre-Opening Session. With regard to an ETP, the Exchange does not believe that there is reason to restrict quoting in such products to a specified amount of time prior to the auction and that additional time is warranted. In particular, the Exchange believes that allowing a longer Quote-Only Period will encourage the entry of orders prior to an IPO Auction for a newly issued ETP, which typically have low participation rates especially when compared to IPO Auctions for corporate securities. Further, while an IPO Auction for a corporate security is typically conducted at least 30 minutes after the commencement of Regular Trading Hours, an IPO Auction for a newly issued ETP is typically conducted at the beginning of Regular Trading Hours (*i.e.*, 9:30 Eastern Time), and thus may not afford much time for participants to enter orders prior to such auction. For these reasons, the Exchange believes that a longer Quote-Only Period for ETPs is warranted.

The Exchange proposes to extend the Quote-Only Period for a BATS listed corporate security to begin at a time announced in advance by the Exchange that shall be between fifteen (15) and thirty (30) minutes plus a short random period prior to such IPO Auction. The Exchange believes that extending the Quote-Only period as proposed is reasonable as it would provide market participants more time to enter orders to participate in the IPO Auction. Extension of the Quote-Only Period would also enable the underwriters more time to evaluate the scope of demand for, and supply of, the security subject to the IPO Auction ("IPO Security"), in a manner that will allow it to make more informed decisions about the appropriate time to initiate the opening of the IPO Security through the IPO Auction. The Exchange would determine the length of time of the Quote-Only Period for a BATS listed corporate security (*i.e.*, what time between fifteen (15) and thirty (30) minutes) in consultation with the issuer of the IPO security and would announce the length of time for the Quote-Only

Period in advance of the commencement of such period.⁴¹

(a) [sic] Currently, the Exchange may extend the Quote-Only Period under Rule 11.23(d)(2)(B) for an IPO Auction beyond the above timeframes where: (i) There are unmatched Market Orders on the Auction Book; (ii) the underwriter requests an extension; or (iii) where the Indicative Price moves the greater of 10% or fifty (50) cents in the fifteen (15) seconds prior to the auction. The Exchange proposes to amend Rule 11.23(d)(2)(B) to enable it to also extend the Quote-Only Period in the event of a technical or systems issue at the Exchange that may impair the ability of Users to participate in the IPO Auction or of the Exchange to complete the IPO Auction. The Exchange believes it is reasonable to be able to extend the Quote-Only Period in the event of a technical or systems issue at the Exchange as such an issue may prevent market participants from entering orders during the Quote-Only Period, resulting in less liquidity which may prevent the underwriters from adequately accessing the trading interest of the IPO Security. In such case, the Exchange believes it is reasonable to extend the Quote-Only Period in the event of a technical or systems issue to provide market participants the adequate time to enter orders to participate in the IPO auction. The Exchange also proposes to adopt paragraph (C) to codify its intention to notify market participants regarding extensions to the Quote-Only Period. As proposed, the Exchange will notify market participants in the event of any extension to the Quote-Only Period pursuant to paragraph (B), including details regarding the circumstances and length of the extension.⁴² In connection with this change, the Exchange proposes to designate current paragraph (C) of Rule 11.23(d)(2) as paragraph (D).

Technical Changes

The Exchange also proposes to make the following technical changes to Rule 11.23:

- Amend paragraphs (b)(1)(A) and (c)(1)(A) to replace the phrase "starting at 8:00 a.m., the beginning of the Pre-

⁴¹ The scope of market participants notified regarding the anticipated commencement of the Quote-Only Period (or extension of Quote-Only Period, as described below) would include but would not be limited to Members of the Exchange. Such notice would also include those market participants, individuals or entities that have subscribed to the Exchange's notification system. The Exchange intends to send notifications regarding the Quote-Only Period via email, as it does with most public notifications today. The Exchange notes that it does, in certain circumstances, post information on its public Web site in addition to email dissemination.

⁴² *Id.*

³⁹ See Exchange Rule 11.23(a)(17).

⁴⁰ See Exchange Rule 11.23(d)(1)(A).

Opening Session” with “as set forth in Rule 11.1”. Paragraph (b)(1)(A) sets forth when a User may enter or cancel orders that are to participate in the opening auction. Paragraph (c)(1)(A) sets forth when a User may enter or cancel orders that are to participate in the closing auction. Rule 11.1 governs when orders may be entered into the System and when they may be eligible for execution. The Exchange believes cross-referencing Rule 11.1 within paragraphs (b)(1)(A) and (c)(1)(A) would assist in avoiding investor confusion as Rule 11.1 provides additional detail on when and orders may be entered into the System

- Amend paragraph (d)(2)(A) to replace with term “quotation only period” with the defined term “Quote-Only Period”.

Neither of the above proposed changes would amend the meaning or operation of paragraphs (b)(1)(A), (c)(1)(A), or (d)(2)(A) of Rule 11.23. The Exchange simply proposes these changes to make the rules easier to understand and avoid potential investor confusion.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁴³ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁴⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes amending the definition of Eligible Auction Orders to reject, convert, or ignore certain types of orders in connection with the IPO Auction process for a BATS listed corporate security would promote just and equitable principles of trade by simplifying and reducing the complexity of the auction process as well as the process of transferring unexecuted interest to the BATS Book following the auction process. The Exchange also believes the proposed limitations remove impediments to and perfect the mechanism of a free and open market and a national market system by appropriately limiting the types of orders that may participate to those types of orders that are consistent with the purpose of an IPO Auction.

The Exchange believes extending the Quote-Only period would promote just and equitable principles of trade, and to

remove impediments to and perfect the mechanism of a free and open market and a national market system by providing market participants with additional time to enter orders to participate in the IPO Auction. The Exchange believes that allowing a longer Quote-Only Period for ETPs will encourage the entry of orders prior to an IPO Auction for a newly issued ETP. Extension of the Quote-Only Period for a corporate security would similarly provide market participants with additional time to enter orders to participate in the IPO Auction and would also enable the underwriters more time to evaluate the scope of demand for, and supply of, the IPO Security, in a manner that will allow it to make more informed decisions about the appropriate time to initiate the opening of the IPO Security through the IPO Auction.

The Exchange believes that extending the Quote-Only Period in the event of a technical or systems issue at the Exchange also remove impediments to and perfect the mechanism of a free and open market and a national market system. A technical or systems issue may prevent market participants from entering orders during the Quote-Only Period or prevent the Exchange from successfully completing the IPO Auction. In such case, the Exchange believes it is reasonable to extend the Quote-Only Period to provide market participants with additional time to enter orders and access the market for the IPO Security after the technical or systems issue is remedied.

Lastly, the Exchange believes that the technical changes to paragraphs (b)(1)(A), (c)(1)(A), or (d)(2)(A) of Rule 11.23 are consistent with Section 6(b)(5) of the Act⁴⁵ because they are intended to make the rules easier to understand and avoid potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its 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 the proposal would increase competition by reducing the complexity of its IPO Auction process for BATS listed corporate securities through reducing the number of allowable types of orders. In addition,

the Exchange believes that the proposed extensions of the Quote-Only Period would also increase competition by providing additional time for market participants to enter orders to participate in the IPO Auction, potentially resulting in improved liquidity and price discovery. Lastly, the Exchange believes that the technical changes to paragraphs (b)(1)(A), (c)(1)(A), or (d)(2)(A) of Rule 11.23 would not impose any burden on completion as they are not intended to amend the meaning or operation of these rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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, as modified by 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-BATS-2016-17 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.

⁴³ 15 U.S.C. 78f.

⁴⁴ 15 U.S.C. 78f(b)(5).

⁴⁵ *Id.*

All submissions should refer to File Number SR-BATS-2016-17. 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-BATS-2016-17, and should be submitted on or before March 21, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁶

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-04358 Filed 2-26-16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77214; File No. SR-BATS-2016-14]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Adopt an Early Trading Session and Three New Time-in-Force Instructions

February 23, 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 12, 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 its rules to: (i) Create a new trading session to be known as the Early Trading Session, which will run from 7:00 a.m. to 8:00 a.m. Eastern Time; and (ii) adopt three new Time-in-Force ("TIF") instructions.

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.

(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 its rules to: (i) Create a new trading session to be known as the Early Trading Session, which will run from 7:00 a.m. to 8:00 a.m. Eastern Time; and (ii) adopt three new TIF instructions.

Early Trading Session

The Exchange trading day is currently divided into three sessions of which a User³ may select their order(s) be eligible for execution: (i) The Pre-Opening Session which starts at 8:00 a.m. and ends at 9:30 a.m. Eastern Time; (ii) Regular Trading Hours which runs

from 9:30 a.m. to 4:00 p.m. Eastern Time; and (iii) the After Hours Session, which runs from 4:00 p.m. to 5:00 p.m. Eastern Time. The Exchange proposes to amend its rules to create a new trading session to be known as the Early Trading Session, which will run from 7:00 a.m. to 8:00 a.m. Eastern Time.⁴ Exchange Rule 1.5 would be amended to add a new definition for the term "Early Trading Session" under new paragraph (ee). "Early Trading Session" would be defined as "the time between 7:00 a.m. and 8:00 a.m. Eastern Time."⁵

The Exchange also proposes to amend Rule 11.1(a) to account for the Early Trading Session starting at 7:00 a.m. Eastern Time. Other than the proposal to adopt an Early Trading Session starting at 7:00 a.m. Eastern Time, the Exchange does not propose to amend the substance or operation of Rule 11.1(a).

Users currently designate when their orders are eligible for execution by selecting the desired TIF instruction under Exchange Rule 11.9(b). Orders entered between 6:00 a.m. and 8:00 a.m. Eastern Time are not eligible for execution until the start of the Pre-Opening Session, or Regular Trading Hours,⁶ depending on the TIF selected by the User. Users may enter orders in advance of the trading session they intend the order to be eligible for. For example, Users may enter orders starting at 6:00 a.m. Eastern Time with a TIF of Regular Hours Only, which designates that the order only be eligible for execution during Regular Trading Hours.⁷ As stated above, Users may enter orders as early as 6:00 a.m. Eastern Time, but those orders would not be eligible for execution until the start of the Pre-Opening Session at 8:00 a.m.

⁴ The Exchange notes that NYSE Arca, Inc. ("NYSE Arca") operates an Opening Session that starts at 4:00 a.m. Eastern Time (1:00 a.m. Pacific Time) and ends at 9:30 a.m. Eastern Time (6:30 a.m. Pacific Time). See NYSE Arca Rule 7.34(a)(1). The Nasdaq Stock Market LLC ("Nasdaq") operates a pre-market session that also opens at 4:00 a.m. and ends at 9:30 a.m. Eastern Time. See Nasdaq Rule 4701(g). See also Securities Exchange Act Release No. 69151 (March 15, 2013), 78 FR 17464 (March 21, 2013) (SR-Nasdaq-2013-033) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Pre-Market Hours of the Exchange to 4:00 a.m. EST).

⁵ An Exchange having bifurcated after hours trading sessions is not novel. For example, the Chicago Stock Exchange, Inc. ("CHX") maintains two after hours trading sessions. See CHX Article 20, Rule 1(b). See also Securities Exchange Act Release No. 60605 (September 1, 2009), 74 FR 46277 (September 8, 2009) (SR-CHX-2009-13) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adding Additional Trading Sessions).

⁶ "Regular Trading Hours" is defined as "the time between 9:30 a.m. and 4:00 p.m. Eastern Time." See Exchange Rule 1.5(w).

⁷ See Exchange Rule 11.9(b)(7).

⁴⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ "User" is defined as "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3." See Exchange Rule 1.5(cc).

Some Users have requested the ability for their orders to be eligible for execution starting at 7:00 a.m. Eastern Time. Therefore, the Exchange is proposing to adopt the Early Trading Session as discussed herein.

Order entry and execution during the Early Trading Session would operate in the same manner as it does during the Pre-Opening Session. As amended, Exchange Rule 11.1(a) would state that orders entered between 6:00 a.m. and 7:00 a.m. Eastern Time, rather than 6:00 a.m. and 8:00 a.m. Eastern Time, would not be eligible for execution until the start of the Early Trading Session, Pre-Opening Session, or Regular Trading Hours,⁸ depending on the TIF selected by the User. Exchange Rule 11.1(a) will also be amended to state that the Exchange will not accept the following orders prior to 7:00 a.m. Eastern Time, rather than 8:00 a.m.: BATS Post Only Orders,⁹ Partial Post Only at Limit Orders,¹⁰ Intermarket Sweep Orders (“ISOs”),¹¹ BATS Market Orders¹² with a TIF other than Regular Hours Only,¹³ Minimum Quantity Orders¹⁴ that also include a TIF of Regular Hours Only, and all orders with a TIF instruction of Immediate-or-Cancel (“IOC”)¹⁵ or Fill-or-Kill (“FOK”).¹⁶ At the commencement of the Early Trading Session, orders entered between 6:00 a.m. and 7:00 a.m. Eastern Time, rather than 6:00 a.m. and 8:00 a.m. Eastern Time, will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the BATS Book,¹⁷ routed, cancelled, or executed in accordance with the terms of the order. As amended, Rule 11.1(a) would state that orders may be executed on the Exchange or routed away from the Exchange during Regular Trading Hours and during the Early Trading, Pre-Opening and After Hours Trading Sessions.

Operations. From the Members’ operational perspective, the Exchange’s goal is to permit trading for those that choose to trade, without imposing burdens on those that do not. Thus, for example, the Exchange will not require any Member to participate in the Early Trading Session, including not requiring registered market makers to make two-

sided markets between 7:00 a.m. and 8:00 a.m., just as it does not require such participation between 8:00 a.m. and 9:30 a.m.¹⁸ The Exchange will minimize Members’ preparation efforts to the greatest extent possible by allowing Members to trade beginning at 7:00 a.m. with the same equipment, connectivity, order types, and data feeds they currently use from 8:00 a.m. onwards.

Opening Process. The Exchange will offer no opening process at 7:00 a.m., just as it offers no opening process at 8:00 a.m. today. Instead, at 7:00 a.m., the System will “wake up” by loading in price/time priority all open trading interest entered after 6:00 a.m.¹⁹ Also at 7:00 a.m., the Exchange will open the execution system and accept new eligible orders, just as it currently does at 8:00 a.m. Members will be permitted to enter orders beginning at 6:00 a.m. Market Makers will be permitted but not required to open their quotes beginning at 7:00 a.m. in the same manner they open their quotes today beginning at 8:00 a.m.

Order Types. Every order type that is currently available beginning at 8:00 a.m. will be available beginning at 7:00 a.m.²⁰ All other order types, and all order type behaviors, will otherwise remain unchanged. The Exchange will not extend the expiration times of any orders. For example, an order that is currently available from 8:00 a.m. to 4:00 p.m. will be modified to be available from 7:00 a.m. to 4:00 p.m. An order that is available from 8:00 a.m. to 9:30 a.m. will be modified to be available from 7:00 a.m. to 9:30 a.m. Users must continue to enter a TIF instruction along with their order to indicate when the order is eligible for execution.²¹

Routing Services. The Exchange will route orders to away markets between 7:00 a.m. and 8:00 a.m., just as it does today between 8:00 a.m. and 9:30 a.m.²² All routing strategies set forth in Exchange Rule 11.13 will remain otherwise unchanged, performing the same instructions they perform between 7:00 a.m. and 8:00 a.m. today.²³

Order Processing. Order processing will operate beginning at 7:00 a.m. just as it does today beginning at 8:00 a.m.

There will be no changes to the ranking, display, and execution processes or rules.

Data Feeds. The Exchange will report the best bid and offer on the Exchange to the appropriate network processor, as it currently does beginning 8:00 a.m.²⁴ The Exchange’s proprietary data feeds will be disseminated beginning at 7:00 a.m. using the same formats and delivery mechanisms with which the Exchange currently disseminates them beginning at 8:00 a.m.

Trade Reporting. Trades executed between 7:00 a.m. and 8:00 a.m. will be reported to the appropriate network processor with the “.T” modifier, just as they are reported today between at 8:00 a.m. and 9:30 a.m.²⁵

Market Surveillance. The Exchange’s commitment to high-quality regulation at all times will extend to 7:00 a.m. The Exchange will offer all surveillance coverage currently performed by the Exchange’s surveillance systems, which will launch by the time trading starts at 7:00 a.m.

Clearly Erroneous Trade Processing. The Exchange will process trade breaks beginning at 7:00 a.m. pursuant to Exchange Rule 11.17, just as it does today beginning at 8:00 a.m.

Related changes to Rules 3.21, 11.9, 11.13, 11.17, 11.23, 14.6, 14.11, and 14.12. The Exchange proposes to also make the following changes to Rules 3.21, 11.9, 11.13, 11.17, 11.23, 14.6, 14.11, and 14.12 to reflect the adoption of the Early Trading Session:

- Rule 3.21, Customer Disclosures. In sum, Exchange Rule 3.21 prohibits Members from accepting an order from a customer for execution in the Pre-Opening or After Hours Trading Session without disclosing to their customer that extended hours trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk. The Exchange proposes to amend Rule 3.21 to include the Early Trading Session as part of the Member’s required disclosures to their customers.

- Rule 11.9, Orders and Modifiers. The Exchange proposes to amend the description of BATS Market Orders under Rule 11.9(a)(2), Market Maker Peg Orders under Rule 11.9(c)(16), and Supplemental Peg Orders under Rule 11.9(c)(19) to account for the Early Trading Session. BATS Market Orders are currently not eligible for execution

⁸ “Regular Trading Hours” is defined as “the time between 9:30 a.m. and 4:00 p.m. Eastern Time.” See Exchange Rule 1.5(w).

⁹ See Exchange Rule 11.9(c)(6).

¹⁰ See Exchange Rule 11.9(c)(7).

¹¹ See Exchange Rule 11.9(d).

¹² See Exchange Rule 11.9(a)(2).

¹³ See Exchange Rule 11.9(b)(7).

¹⁴ See Exchange Rule 11.9(c)(5).

¹⁵ See Exchange Rule 11.9(b)(1).

¹⁶ See Exchange Rule 11.9(b)(6).

¹⁷ See Exchange Rule 1.5(e).

¹⁸ See Exchange Rule 11.8(d)(2) (stating that for NMS stocks (as defined in Rule 600 under Regulation NMS) a Market Maker shall adhere to the pricing obligations established by this Rule during Regular Trading Hours).

¹⁹ See Exchange Rule 11.1(a).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ See Exchange Rule 11.13(b) (Routing to Away Trading Centers).

²⁴ See Exchange Rule 11.14 (Trade Execution and Reporting).

²⁵ *Id.*

during the Pre-Opening Session or After Hours Trading Session. Rule 11.9(a)(2) would be amended to state that BATS Market Orders would also not be eligible for execution during the Early Trading Session. Market Maker Peg Orders may currently be submitted to the Exchange starting at the beginning of the Pre-Opening Session, but the order will not be executable or automatically priced until the beginning of Regular Trading Hours. Rule 11.9(c)(16) would be amended to state that Market Maker Peg Orders may be submitted to the Exchange starting at the beginning of the Early Trading Session. Market Maker Peg Orders would continue to not be executable or automatically priced until the beginning of Regular Trading Hours. Rule 11.9(c)(19) states that Supplemental Peg Orders are eligible for execution during the Pre-Opening Session, Regular Trading Hours, and the After Hours Trading Session. Rule 11.9(c)(19) would be amended to state that Supplemental Peg Orders are also eligible for execution during the Early Trading Session. As stated above, every order type that is currently available beginning at 8:00 a.m. will be available beginning at 7:00 a.m. for inclusion in the Early Trading Session.²⁶ All other order types, and all order type behaviors, will otherwise remain unchanged. The above rules describing BATS Market Orders, Market Maker Peg Orders, and Supplemental Peg Orders specifically reference the trading sessions during which the order type is eligible for execution. Therefore, the Exchange proposes to amend the description of each order type to account for the Early Trading Session.

- Rule 11.13, Order Execution and Routing. Exchange Rule 11.13(a)(2)(B) discusses compliance with Regulation NMS and Trade Through Protections and states that the price of any execution occurring during the Pre-Opening Session or the After Hours Trading Session must be equal to or better than the highest Protected Bid or lowest Protected Offer, unless the order is marked ISO or a Protected Bid is crossing a Protected Offer. The Exchange proposes to amend Rule 11.13(a)(2)(B) to expand the rule's requirements to the Early Trading Session.

- Rule 11.17, Clearly Erroneous Executions. Exchange Rule 11.17 outlines under which conditions the Exchange may determine that an execution is clearly erroneous. The Exchange proposes to amend Rule 11.17 to include executions that occur during

the Early Trading Session.²⁷ Exchange Rule 11.17(c)(1) sets forth the numerical guidelines the Exchange is to follow when determining whether an execution was clearly erroneous during Regular Trading Hours or the Pre-Opening or After Hours Trading Session. Exchange Rule 11.17(c)(3) sets forth additional factors the Exchange may consider in determining whether a transaction is clearly erroneous. These factors include Pre-Opening and After Hours Trading Session executions. The Exchange proposes to amend Rule 11.17(c)(1) and (3) to include executions occurring during the Early Trading Session.

- Rule 11.23, Auctions. Exchange Rules 11.23(b) and (c) describe the Exchange's Opening and Closing Auction processes. The Exchange proposes to amend Rules 11.23(b)(1)(A) and (c)(1)(A) to reflect that Users may submit orders at the start of the Early Trading Session at 7:00 a.m., rather than 8:00 a.m., to participate in either the Opening or Closing Auctions.

- Rule 14.6, Obligations for Companies Listed on the Exchange. The Exchange proposes to amend Rules 14.6(b)(1), (b)(2), and Interpretation and Policies .01(a), (b), (c), and .02 to require an Exchange-Listed Company that publicly releases material information outside of the Exchange market hours to inform the Exchange's Surveillance Department of that material information prior to 6:50 a.m. rather than 7:50 a.m. Eastern Time. The Exchange proposes to amend Rule 14.6, Interpretation and Policies .01(a), (b), (c), and .02 to reflect the start of the Early Trading Session at 7:00 a.m. Eastern Time. The amended provisions of Rule 14.6, Interpretation and Policies .01(a), (b), (c), and .02 require companies to notify the Exchange's Surveillance Department of the release of certain material information at least ten minutes prior to the release of such information to the public when the public release of the information is made during Exchange market hours.

- Rule 14.11, Other Securities. The Exchange proposes to amend Rule 14.11(b)(7) and (c)(7) to reflect the extension of the Pre-Opening Session to 7:00 a.m. Eastern Time. The Exchange also proposes to amend the following provisions of Rule 14.11 to include references to the Early Trading Session or to state that transaction in the following products may occur during the Early Trading Session, in addition to during Regular Trading Hours and the Pre-Opening and After Hours Trading

Sessions: Commodity-Based Trust Shares; Currency Trust Shares; Commodity Futures Trust Shares; Trust Units; and Managed Trust Securities:

- Rule 14.11(d), *Securities Linked to the Performance of Indexes and Commodities (Including Currencies)*. The Exchange proposes to amend Rule 14.11(d)(2)(K)(i)(b)(3)(B) and Interpretation and Policies .01(b) of Rule 14.11(e) to state, in sum, that where the value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis with respect to indexes containing only securities listed on a national securities exchange, or on at least a 60-second basis with respect to indexes containing foreign country securities, provided, however, that, if the official index value does not change during some or all of the period when trading is occurring on the Exchange then the last calculated official index value must remain available throughout Regular Trading Hours and the Early Trading, Pre-Opening and After Hours Trading Sessions.

- Rule 14.11(e)(4), *Commodity-Based Trust Shares*. The Exchange proposes to amend Interpretation and Policies .03 to Rule 14.11(e)(4) to state that transactions in Commodity-Based Trust Shares may occur during the Early Trading Session, in addition to during Regular Trading Hours and the Pre-Opening and After Hours Trading Sessions.

- Rule 14.11(e)(5), *Currency Trust Shares*. The Exchange proposes to amend Interpretation and Policies .03 to Rule 14.11(e)(5) to state that transactions in Currency Trust Shares may occur during the Early Trading Session, in addition to during Regular Trading Hours and the Pre-Opening and After Hours Trading Sessions.

- Rule 14.11(e)(6), *Commodity Index Trust Shares*. The Exchange proposes to amend Interpretation and Policies .03 to Rule 14.11(e)(6) to state that transactions in Commodity-Based Trust Shares may occur during the Early Trading Session, in addition to during Regular Trading Hours and the Pre-Opening and After Hours Trading Sessions.

- Rule 14.11(e)(7), *Commodity Future Trust Shares*. The Exchange proposes to amend Interpretation and Policies .02 to Rule 14.11(e)(7) to state that transactions in Commodity Future Trust Shares may occur during the Early Trading Session, in addition to during Regular Trading Hours and the Pre-Opening and After Hours Trading Sessions.

- Rule 14.11(e)(9), *Trust Units*. The Exchange proposes to amend

²⁶ See proposed amendments to Exchange Rule 11.1(a).

²⁷ The Exchange notes that it also proposes to delete the "s" from the word "tapes" in paragraph (c)(3) of Rule 11.17.

Interpretation and Policies .02 to Rule 14.11(e)(9) to state that transactions in Trust Units may occur during the Early Trading Session, in addition to during Regular Trading Hours and the Pre-Opening and After Hours Trading Sessions.

○ *Rule 14.11(e)(10), Managed Trust Securities.* The Exchange proposes to amend Interpretation and Policies .02 to Rule 14.11(e)(10) to state that transactions in Managed Trust Securities may occur during the Early Trading Session, in addition to during Regular Trading Hours and the Pre-Opening and After Hours Trading Sessions.

○ *Rule 14.11(j), Derivative Securities Traded under Unlisted Trading Privileges.* The Exchange proposes to amend Rule 14.11(j)(2) to state that the Exchange will distribute an information circular prior to the commencement of trading in each UTP Derivative Security that generally includes the same information as contained in the listing circular provided by the listing exchange, including, the risk of trading during the Early Trading Session (7:00 a.m.–8:00 a.m.) in addition, to the Pre-Opening Session (8:00 a.m.–9:30 a.m. Eastern Time) and the After Hours Trading Session (4:00 p.m.–5:00 p.m. Eastern Time), due to the lack of calculation or dissemination of the underlying index value, the Intraday Indicative Value (as defined in Rule 14.11(b)(3)(C)) or a similar value. The Exchange also proposes to amend Rule 14.11(j)(2) to correct an inaccurate description of the Pre-Opening Session, which currently reads as 9:00 a.m. to 9:30 a.m. rather than 8:00 a.m. to 9:30 a.m. as is set forth throughout Exchange Rules.

• *Rule 14.12, Failure to Meet Listing Standards.* The Exchange proposes to amend Rule 14.12(e) and (m)(11) to require that companies that publicly announce the receipt of a notification of deficiency, Staff Delisting Determination, Public Reprimand Letter, or Adjudicatory Body Decision that serves as a Public Reprimand outside of Exchange market hours inform the Exchange's Surveillance Department of the material information prior to 6:50 a.m. rather than 7:50 a.m. Eastern Time. If the public announcement is made during Exchange market hours, both Rules would continue to require that the company inform the Exchange's Surveillance Department at least 10 minutes prior to the announcement.

TIF Instructions

The Exchange proposes to adopt three new TIF instructions under Rule

11.9(b). Under Rule 11.1(a), a User may designate when their order is eligible for execution by selecting the desired TIF instruction under Exchange Rule 11.9(b). Currently, orders entered between 6:00 a.m. and 8:00 a.m. Eastern Time are not eligible for execution until the start of the Pre-Opening Session, or Regular Trading Hours, depending on the TIF selected by the User. Users may enter orders in advance of the trading session they intend the order to be eligible for. For example, Users may enter orders starting at 6:00 a.m. Eastern Time with a TIF of Regular Hours Only, which designates that the order only be eligible for execution during Regular Trading Hours.²⁸ As stated above, Users may enter orders as early as 6:00 a.m. Eastern Time, but those orders would not be eligible for execution until the start of the Pre-Opening Session at 8:00 a.m.

As discussed above, the Exchange proposed the Early Trading Session in response to User requests for their orders to be eligible for execution starting at 7:00 a.m. Eastern Time. Some Users, however, do not wish for their orders to be executed during the Early Trading Session and have requested their orders continue to not be eligible for execution until the start of the Pre-Opening Session at 8:00 a.m. Therefore, the Exchange proposes to adopt the following three new TIF instructions under Rule 11.9(b):

- *Pre-Opening Session Plus ("PRE").* A limit order that is designated for execution during the Pre-Opening Session and Regular Trading Hours. Like the current Good-'til Cancel ("GTC") TIF instruction,²⁹ any portion not executed expires at the end of Regular Trading Hours.

- *Pre-Opening Session 'til Extended Day ("PTX").* A limit order that is designated for execution during the Pre-Opening Session, Regular Trading Hours, and the After Hours Session. Like the current Good-'til Extended Day ("GTX") TIF instruction,³⁰ any portion not executed expires at the end of the After Hours Session.

- *Pre-Opening Session 'til Day ("PTD").* A limit order that is designated for execution during the Pre-Opening Session, Regular Trading Hours, and the After Hours Session. Like the current Good-'til Day ("GTD") TIF instruction,³¹ any portion not executed will be cancelled at the expiration time assigned to the order, which can be no

later than the close of the After Hours Trading Session.

Under each proposed TIF instruction, Users may designate that their orders only be eligible for execution starting with the Pre-Opening Session. This is similar to the existing TIF of Regular Hours Only, which designates that the order only be eligible for execution during Regular Trading Hours, which starts at 9:30 a.m. Eastern Time. In such case, a User may enter orders starting at 6:00 a.m. Eastern Time, but such order would not be eligible for execution until 9:30 a.m. Eastern Time. Likewise, under each of the proposed TIF instructions, a User may continue to enter orders as early as 6:00 a.m., but such orders would not be eligible for execution until 8:00 a.m. Eastern Time, the start of the Pre-Opening Session.³² At the commencement of the Pre-Opening Session, orders entered between 6:00 a.m. and 8:00 a.m. Eastern Time with one of the proposed TIF instructions will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the BATS Book, routed, cancelled, or executed in accordance with the terms of the order.³³

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,³⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,³⁵ in particular, in that it is 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. The Exchange also believes that the proposed rule change is non-discriminatory as it would apply to all Members uniformly. The proposed rule change in whole is designed to attract more order flow to the Exchange between 7:00 a.m. and 9:30 a.m. Eastern Time. Increased liquidity during this time will lead to improved price discovery and increased execution opportunities on the Exchange, therefore, promoting just and equitable principles of trade, and removing impediments to and perfecting the mechanism of a free and open market and a national market system.

³² Orders utilizing one of the proposed TIF instructions would not be eligible for execution during the proposed Early Trading Session.

³³ See Exchange Rule 11.1(a).

³⁴ 15 U.S.C. 78f.

³⁵ 15 U.S.C. 78f(b)(5).

²⁸ See Exchange Rule 11.9(b)(7).

²⁹ See Exchange Rule 11.9(b)(3).

³⁰ See Exchange Rule 11.9(b)(5).

³¹ See Exchange Rule 11.9(b)(4).

Early Trading Session

The Exchange believes its proposal to adopt the Early Trading Session promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, prevents fraudulent and manipulative acts and practices, and, in general, protects investors and the public interest. The Exchange believes that the Early Trading Session will benefit investors, the national market system, Members, and the Exchange market by increasing competition for order flow and executions, and thereby spur product enhancements and lower prices. The Early Trading Session will benefit Members and the Exchange market by increasing trading opportunities between 7:00 a.m. and 8:00 a.m. without increasing ancillary trading costs (telecommunications, data, connectivity, etc.) and, thereby, decreasing average trading costs per share. The Exchange notes that trading during the proposed Early Trading Session has been available on NYSE Arca and Nasdaq.³⁶ The Exchange believes that the availability of trading between 7:00 a.m. and 8:00 a.m. has been beneficial to market participants including investors and issuers on other markets. Introduction of the Early Trading Session on the Exchange will further expand these benefits.

Additionally, the Exchange Act's goal of creating an efficient market system includes multiple policies such as price discovery, order interaction, and competition among markets. The Exchange believes that offering a competing trading session will promote all of these policies and will enhance quote competition, improve liquidity in the market, support the quality of price discovery, promote market transparency, and increase competition for trade executions while reducing spreads and transaction costs. Additionally, increasing liquidity during the Early Trading Session will raise investors' confidence in the fairness of the markets and their transactions, particularly due to the lower volume of trading occurring prior to opening.

Although the Exchange will be operating with bifurcated pre-opening trading sessions, the Exchange notes that having bifurcated after hours trading sessions is not novel. For example, the CHX maintains two after hours trading sessions,³⁷ the Late Trading Session, which runs from 4:00

p.m. to 4:15 p.m. Eastern Time, and the Late Crossing Session, which runs from 4:15 p.m. to 5:00 Eastern Time. As such, the Exchange does not believe that the proposed rule change will disproportionately increase the complexity of the market.

The expansion of trading hours through the creation of the Early Trading Session promotes just and equitable principles of trade by providing market participants with additional options in seeking execution on the Exchange. Order entry and execution during the Early Trading Session would operate in the same manner as it does today during the Pre-Opening Session. In addition, the Exchange will report the best bid and offer on the Exchange to the appropriate network processor, and the Exchange's proprietary data feeds will be disseminated, beginning at 7:00 a.m. The proposal will, therefore, facilitate a well-regulated, orderly, and efficient market during a period of time that is currently underserved.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because all surveillance coverage currently performed by the Exchange's surveillance systems will launch by the time trading starts at 7:00 a.m. Eastern Time. Further, the Exchange believes that the proposed rule change will protect investors and the public interest because the Exchange is updating its customer disclosure requirements to prohibit Members from accepting an order from a customer for execution in the Early Trading Session without disclosing to their customer that extended hours trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk.

TIF Instructions

The Exchange believes its proposed TIF instructions promote just and equitable principles of trade, and remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed TIF instructions will benefit investors by providing them with greater control over their orders. The proposed TIF instructions simply provide investors with additional optionality for when their orders may be eligible for execution.

The ability to select the trading sessions or time upon which an order is

to be eligible for execution is not novel and is currently available on the Exchange and other market centers. For example, on the Exchange, a User may enter an order starting at 6:00 a.m. Eastern Time and select that such order not be eligible for execution until 9:30 a.m., the start of Regular Trading Hours using TIF instructions of Regular Hours Only.³⁸ In addition, like each of the proposed TIF instructions, Nasdaq utilizes a TIF, referred to as ESCN, under which an order using its SCAN routing strategy entered prior to 8:00 a.m. Eastern Time is not eligible for execution until 8:00 a.m. Eastern Time.³⁹

The Exchange proposed the Early Trading Session discussed above in response to User requests for their orders to be eligible for execution starting at 7:00 a.m. Eastern Time. However, some Users have requested their orders continue to not be eligible for execution until the start of the Pre-Opening Session at 8:00 a.m. Therefore, the Exchange proposed the three new TIF instructions in order for Users to designate their orders as eligible for execution as of the start of the Pre-Opening Session.

Members will maintain the ability to cancel or modify the terms of their order at any time, including during the time from when the order is routed to the Exchange until the start of the Pre-Opening Session. As a result, a Member who utilizes the proposed TIF instructions, but later determines that market conditions favor execution during Early Trading Session, can cancel the order residing at the Exchange and enter a separate order to execute during the Early Trading Session. While a User must make every effort to execute a marketable customer order it receives fully and promptly,⁴⁰ doing so might not result in the best execution possible for the customer. Such Users may wish to delay the execution of their orders until the start of the Pre-Opening Session for various reasons, including the characteristics of the market for the security as well as the amount of liquidity available in the market as part of their best execution obligations.⁴¹

³⁸ See Exchange Rule 11.9(b)(7). See also Nasdaq Rule 4703(a) (outlining TIF instructions that do not activate orders until 9:30 a.m. Eastern Time).

³⁹ See Nasdaq Rule 4703(a). See also Nasdaq Rule 4703(a)(7).

⁴⁰ See Supplemental Material .01 to Financial Industry Regulatory Authority, Inc. ("FINRA") Rule 5310.

⁴¹ A Member's best execution obligation may also include cancelling an order when market conditions deteriorate and could result in an inferior execution or informing customers where the execution of their order may be delayed

³⁶ See *supra* note 4.

³⁷ See *supra* note 5.

Specifically, FINRA Rule 5310(a)(1) provides that a Member must use reasonable diligence to ascertain the best market for a security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. And importantly, FINRA Rule 5310(a)(1)(A) states that one of the factors that will be considered in determining whether a member has used “reasonable diligence” is “the character of the market for the security (e.g., price, volatility, relative liquidity, and pressure on available communication).”⁴² As such, a Member conducting “reasonable diligence” may determine that due to the character of the Early Trading Session, along with considering other relevant factors, the Member wants to utilize the proposed TIF instructions.

Members will be accustomed to this additional analysis in determining whether to participate in the Early Trading Session, Pre-Opening Session, or Regular Trading Hours. The regulatory guidance with respect to best execution anticipates the continued evolution of execution venues:

[B]est execution is a facts and circumstances determination. A broker-dealer must consider several factors affecting the quality of execution, including, for example, the opportunity for price improvement, the likelihood of execution . . . , the speed of execution and the trading characteristics of the security, together with other non-price factors such as reliability and service.⁴³

To the extent there may be best execution obligations at issue, they are no different than the best execution obligations faced by brokers in the current market structure,⁴⁴ including

intentionally as the Member utilizes reasonable diligence to ascertain the best market for the security. See FINRA Rule 5130. See also FINRA Regulatory Notice 15–46, *Best Execution. Guidance on Best Execution Obligations in Equity, Options, and Fixed Income Markets*, (November 2015).

⁴² Tellingly, these characteristics are reflected in the disclosure requirements mandated by Exchange Rule 3.21 before a Member may accept an order from a customer for execution in the Pre-Opening, After Hours, and proposed Early Trading Sessions.

⁴³ See Securities Exchange Act Release No. 43950 (November 17, 2000), 65 FR 75414 (December 1, 2000) (“Disclosure of Order Execution and Routing Practices release”).

⁴⁴ The Commission has also indicated a User’s best execution obligation may not be satisfied simply by obtaining the best bid or offer (“BBO”). See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (“Order Executions Obligations release”). While a User may seek the most favorable terms reasonably available under the circumstances of the transaction, such terms may not necessarily in every case be the best price available. Id. See also FINRA Regulatory Notice 15–46, *Best Execution. Guidance on Best Execution Obligations in Equity, Options, and Fixed Income Markets*, (November 2015).

the use of the currently available Regular Trading Hours TIF instruction or SCAN/ESCN routing strategy available on Nasdaq discussed above.⁴⁵ However, similar to why a Member may utilize the Regular Trading Hours TIF instruction, a User may wish to forgo a possible execution during the Early Trading Session and/or Pre-Opening Session if they believe doing so is consistent with their best execution obligations as they anticipate that the market for the security may improve upon the start of the Pre-Opening Session and/or Regular Trading Hours.⁴⁶ Applicable best execution guidance contains no formulaic mandate as to whether or how brokers should direct orders. The optionality created by the proposed rule change simply represents one tool available to Members in order to meet their best execution obligations.

The Exchange notes that it would subject orders that are eligible for execution as of the start of the Pre-Opening Session to all of the Exchange’s standard regulatory checks, as it currently does with all orders upon entry. These checks include compliance with Regulation NMS,⁴⁷ Regulation SHO,⁴⁸ as well as relevant Exchange rules.⁴⁹

Lastly, the Exchange reminds Members of their regulatory obligations when submitting an order one of the proposed TIF instructions. The Market Access Rule under Rule 15c3–5 of the Act requires broker-dealers to, among other things, implement regulatory risk management controls and procedures that are reasonably designed to prevent the entry of orders that fail to comply with regulatory requirements that apply on a pre-order entry basis.⁵⁰ These pre-trade controls must, for example, be reasonably designed to assure compliance with Exchange trading rules and Commission rules under Regulation SHO⁵¹ and Regulation NMS.⁵² In

⁴⁵ See *supra* note 39.

⁴⁶ Exchange Rule 3.21 requires Member make certain disclosures to their customers prior to accepting an order for execution outside of Regular Trading Hours. These disclosures include, among other things, the risk of lower liquidity, higher volatility, wider spreads, and changing prices in extended hours trading as compared to regular market hours. See Exchange Rule 3.21(a)–(g).

⁴⁷ 17 CFR 242.610–611.

⁴⁸ 17 CFR 242.200–204.

⁴⁹ See, e.g., Exchange Rule 11.13(a).

⁵⁰ See Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010) (File no. S7–03–10).

⁵¹ See e.g., Question 2.6 of the Division of Trading and Markets: Response to Frequently Asked Questions Concerning Regulations SHO, available at <https://www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm>.

⁵² 17 CFR 240.610–611.

accordance with the Market Access Rule, a Member’s procedures must be reasonably designed to ensure compliance with their applicable regulatory requirements, not just at the time the order is routed to the Exchange, but also at the time the order becomes eligible for execution.

(B) Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that its proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will benefit investors, the national market system, Members, and the Exchange market by increasing competition for order flow and executions during the pre-market sessions, thereby spurring product enhancements and lowering prices. The Exchange believes the proposed Early Trading Session would enhance competition by enabling the Exchange to directly compete with NYSE Arca and Nasdaq for order flow and executions starting at 7:00 a.m., rather than 8:00 a.m. Eastern Time. In addition, the proposed TIF instructions will enhance competition by enabling the Exchange to offer functionality similar to Nasdaq.⁵³ The fact that the extending of the proposed Early Trading Session and TIF instructions are themselves a response to the competition provided by other markets is evidence of its pro-competitive nature.

(C) Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

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

⁵³ See *supra* note 39.

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-BATS-2016-14 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-2016-14. 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 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-2016-14 and should be submitted on or before March 21, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁴

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-04252 Filed 2-26-16; 8:45 am]

BILLING CODE 8011-01-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

2015/2016 Generalized System of Preferences (GSP) Annual Product Review: Inviting Public Comments on Possible Actions Related to Competitive Need Limitations

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and solicitation of comments.

SUMMARY: This notice announces the availability of full 2015 calendar year import statistics relating to competitive need limitations (CNLs) under the Generalized System of Preferences (GSP) program. The Office of the United States Trade Representative (USTR) will accept public comments submitted by April 1, 2016, regarding: (1) Possible *de minimis* CNL waivers; and (2) possible redesignations of articles currently not eligible for GSP benefits because they previously exceeded the CNL thresholds. This notice also announces the withdrawal by the petitioners of certain previously accepted CNL waiver petitions.

FOR FURTHER INFORMATION CONTACT:

Aimee Larsen, Director for GSP, Office of the United States Trade Representative, 600 17th Street NW., Washington DC 20508. The telephone number is (202) 395-2974 and the email address is Aimee_B_Larsen@ustr.eop.gov.

DATES: Public comments are due by 5:00 p.m., Friday, April 1, 2016.

SUPPLEMENTARY INFORMATION:

I. Statutory Provisions Related to CNLs

The GSP program provides for the duty-free importation of designated articles when imported from designated beneficiary developing countries (BDCs). The GSP program is authorized by Title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended (the "1974 Act").

Section 503(c)(2)(A) of the 1974 Act sets out the two CNLs. When the President determines that a BDC exported to the United States during a calendar year either: (1) A quantity of a GSP-eligible article having a value in excess of the applicable amount for that

year (\$170 million for 2015), or (2) a quantity of a GSP-eligible article having a value equal to or greater than 50 percent of the value of total U.S. imports of the article from all countries (the "50 percent" CNL), the President must terminate GSP duty-free treatment for that article from that BDC by no later than July 1 of the next calendar year, unless a waiver is granted. (*Note*—as announced in a November 17, 2015, **Federal Register** notice (FRN), petitions for CNL waivers are being considered under a separate timeline than that of the actions on CNLs set forth in this FRN).

De minimis waivers: Under section 503(c)(2)(F) of the 1974 Act, the President may waive the 50 percent CNL with respect to an eligible article imported from a BDC if the value of total imports of that article from all countries during the calendar year did not exceed the applicable *de minimis* amount for that year (\$22.5 million for 2015).

Redesignations: Under section 503(c)(2)(C) of the 1974 Act, if imports of an eligible article from a BDC ceased to receive duty-free treatment due to exceeding a CNL in a prior year, the President may, subject to the considerations in sections 501 and 502 of the 1974 Act, redesignate such an article for duty-free treatment if imports in the most recently completed calendar year did not exceed the CNLs.

CNL waiver revocation: Under Section 503(d)(5) of the 1974 Act, a CNL waiver remains in effect until the President determines that it is no longer warranted due to changed circumstances. Section 503(d)(4)(B)(ii) of the 1974 Act, as amended by Public Law 109-432, also provides that, "[n]ot later than July 1 of each year, the President should revoke any waiver that has then been in effect with respect to an article for five years or more if the beneficiary developing country has exported to the United States (directly or indirectly) during the preceding calendar year a quantity of the article— (I) having an appraised value in excess of 1.5 times the applicable amount set forth in subsection (c)(2)(A)(ii) for that calendar year (\$255 million in 2015); or (II) exceeding 75 percent of the appraised value of the total imports of that article into the United States during that calendar year."

Exclusions from GSP duty-free treatment where CNLs have been exceeded will be effective July 1, 2016, unless granted a waiver by the President. Any CNL-based exclusions, CNL waiver revocations, and decisions with respect to *de minimis* waivers and

⁵⁴ 17 CFR 200.30-3(a)(12).

redesignations will be based on full 2015 calendar year import data.

II. 2015 Import Statistics

In order to provide notice of articles that have exceeded the CNLs for 2015 and to afford an opportunity for comment regarding (1) potential *de minimis* waivers and (2) potential redesignations for 2015, USTR has posted product lists on the USTR Web site at <https://ustr.gov/issue-areas/preference-programs/generalized-system-preferences-gsp/current-reviews/gsp-20152016> under the title “2015 Import Statistics Relating to Competitive Need Limitations for the Generalized System of Preferences.” These lists can also be found at www.regulations.gov in Docket Number USTR–2015–0013. There were no articles that were subject to CNL waiver revocation for 2015 based on the provisions of Section 503(d)(4)(B)(ii) of the 1974 Act, as amended by Public Law 109–432. Full 2015 calendar year data for individual tariff subheadings may also be viewed on the Web site of the U.S. International Trade Commission at <http://dataweb.usitc.gov>.

The lists available on the USTR Web site contain, for each article, the Harmonized Tariff Schedule of the United States (HTSUS) subheading and BDC country of origin, the value of imports of the article for the 2015 calendar year, and the percentage of total U.S. imports of that article from all countries.

The lists published on the USTR Web site are for informational purposes only. They may not include all articles to which the GSP CNLs may apply. All determinations and decisions regarding the CNLs of the GSP program will be based on full 2015 calendar year import data with respect to each GSP-eligible article. Each interested party is advised to conduct its own review of 2015 import data with respect to the possible application of the GSP CNL provisions.

List I on the USTR Web site shows GSP-eligible articles from BDCs that exceeded a CNL by having been imported in excess of \$170 million, or in a quantity equal to or greater than 50 percent of the total U.S. import value, in 2015. These products will be removed from eligibility for GSP for the subject countries on July 1, 2016, unless the President grants a waiver for the product for the subject country in response to a petition filed by an interested party. Such petitions for CNL waivers must have been previously submitted in the 2015/2016 GSP Annual Review. (See 80 FR 50376 and 80 FR 71913.) The last column in List I shows those products for which petitions have

been accepted and are now under review.

List II identifies GSP-eligible articles from BDCs that are above the 50 percent CNL, but that are eligible for a *de minimis* waiver of the 50 percent CNL. Articles eligible for *de minimis* waivers are automatically considered in the GSP annual review process, without the filing of a petition. List III shows GSP-eligible articles from certain BDCs that are currently not receiving GSP duty-free treatment, but that may be considered for GSP redesignation based on 2015 trade data and consideration of certain statutory factors. Recommendations to the President on *de minimis* waivers and redesignations will be made as part of the GSP annual review process, and public comments (including comments in support of or in opposition to *de minimis* waivers and redesignations) are invited in accordance with the Requirements for Submissions below.

III. Public Comments

Requirements for Submissions

Written comments submitted in response to this notice must be submitted electronically by 5:00 p.m., Friday, April 1, 2016. All submissions must be made in English and submitted electronically via <http://www.regulations.gov>, using docket number USTR–2015–0013. Hand-delivered submissions will not be accepted.

All submissions for the GSP Annual Review must conform to the GSP regulations set forth at 15 CFR part 2007, except as modified below. These regulations are available on the USTR Web site at <https://ustr.gov/issue-areas/trade-development/preference-programs/generalized-system-preference-gsp/gsp-program-inf>. Any person or party making a submission is strongly advised to review the GSP regulations as well as the GSP Guidebook, which is available at the same link.

To make a submission using <http://www.regulations.gov>, enter docket number USTR–2015–0013 in the “Search for” field on the home page and click “Search.” The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting “Notice” under “Document Type” in the “Filter Results by” section on the left side of the screen and click on the link entitled “Comment Now.” The <http://www.regulations.gov> Web site offers the option of providing comments by filling in a “Type Comment” field or by attaching a document using the

“Upload file(s)” field. The Subcommittee prefers that submissions be provided in an attached document and, in such cases, that parties note “See attached” in the “Type Comment” field on the online submission form.

At the beginning of the submission, or on the first page (if an attachment), please note that the submission is in response to this **Federal Register** notice and indicate the specific product(s) (including the eight-digit HTSUS subheading) that is the subject of the comment and on which of the relevant lists described above (e.g., List I) it appears. Submissions should not exceed 30 single-spaced, standard letter-size pages in 12–point type, including attachments. Any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Each submitter will receive a submission tracking number upon completion of the submissions procedure at <http://www.regulations.gov>. The tracking number will be the submitter’s confirmation that the submission was received into <http://www.regulations.gov>. The confirmation should be kept for the submitter’s records. USTR is not responsible for any delays in a submission due to technical difficulties, nor is it able to provide any technical assistance for the <http://www.regulations.gov> Web site. Documents not submitted in accordance with these instructions may not be considered in this review. If an interested party is unable to provide submissions as requested, please contact the GSP program at USTR to arrange for an alternative method of transmission.

Business Confidential Petitions

An interested party requesting that information contained in a submission be treated as business confidential information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such. The submission must be marked “BUSINESS CONFIDENTIAL” at the top and bottom of the cover page and each succeeding page, and the submission should indicate, via brackets, the specific information that is confidential. Additionally, “Business Confidential” must be included in the “Type Comment” field. For any submission containing business confidential information, a non-confidential version must be submitted separately (i.e., not as part of the same submission with the confidential version), indicating where

confidential information has been redacted. The non-confidential version will be placed in the docket and open to public inspection.

Public Viewing of Review Submissions

Submissions in response to this notice, except for information granted "business confidential" status under 15 CFR part 2003.6, will be available for public viewing pursuant to 15 CFR part 2007.6 at <http://www.regulations.gov> upon completion of processing, usually within two weeks of the relevant due date or date of the submission. Public versions of all documents relating to the 2015/2016 Annual Product Review will be made available for public viewing in docket USTR-2015-0013 at www.regulations.gov upon completion of processing.

IV. Withdrawal of Certain CNL Waiver Petitions

In a January 11, 2016 **Federal Register** notice (see 81 FR 1275), USTR announced the acceptance of CNL waiver petitions for the 2015/2016 GSP Annual Review. Following the release of full 2015 calendar year trade data, the following petitioners have withdrawn their CNL waiver petition from the 2015/2016 GSP Annual Review because the product imported from the subject GSP beneficiary country did not surpass the CNL thresholds for 2015:

- CamelBak Products LLC: HTS 4202.92.04 from the Philippines
- Government of Tunisia: HTS 1509.10.40 from Tunisia
- Government of Ukraine: HTS 2804.29.00 from Ukraine
- Lenox Corporation: HTS 6911.10.37 from Indonesia

An updated list of the CNL waiver petitions being considered in the 2015/2016 review can be found on the USTR Web site at <https://ustr.gov/issue-areas/preference-programs/generalized-system-preferences-gsp/current-reviews/gsp-20152016> under the title "Product and CNL Waiver Petitions Accepted for the 2015/2016 GSP Annual Review." This list can also be found at www.regulations.gov in Docket Number USTR-2015-0013.

William D. Jackson,

Deputy Assistant U.S. Trade Representative for the Generalized System of Preferences, Office of the U.S. Trade Representative.

[FR Doc. 2016-04301 Filed 2-26-16; 8:45 am]

BILLING CODE 3290-F6-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Unified Carrier Registration Plan Board of Directors meeting.

Time and Date: The meeting will be held on March 17, 2016, from 12:00 Noon to 3:00 p.m., Eastern Daylight Time.

Place: This meeting will be open to the public via conference call. Any interested person may call 1-877-422-1931, passcode 2855443940, to listen and participate in this meeting.

Status: Open to the public.

Matters to be considered: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

For further information contact: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827-4565.

Dated: February 17, 2016.

Larry W. Minor,

Associate Administrator, Office of Policy, Federal Motor Carrier Safety Administration.

[FR Doc. 2016-04460 Filed 2-25-16; 4:15 pm]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2015-0030]

Award Management Requirements: Proposed Circular

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability of proposed circular and request for comments.

SUMMARY: FTA has placed in the docket and on its Web site proposed guidance in the form of proposed FTA Circular, 5010.1E, "Award Management Requirements," to facilitate implementation of FTA's assistance programs. The purpose of the proposed circular is to update the current "Grants Management Requirements" circular to reflect various changes in the law, regulations, and FTA's transition to a

new electronic award and management system. The proposed circular provides guidance regarding the management responsibilities accompanying FTA awards of federal assistance through Grants and Cooperative Agreements. By this notice, FTA seeks public comment on the proposed circular.

DATES: Comments must be submitted by April 29, 2016. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments by only one of the following methods, identifying your submission by DOT Docket Number FTA-2015-0030. All electronic submissions must be made to the U.S. Government electronic site at <http://www.regulations.gov>.

Federal e-Rulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.

Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

Fax: 202-493-2251.

Instructions: You must include the agency name (Federal Transit Administration) and Docket number (FTA-2015-0030) for this notice at the beginning of each submission of your comments. Submit two copies of your comments if you submit them by mail.

For confirmation that FTA received your comments, include a self-addressed stamped postcard. All comments received will be posted without change to www.regulations.gov including any personal information provided and will be available to internet users. You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477) or <http://DocketsInfo.dot.gov>.

Docket: For access to the docket to read background documents and comments received, go to www.regulations.gov at any time or to the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M-30, West Building Ground Floor, Room W12-140, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m. Eastern Standard Time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program matters, contact Pamela A. Brown, FTA Office of Program

Management, at (202) 493–2503, or pamela.brown@dot.gov. For legal matters, contact Linda W. Sorkin, FTA Attorney-Advisor, Office of Chief Counsel, at (202) 366–0959 or linda.sorkin@dot.gov.

SUPPLEMENTARY INFORMATION:

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- I. Overview
- II. Chapter-by-Chapter Analysis
 - A. Chapter I—Introduction and Background
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 - C. Chapter III—Administration of the Award
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I. Overview

The proposed circular incorporates changes to FTA's programs resulting from enactment of FTA's most recent authorizing legislation, the Fixing America's Surface Transportation (FAST) Act, Public Law 114–94, December 4, 2015, the Moving Ahead for Progress in the 21st Century Act (MAP–21), and the impact of FTA programs funded with federal assistance appropriated or made available for the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59, August 10, 2005, as amended. In addition, the proposed circular incorporates the promulgation of Department of Transportation (DOT) regulations, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR part 1201, and changes in terms as used in FTA's new electronic award and management system, the Transit Award and Management System (TrAMS). The proposed circular reflects these changes, proposes policies, adds information, clarifies FTA's requirements and processes, and restructures FTA Circular 5010.1D, “Grant Management Requirements,” for accuracy, clarity, and ease of use.

On December 4, 2015, the FAST Act, Public Law 114–94, was signed into law with an effective date of October 1, 2015, the first day of Fiscal Year (FY) 2016. With certain exceptions, the provisions of the FAST Act will apply to funds FTA obligates in FY 2016 through FY 2020, including funds apportioned in FY 2015 and prior. To the extent that FTA awards additional funding in FY 2016 to support a project originally receiving FTA funding before FY 2016, FAST Act cross-cutting requirements will apply to the new funding. FTA will be developing and

issuing guidance on implementation of FAST Act requirements as necessary to accommodate situations that arise.

On December 26, 2014, U.S. DOT adopted the Office of Management and Budget (OMB) regulatory guidance, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” (Uniform Guidance), 2 CFR part 200, now incorporated by reference in U.S. DOT regulations, 2 CFR part 1201. The Uniform Guidance streamlines and adds to the guidance found in the following eight OMB circulars that have been superseded by 2 CFR part 200: OMB Circular A–102, “Grant Awards and Cooperative Agreements with State and Local Governments”; OMB Circular A–110, “Uniform Administrative Requirements for Awards and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations,” 2 CFR part 215; OMB Circular A–21, “Cost Principles for Educational Institutions,” 2 CFR part 220; OMB Circular A–87, “Cost Principles for State, Local and Indian Tribal Governments,” 2 CFR part 225; OMB Circular A–122, “Cost Principles for Non-Profit Organizations,” 2 CFR part 230; OMB Circular A–133, “Audits of States, Local Governments and Non-Profit Organizations”; and OMB Circular A–50, “Audit Follow-Up,” and OMB Circular A–89, “Federal Domestic Assistance Program Information.” While 2 CFR part 1201 generally adopts most of the Uniform Guidance, part 1201 does contain several DOT-specific provisions.

U.S. DOT regulations, 2 CFR part 1201, apply to an FTA Award and any Amendments thereto that have been signed by an authorized FTA official on or after December 26, 2014. These regulations supersede the former 49 CFR part 18, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” and former 49 CFR part 19, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,” except that Grants and Cooperative Agreements executed before December 26, 2014, continue to be subject to former 49 CFR parts 18 and 19 in effect on the date of such grants or agreements.

In addition to addressing changes to federal law and regulations, the proposed circular reflects terminology changes for consistency with FTA's prospective new electronic award and management system, TrAMS. The proposed circular also clarifies FTA's

requirements and processes, proposes new FTA policies, and restructures FTA Circular 5010.1D, “Grant Management Requirements.” The proposed circular applies to both Grants and Cooperative Agreements when program-specific requirements are not addressed in an FTA program-specific circular.

This notice provides a section-by-section summary of the proposed circular. The proposed circular itself is not included in this notice; instead, an electronic version may be found on FTA's Web site, at www.fta.dot.gov, and in the docket, at www.regulations.gov. Paper copies of the proposed circular may be obtained by contacting FTA's Administrative Services Help Desk at (202) 366–4865. The FTA seeks comment on the proposed circular.

FTA will publish a second notice in the **Federal Register** after the close of the comment period. The second notice will respond to comments received and announce the availability of the final circular. The final circular will supersede FTA Circular 5010.1D.

II. Chapter-by-Chapter Analysis

Apart from changes in terms to accommodate 2 CFR part 1201, 2 CFR part 200, and the introduction of TrAMS, minor changes to headings and names of reports and processes, and structural changes, this analysis discusses proposed substantive changes to FTA Circular 5010.1D. We strongly recommend that stakeholders carefully review the proposed circular in its entirety, particularly those provisions that contain new, added, or expanded information.

A. Chapter I—Introduction and Background

Proposed Chapter I covers general information regarding FTA, FTA's authorizing legislation, how to contact FTA, and Grants.Gov. It also provides definitions and acronyms and updates the information in FTA Circular 5010.1D.

Along with a new list of acronyms and their meanings, most changes in proposed Chapter I are changes to definitions, particularly those needed for consistency with the FAST Act, MAP–21, the Uniform Guidance, and TrAMS.

An example of a new definition resulting from the FAST Act is the definition of “Low or No Emission Vehicle” which means a passenger vehicle used to provide public transportation that the Secretary determines sufficiently reduces energy consumption or harmful emissions, including direct carbon emissions, when compared to a comparable

standard vehicle; or a zero emission vehicle used to provide public transportation. A new policy regarding using low or no emission vehicles when repowering or remanufacturing vehicles to extend their useful life is included in the 5010.1E and this definition will provide clarification for that use.

Another new definition added by MAP-21 and enhanced in the FAST Act, is the definition of “associated transit improvements,” which supersedes “transit enhancements” under the Urbanized Area Formula Program (49 U.S.C. 5307) financed with appropriations or federal assistance made available for fiscal years 2013 and later. The following activities qualify as both associated transit improvements under MAP-21 and transit enhancements under the FAST Act: (1) Historic preservation, rehabilitation, and operation of historic public transportation buildings, structures, and facilities (including historic bus and railroad facilities) intended for use in public transportation service; (2) bus shelters; (3) functional landscaping and streetscaping, including benches, trash receptacles, and street lights; (4) pedestrian access and walkways; (5) bicycle access, including bicycle storage shelters and parking facilities and the installation of equipment for transporting bicycles on public transportation vehicles; (6) signage; and (7) enhanced access for persons with disabilities to public transportation. The FAST Act prohibits grants or loans to be used to pay the incremental costs of incorporating art or non-functional landscaping into facilities, including the cost of an artist on the design team. Both the FAST Act and MAP-21 do not treat the following “transit enhancements” that were eligible under SAFETEA-LU as eligible “associated transit improvements” under MAP-21: (1) Public art, (2) transit connections to parks within the recipient’s transit service area, (3) scenic beautification other than functional landscaping, and (4) tables.

Two examples of new definitions added for consistency with TrAMS include the definition of “Project” and “Award.” “Project” now means public transportation improvement activities eligible for federal assistance in an application to FTA and/or in an FTA Award. “Award” now means the Scope of Work that FTA has approved when FTA agreed to provide federal assistance, including the requirements of all documents, terms, and conditions incorporated by reference and made part of the Grant Agreement or Cooperative Agreement.

Two examples of definitions FTA has added to explain program concerns are “Remanufactured Vehicles” and “Rolling Stock Repower.” “Remanufactured vehicles” means a previously owned/used vehicle that has undergone or requires substantial structural, mechanical, electrical, and/or cosmetic rebuilding, restoration or updating and that is to be acquired or leased by a new party; a remanufactured vehicle must meet all of the requirements for new bus models (*e.g.*, useful life, bus testing, *etc.*). “Rolling stock repowering” involves replacing a vehicle’s propulsion system with a propulsion system of a different type (*e.g.*, replacing a diesel engine with an electric battery propulsion system). Rolling stock repowering is permitted for buses that have met at least 40 percent of their useful life; in which case, it must be designed to permit the bus to meet its useful life requirements. Rolling stock repowering also is permitted as part of a rebuild; in which case, it must extend the useful life by at least 4 years.

B. Chapter II—Circular Overview

Proposed Chapter II covers general information regarding the requirements and procedures for FTA programs, particularly when the program-specific circular does not discuss a particular issue.

Proposed Chapter II lists descriptions of new or revised programs under 49 U.S.C. chapter 53, as amended by the FAST Act and MAP-21. FTA’s public Web site <http://www.fta.dot.gov> provides a complete listing of FTA programs and their current FTA circulars. Among the new programs listed are: (1) The Buses and Bus Facilities Formula Program authorized under 49 U.S.C. 5339, (2) the Public Transportation Emergency Relief Program authorized under 49 U.S.C. 5324, (3) the Public Transportation Safety Program authorized under 49 U.S.C. 5329, (4) the State of Good Repair Formula Program authorized under 49 U.S.C. 5337, and (5) the Transit-Oriented Development Planning Pilot Program authorized under Section 20005(b) of MAP-21. As in the current circular, proposed Chapter II then discusses various federal civil rights requirements, such as those pertaining to the Americans with Disabilities Act (ADA), Title VI of the Civil Rights Act of 1964 (Title VI), Equal Employment Opportunity (EEO) and Disadvantaged Business Enterprise (DBE).

C. Chapter III—Administration of the Award

Proposed Chapter III provides more detail about administrative requirements that accompany an Award to ensure easier compliance with the FAST Act, MAP-21, and the Uniform Guidance. The chapter begins by describing the life cycle of an Award from the application process, reporting requirements, modifications, and closeout.

Among the differences between proposed Chapter III and the current Chapter III are the following:

Proposed Chapter III explains that the purpose of reporting requirements is to ensure proper recipient stewardship of federal assistance and compliance with laws, regulations, and requirements applicable to the Award and its recipients and/or subrecipients.

Proposed Chapter III directs stakeholders to FTA program-specific circulars for information about exceptions to Milestone Progress Reports (MPR) due dates. In limited instances, FTA may grant extensions of report due dates for good cause. For quarterly reporters, an extension may be granted up to the day prior to the next quarter reporting cycle. (For example, a report due on January 30, may receive an extension with a due date no later than March 30. This is necessary to ensure information is captured for the next reporting cycle beginning on April 1.) Extensions may not be granted for recipients required to report monthly. Annual reporters must report by October 30. Proposed Chapter III asserts FTA’s right to require more stringent or specialized reports than reports typically required; and, reports on significant events impacting the Award should be reported to FTA immediately after detection and then reflected in the next MPR. The frequency of reporting based on risk also may be implemented. We are seeking comments on that matter.

Proposed Chapter III indicates that the requirements for Associated Transit Improvement Reports required by MAP-21 will be similar to the requirements for Transit Enhancement Reports required by SAFETEA-LU.

Proposed Chapter III explains that within 30 days, after entering into a contract for any vehicle purchase or when exercising an option or a piggyback on an existing contract, the recipient must submit to FTA the name of the transit vehicle manufacturer (TVM) that is the contractor and the total dollar value of the third party contract. Additionally, the next MPR after the contract is awarded should

include the name of the successful bidder.

Proposed Chapter III also states that recipients must submit a quarterly, rather than monthly, project budget and project schedule update for Major Capital projects to be consistent with changes made by MAP-21.

For greater consistency with the Uniform Guidance, proposed Chapter III explains the criteria for when prior approval for budget revisions will be required.

For construction projects, FTA will require approval when the budget revision results from changes in the scope or the objective of the project or program, the need arises for additional Federal funds to complete the project, or when the desired revision involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in 2 CFR part 200, subpart E—Cost Principles.

For nonconstruction projects, such as projects for equipment, FTA will require approval of the budget revision when the federal share of the Award exceeds the simplified acquisition threshold (\$150,000 as of the date of publication of the proposed circular) and the cumulative amount of the change exceeds 20 percent of the total federal assistance allocated from the current approved Award Budget. A change below these thresholds does not require FTA prior approval, provided it does not alter the scope of work of the Award.

In addition, rolling stock spare ratio requirements will continue to apply when changes are contemplated or undertaken. This chapter also cautions that budget revisions or proposed Award amendments must be consistent with the approved STIP, satisfy NEPA requirements, and be consistent with its earmark, if any, and statutory requirements.

When closeout of an Award is sought, proposed Chapter III requires recipients to confirm that all activities are complete, to indicate whether or not funds will need to be deobligated, and to list the assets acquired or improved that will continue to be subject to the requirements of the accompanying Grant or Cooperative Agreement.

D. Chapter IV—Management of the Award

Proposed Chapter IV includes guidance regarding the management, use, and disposition of FTA assisted assets, including real property such as land and the facilities purchased or constructed thereon, equipment consisting of rolling stock and other

items of personal property, and supplies consistent with 2 CFR part 1201 and 2 CFR part 200. It also addresses the design and construction of facilities in light of MAP-21 amendments to 49 U.S.C. chapter 53.

General information regarding real property is consolidated in proposed Section 2, and oversight of real property transactions is addressed in proposed Section 3. Information about equipment and supplies, including rolling stock, is consolidated in proposed Section 4. In connection with appraisals, proposed Section 2 updates NEPA information including information regarding environmental site assessments (ESA), particularly in regard to contaminated property and the estimated cost to remediate contaminated property and contamination discovered during construction. Contaminated property is addressed more fully in Appendix D.

Proposed Section 2 discusses administrative settlements, clarifying that relocation payments are not considered part of an administrative settlement.

Proposed Section 2 adds the following new Special Real Estate Acquisition Program Strategies/Issues including: (1) A new discussion of land exchanges advising that FTA does not have separate processes for these transactions but uses typical appraisal processes, including a reminder that relocation requirements will continue to apply; (2) directs stakeholders interested in joint development to FTA Circular 7050.1 as well as to the discussion in proposed Chapter IV; and (3) adds an extensive discussion of contaminated properties including information regarding ESAs.

Proposed Section 2 adds information about the treatment of real estate acquisition management plans (RAMP) advising that the recipient review it for needed changes, provide information about how real property will be acquired, and provide adequate information about relocation.

Proposed Section 2 discusses property management. Along with the topics addressed in FTA Circular 5010.1D, FTA has added new subsections to clarify FTA policy pertaining to issues FTA staff frequently encounter in administering its awards. These new subsections discuss such matters as title to real property, use, maintenance, idle facilities and idle capacity, reporting on real property, and non-transit uses of real property, including incidental use, joint development, and shared use. Real property reporting has become more extensive, with a list of subjects to be addressed in the new Appendix I to the proposed circular.

Proposed Section 3 is a separate section addressing FTA management and project oversight of real property but does not change the information in FTA Circular 5010.1D.

Proposed Section 4 addresses issues pertaining to the acquisition, use, management, and disposition of equipment and supplies, including rolling stock.

Consistent with the Uniform Guidance, proposed Section 4 expressly states that title to equipment continues to vest in the recipient, but the equipment must be used for purposes of the project, remain unencumbered unless FTA provided prior approval of the encumbrance, and it must be disposed of in accordance with federal law and/or the Uniform Guidance.

Proposed Section 4 adds the Uniform Guidance prohibition against using federally assisted equipment to provide services in connection with incidental uses for a fee less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment.

Proposed Section 4 clarifies that FTA provides a minimum useful life policy for capital rolling stock, trolleys, ferries, and facilities in this circular. If property is prematurely withdrawn from service, FTA must be notified immediately.

As an effort to streamline and add flexibility, FTA will no longer require its recipients, in the application for federal assistance, to identify a minimum useful life period for equipment (other than rolling stock, trolleys, ferries, and facilities) with an acquisition value greater than \$5,000 procured with federal assistance. However, the recipient should identify useful life in its equipment records and must continue to complete the physical inventory of the equipment and the results reconciled with equipment records at least once every two years. Proposed Section 4 also adds more information regarding calculations of the federal interest in FTA-assisted property.

FTA is interested in the potential of zero-emission vehicles to provide cleaner, more efficient transit service. FTA is seeking comments on whether the current useful life requirements for buses discourages the consideration of this technology, and if so, what an appropriate useful life requirement for these vehicles should be and/or whether these requirements should change over time as the technology advances.

Proposed Section 4 clarifies FTA's rolling stock rebuilding policies for buses and railcars as follows: (1) With

FTA approval, the recipient may rebuild a bus, railcar, or repowered rolling stock before it has met its minimum useful life, and (2) for a bus or railcar that has been rebuilt before the end of its minimum useful life, the minimum extension of the useful life of the rebuilt vehicle is the remaining useful life at the time the vehicle is rebuilt plus four years. A remanufactured vehicle must meet all the requirements for new vehicles.

Proposed Section 4 notes that repowering of rolling stock is permitted for buses that have met at least 40 percent of their useful life in which case it must be designed to permit the bus to meet its useful life requirements or as part of a rebuild in which case it must extend the useful life by at least 4 years. We seek your comments on how repowering should be implemented.

Proposed Section 4 notes that remanufactured vehicles also may be eligible for FTA assistance so long as they meet all of the requirements for new bus models (*e.g.*, useful life, bus testing, *etc.*). We also seek your comments on the standards FTA should adopt in providing federal assistance for remanufactured vehicles.

Proposed Section 4 notes that FTA also will permit agencies to include vehicles that have met their minimum useful life in their contingency fleet if an agency is introducing zero emission vehicles into its fleet. This will ensure reliable public transportation service in the event that these vehicles require more frequent maintenance. These contingency vehicles are not included in the calculation of the recipient's spare ratio. Contingency plans are subject to review during triennial reviews and other FTA oversight reviews. Any rolling stock not supported by a contingency plan will be considered part of the active fleet.

Proposed Section 4 notes that if a recipient has exceeded its spare ratio by a small amount when acquiring vehicles to be used in public transportation service, FTA may be willing to allow a deviation; approval of such a deviation must be obtained in writing.

Proposed Section 4 expands maintenance requirements to include a vehicle maintenance plan and a facility/equipment maintenance plan.

Proposed Section 4 includes additional information regarding leases, including operating and capital leases as updated in the FAST Act, including removable power sources for zero emission vehicles which may now be acquired separately as capital leases. Notably, the FAST Act eliminates FTA's regulatory requirement that FTA may only participate in capital leases that are

more cost effective than acquisitions. However, the FAST Act also requires recipients to provide a report to FTA within 3 years after the date on which the recipient enters into rolling stock or related equipment leases, with an evaluation of the overall costs and benefits of leasing rolling stock and a comparison of the expected short-term and long-term maintenance costs of leasing versus buying rolling stock.

Proposed Section 4 includes additional information regarding the disposition or inappropriate use of federally assisted property before the end of that property's useful life, focusing especially on: (1) The transfer of property no longer needed; (2) dispositions due to casualty, fire, or natural disaster and the use of insurance proceeds recovered as a result of the casualty, fire, or natural disaster; and (3) misused property. To facilitate compliance with federal requirements, proposed Section 4 adds a subsection providing instructions on calculating the "federal interest" in federally assisted property. Proposed Section 4 also consolidates information regarding disposition or use of federally assisted property after the property's useful life has ended.

Proposed Section 4 expands the information about flood insurance requirements for FTA programs, including requirements for coverage of buildings and contents.

Proposed Section 5 provides information on design and construction of facilities.

Proposed Section 5 sets forth references to major environmental laws and regulations that affect the design and construction of facilities.

Proposed Section 5 clarifies force account work requirements and raises the threshold for when force account justification and plans are required from \$100,000 to \$1,000,000 to reduce the administrative burden on recipients. FTA's policies require a force account justification and a force account plan when work is \$1,000,000 or greater. When force account work is \$10,000,000 or more, FTA approval of the force account plan is required. Among the justifications FTA recognizes for using force account are: (1) Cost savings, (2) exclusive expertise, (3) safety and efficiency of operations, or (4) union agreement.

Proposed Section 5 now removes the requirement for a separate annual value engineering (VE) report. Recipients with major capital projects are still required to submit a VE report to the appropriate FTA Regional Office upon completing the report.

Proposed Section 5 also includes information regarding federal \$1 coin requirements, specifically that equipment and facilities must be capable of accepting and dispensing \$1 coins when coins or currency are required to use that equipment or those facilities and appropriate signs must be in place.

Finally, Section 5 cautions recipients to consult appropriate circulars, DOT guidance, and other official guidance pertaining to compliance with the Americans with Disabilities Act.

E. Chapter V—FTA Oversight

Proposed Chapter V includes guidance regarding the various types of reviews FTA conducts. Reviews are grouped in the following categories: (1) Program Oversight, (2) Safety Oversight, and (3) Project Oversight. Project Management Meetings have been added to the list of reviews.

Program Oversight reviews include comprehensive reviews and specialized reviews. Comprehensive reviews assess a recipient's project management practices as well as compliance with the program and administrative requirements. Specialized reviews are conducted when a recipient is, or at risk of being, out of compliance in a specific area. These specialized reviews include: Procurement, financial management, and civil rights reviews.

Safety Oversight reviews are conducted to evaluate and direct changes in a recipient's performance of operations in order to improve the safety of public transportation systems. These reviews include: Drug and alcohol program compliance audits, state safety oversight program audits, and FTA voluntary bus transit safety and security reviews.

Project level oversight includes reviews of capital management projects, which includes the assignment of a Project Management Oversight (PMO) contractor and is applied to major capital projects.

A "Note" has been added to advise that as a result of a review, FTA may determine that a recipient requires additional or specialized oversight to address identified or potential programmatic, administrative, or financial concerns. Supplemental oversight also may include the imposition of additional conditions on the award or monitoring requirements.

F. Chapter VI—Financial Management

Proposed Chapter VI includes guidance regarding general matters, internal controls, non-federal share, financial plan, federal principles for determining allowable costs, indirect

costs, program income, annual audit, payment procedures, de-obligation of federal assistance, debt service reserve, and the right to terminate. While retaining much of the information found in FTA Circular 5010.1D, substantive proposed changes include the following:

Due to the emphasis on having adequate internal controls under the Uniform Guidance, FTA has added more detailed information to assure that transactions are properly executed, funds are safeguarded, and records are adequately created and maintained.

The discussion of non-federal share now lists some sources of non-federal share, noting that the type of federal assistance awarded determines their eligibility as matching funds.

Proposed Chapter VI adds to the information in FTA Circular 5010.1D pertaining to indirect costs. Proposed Chapter VI now states that OMB assigns cognizant agencies for state and local governments. U.S. DOT is the cognizant agency for determining indirect costs for transit districts. In addition, proposed Chapter VI now provides extensive instructions on how to report indirect costs.

Proposed Chapter VI expands the discussion of how program income is to be used and now includes a chart illustrating those requirements. License fees and royalties derived from patents and copyrights, as well as advertising and concession fees are now expressly acknowledged to be program income.

Proposed Chapter VI amends the information regarding the annual "Single Audit" to note that the single audit threshold has been changed from \$500,000 to \$750,000, as required by 2 CFR part 200.

Proposed Chapter VI sets forth the information about procedures a recipient must follow and information a recipient is requested to provide in connection with returns of federal assistance to the Federal Government. When requesting federal assistance, proposed Chapter VI reminds recipients to verify the availability of that federal assistance in FTA's current electronic award and management system.

Proposed Chapter VI provides information regarding requisition payments to include information on the DELPHI e-Invoicing System or DELPHI Markview system.

G. Appendices

Following are changes made to the Appendices of FTA Circular 5010.1D and information about new appendices that have been added to the Proposed Circular:

Proposed Appendix A, "Table of FTA Circulars," has been updated to reflect

the current circulars, as well as list FTA programs associated with the circulars.

Proposed Appendix B, "Federal Financial Report," has been updated to remove information pertaining to TEAM. Once TrAMS is available, FTA will revise Appendix B to include illustrations from TrAMS.

Proposed Appendix C, "Real Estate Acquisition Management Plan," which is substantially similar to Appendix C of FTA Circular 5010.1D, has been revised to address the following issues: (1) Acquisitions, partial acquisitions, and anticipated number of relocations; (2) whether FTA needs to concur in the appraisal review; (3) issues arising from administrative settlements; (4) the anticipated extent of displacement, types of displacement, availability of replacement housing and business sites, and other anticipated problems; and (5) the contracting requirements, reporting requirements, statement of policy regarding rental property for extended possession by tenants and owners, and policy regarding rental of property not immediately needed for use to accomplish the purposes of the Award.

Proposed Appendix D, "Guide for Preparing an Appraisal Scope of Work," has been expanded to provide more guidance on appraising real property, especially real property with adverse environmental conditions. FTA believes this guidance is needed due to the frequency of issues arising when a recipient seeks to acquire real property, especially when adverse environmental conditions are present.

Proposed Appendix E, "Rolling Stock Status Report," is substantially similar to Appendix E of FTA Circular 5010.1D.

FTA Circular 5010.1D, Appendix F, combined information about indirect cost rate proposals (IDRP) with cost allocation plans (CAP). In 2 CFR part 200, indirect cost rate and cost allocation plan have independent definitions and requirements, Appendix F is now solely dedicated to IDRPs and also provides an example of what constitutes a 20 percent change in the FTA approved IDRP, which will then require approval by FTA for a new indirect cost rate.

Also consistent with new provisions of the Uniform Guidance, Appendix F permits recipients that have never negotiated an indirect cost rate or have not had an indirect cost rate approved by a cognizant agency to choose a "de minimis rate" or an indirect cost rate of 10% of the modified total direct cost.

"Cost Allocation Plans" are now addressed in proposed Appendix G. Among other things, proposed Appendix G defines a CAP consistent with the Uniform Guidance and also

contains information pertaining to cost principles appendices of the Uniform Guidance.

Proposed Appendix H [Appendix G of FTA Circular 5010.1D], "Request for Advance or Reimbursement (SF-270)" has been revised to explain how the recipient should use FTA's DELPHI e-Invoicing of DELPHI Markview system.

New Proposed Appendix I, "Reporting on Real Property," lists the information about real property that the recipient, at a minimum, must provide to FTA to facilitate compliance with 2 CFR 200.329. Among the information expressly required is the parcel number and the size, expressed as acreage, square or linear units.

New Proposed Appendix J, "Award Amendments and Budget Revision Guidelines," provides an explanation of how amendments and budget revisions will be treated in both TEAM and TrAMS.

Proposed Appendix K [Appendix H to FTA Circular 5010.1D], "References," has been updated to add citations to new documents appearing in the circular.

Proposed Appendix L [Appendix I to FTA Circular 5010.1D], "FTA Regional and Metropolitan Contact Information," updates previous contact information.

In summary, we emphasize that interested stakeholders should review the proposed circular in its entirety carefully, particularly the definitions that have been added or revised, and those provisions that contain new or expanded information.

Issued in Washington, DC.

Therese W. McMillan,
Acting Administrator.

[FR Doc. 2016-04273 Filed 2-26-16; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Consumer Protections for Depository Institution Sales of Insurance

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information

collection, as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning renewal of its information collection titled, "Consumer Protections for Depository Institution Sales of Insurance."

DATES: Comments must be received by April 29, 2016.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557-0220, 400 7th Street SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465-4326 or by electronic mail to prainfo@occ.treas.gov. You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649-5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649-5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that

members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the collection of information set forth in this document.

The OCC is proposing to extend OMB approval of the following information collection:

Title: Consumer Protections for Depository Institution Sales of Insurance.

OMB Control No.: 1557-0220.

Type of Review: Extension, without revision, of a currently approved collection.

Description: This information collection is required under section 305 of the Gramm-Leach-Bliley Act (GLB Act), Public Law 106-102. Section 305 of the GLB Act requires the OCC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the Agencies) to prescribe joint consumer protection regulations that apply to retail sales practices, solicitations, advertising, and offers of any insurance product by a depository institution or by other persons performing these activities at an office of the institution or on behalf of the institution (other covered persons). Section 305 also requires those performing such activities to disclose certain information to consumers (e.g., that insurance products and annuities are not FDIC-insured).

This information collection requires national banks, Federal savings associations, and other covered persons, as defined in 12 CFR 14.20(f) and 136.20, involved in insurance sales to make two separate disclosures to consumers. Under §§ 14.40 and 136.40, a national bank, Federal savings association, or other covered person must prepare and provide orally and in writing: (1) Certain insurance disclosures to consumers before the completion of the initial sale of an insurance product or annuity to a consumer and (2) certain credit disclosures at the time of application for the extension of credit (if insurance products or annuities are sold, solicited, advertised, or offered in connection with an extension of credit).

Consumers use the disclosures to understand the risks associated with insurance products and annuities and to

understand that they are not required to purchase, and may refrain from purchasing, certain insurance products or annuities in order to qualify for an extension of credit.

Affected Public: Businesses or other for-profit.

Frequency: On occasion.

Estimated Burden:

Estimated Number of Respondents: 663.

Total Estimated Burden Hours: 3,315 hours.

Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of the services necessary to provide the required information.

Dated: February 23, 2016.

Mary Hoyle Gottlieb,

Regulatory Specialist, Legislative and Regulatory Activities Division.

[FR Doc. 2016-04266 Filed 2-26-16; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities; Information Collection Renewal; Comment Request; Funding and Liquidity Risk Management

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning renewal of its information collection titled, "Funding and Liquidity Risk Management."

DATES: Comments must be received by April 29, 2016.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557-0244, 400 7th Street SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465-4326 or by electronic mail to prainfo@occ.treas.gov. You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649-5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649-5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E-218, Mailstop 9W-11, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of

the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the collection of information set forth in this document.

The OCC is proposing to extend OMB approval of the following information collection:

Title: Funding and Liquidity Risk Management.

OMB Control No.: 1557-0244.

Type of Review: Extension, without revision, of a currently approved collection.

Description: The Interagency Policy Statement on Funding and Liquidity Risk Management¹ (Policy Statement) summarizes the principles of sound liquidity risk management that the agencies have issued in the past² and, where appropriate, harmonizes these principles with the international statement issued by the Basel Committee on Banking Supervision titled "Principles for Sound Liquidity Risk Management and Supervision."³ The Policy Statement emphasizes supervisory expectations for all depository institutions including banks, savings associations, and credit unions.

Section 14 of the Policy Statement provides that financial institutions should consider liquidity costs, benefits, and risks in strategic planning and budgeting processes. Significant business activities should be evaluated for liquidity risk exposure as well as profitability. More complex and sophisticated financial institutions should incorporate liquidity costs, benefits, and risks in the internal

¹ 75 FR 13656 (Mar. 22, 2010).

² For national banks and Federal savings associations, see the *Comptroller's Handbook on Liquidity*. For state member banks and bank holding companies, see the Federal Reserve's *Commercial Bank Examination Manual* (section 4020), *Bank Holding Company Supervision Manual* (section 4010), and *Trading and Capital Markets Activities Manual* (section 2030). For state non-member banks, see the FDIC's *Revised Examination Guidance for Liquidity and Funds Management* (Trans. No. 2002-01) (Nov. 19, 2001), and Financial Institution Letter 84-2008, *Liquidity Risk Management* (August 2008). For Federally insured credit unions, see Letter to Credit Unions No. 02-CU-05, Examination Program Liquidity Questionnaire (March 2002). Also see Basel Committee on Banking Supervision, "Principles for Sound Liquidity Risk Management and Supervision" (September 2008).

³ Basel Committee on Banking Supervision, "Principles for Sound Liquidity Risk Management and Supervision," September 2008. See www.bis.org/publ/bcbs144.htm. Federally insured credit unions are not directly referenced in the principles issued by the Basel Committee.

product pricing, performance measurement, and new product approval process for all material business lines, products, and activities. Incorporating the cost of liquidity into these functions should align the risk-taking incentives of individual business lines with the liquidity risk exposure their activities create for the institution as a whole. The quantification and attribution of liquidity risks should be explicit and transparent at the line management level, and should include consideration of how liquidity would be affected under stressed conditions.

Section 20 of the Policy Statement states that liquidity risk reports should provide aggregate information with sufficient supporting detail to enable management to assess the sensitivity of the institution to changes in market conditions, its own financial performance, and other important risk factors. Institutions also should report on the use of and availability of government support, such as lending and guarantee programs, and implications on liquidity positions, particularly since these programs are generally temporary or reserved as a source for contingent funding.

Affected Public: Businesses or other for-profit.

Frequency: On occasion.

Estimated Burden

The OCC estimates the burden of this collection of information on national banks and Federal savings associations as follows:

Estimated Number of Respondents: 1,469 total, 15 large (over \$100 billion in assets), 46 mid-size (\$10-\$100 billion), 1,408 small (less than \$10 billion).

Estimated Burden under Section 14: 360 hours per large respondent, 120 hours per mid-size respondent, and 40 hours per small respondent.

Estimated Burden under Section 20: 2 hours per month.

Total Estimated Burden Hours: 102,496 hours.

Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the information collections are necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of the services necessary to provide the required information.

Dated: February 23, 2016.

Mary Hoyle Gottlieb,

Regulatory Specialist, Legislative and Regulatory Activities Division.

[FR Doc. 2016-04255 Filed 2-26-16; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Proposed Collection; Comment Request; Renewal Without Change of the Requirement for Information Sharing Between Government Agencies and Financial Institutions

AGENCY: Financial Crimes Enforcement Network (“FinCEN”), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, FinCEN is soliciting comments concerning the renewal without change of the “Information sharing between government agencies and financial institutions” under 31 CFR 1010.520, generally referred to as the 314(a) program.

DATES: Written comments are welcome and must be received on or before April 29, 2016.

ADDRESSES: Written comments SHOULD BE SUBMITTED to: Office of Regulatory Policy, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183. *Attention:* PRA Comments—314(a) program.

• Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.gov* with the caption in the body

of the text, “Attention: PRA Comments—314(a) program.”

• Please submit by one method only. All comments submitted by either method in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

Inspection of comments. Comments will be posted on the FinCEN public Web site. Persons wishing to review the comments submitted may access the posted comments by going to https://www.fincen.gov/statutes_regs/frn/https://www.fincen.gov/statutes_regs/frn/ and select the appropriate listing.

FOR FURTHER INFORMATION CONTACT:

FinCEN Resource Center at 1-800-767-2825 or 1-703-905-3591 (not a toll free number) and select option 3 for regulatory questions. Email inquiries can be sent to *FRC@fincen.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (“USA PATRIOT Act” or “Act”), Public Law 107-56. Title III of the Act amends the anti-money laundering provisions of the Bank Secrecy Act (“BSA”), codified at 12 U.S.C. 1829b and 1951-1959 and 31 U.S.C. 5311-5314 and 5316-5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary of the Treasury to administer the BSA has been delegated to the Director of FinCEN.

Of the Act’s many goals, the facilitation of information sharing among governmental entities and financial institutions for the purpose of combating terrorism and money laundering, is of paramount importance. As with many other provisions of the Act, Congress has charged the U.S. Department of the Treasury with developing regulations to implement these information-sharing provisions.

Subsection 314(a) of the Act states in part that:

[t]he Secretary shall . . . adopt regulations to encourage further cooperation among financial institutions, their regulatory authorities, and law enforcement authorities, with the specific purpose of encouraging regulatory authorities and law enforcement authorities to share with financial

institutions information regarding individuals, entities, and organizations engaged in or reasonably suspected based on credible evidence of engaging in terrorist acts or money laundering activities.¹

B. Overview of the Current Regulatory Provisions Regarding the 314(a) Program

On September 26, 2002, FinCEN published a final rule implementing the authority contained in section 314(a) of the Act.² That rule (“the 314(a) rule”) required U.S. financial institutions upon FinCEN’s request, to search their records to determine whether they have maintained an account or conducted a transaction with a person that a Federal law enforcement agency has certified is engaging in or suspected, based on credible evidence, of engaging in terrorist activity or money laundering.³ The rule was expanded on February 10, 2010, to enable certain entities other than Federal law enforcement agencies to benefit from 314(a) requests to industry. As amended, the rule now also enables certain foreign law enforcement agencies, state and local law enforcement agencies, as well as FinCEN, on its own behalf and on behalf of appropriate components of the Department of the Treasury, to initiate 314(a) queries.⁴ Before processing a request, FinCEN requires the requesting agency to certify that, in the case of money laundering, the matter is significant, and that the requesting agency has been unable to locate the information sought through traditional methods of investigation and analysis before attempting to use the 314(a) program.⁵

Since its inception, the 314(a) program has yielded significant investigative benefits for law enforcement in terrorist financing and significant money laundering cases. Feedback from the requesters and illustrations from sample case studies consistently demonstrate that the program is extremely valuable to furthering terrorist financing and significant money laundering investigations. In view of the proven success of the 314(a) program, FinCEN seeks to renew without change the 314(a) program.

¹ See 31 U.S.C. 5311-5314.

² Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity, 67 FR 60,579 (Sept. 26, 2002).

³ 31 CFR 1010.520.

⁴ Expansion of Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity, 75 FR 6560 (Feb. 10, 2010).

⁵ *FinCEN’s 314(a) Fact Sheet* (https://www.fincen.gov/statutes_regs/patriot/pdf/314factsheet.pdf)

II. Paperwork Reduction Act (“PRA”):⁶

Title: Information sharing between government agencies and financial institutions.

Office of Management and Budget (“OMB”) Number: 1506–0049.

Form Number: Not Applicable.

Abstract: 31 CFR Chapter X, Information sharing between government agencies and financial institutions (31 CFR 1010.520) details the requirements of section 314(a) of the USA PATRIOT Act. Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to its Chapter X part for any additional special information sharing procedures.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Businesses or other for-profit and non-profit organizations, and the Federal, state, and local government.

Frequency: As required.

Estimated Number of Respondents: 20,134.⁷

Estimated Time per Respondent: 54 hours annually.⁸

Estimated Total Annual Burden

Hours: 1,087,236.⁹

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. In accordance with 31 CFR 1010.330(e)(3), a person required to make a report under this section must keep a copy of each report filed for five years from the date of filing.

Request for Comments: Comments submitted in response to this notice will

⁶ The PRA does not apply to the requirement in section 1010.520(b)(2) concerning reports by financial institutions in response to a request from FinCEN on behalf of a Federal law enforcement agency. See 5 CFR 1320.4(a)(2). Therefore, this renewal applies only to the use of the 314(a) program with respect to queries initiated by non-federal law enforcement entities.

⁷ On an annual basis, there are approximately 20,134 covered financial institutions, consisting of certain commercial banks, savings associations, and credit unions, securities broker-dealers, future commission merchants, certain trust companies, life insurance companies, mutual funds and money services businesses.

⁸ Estimated requests per annum subject to the PRA include, 10 from FinCEN, 50 from state and local law enforcement, and 30 from European Union countries approved by treaty, for a total of 90 requests per annum, with each request containing an average of 9 subjects (including aliases). Each subject requires 4 minutes to research, resulting in $(90 \times 9 \times 4 \div 60) = 54$ hours per year.

⁹ Burden computation is as follows: 54 hours per year per respondent times 20,134 respondents $(54 \times 20,134) = 1,087,236$ hours.

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) the accuracy of the agency’s estimate of the burden of the collection of information;

(c) ways to enhance the quality, utility, and clarity of the information to be collected;

(d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Jamal El-Hindi,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2016–04275 Filed 2–26–16; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY**Submission for OMB Review; Comment Request**

February 24, 2016.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before March 30, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at OIRA_Submission@OMB.EOP.gov and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8117, Washington, DC 20220, or email at PRA@treasury.gov.

FOR FURTHER INFORMATION CONTACT:

Copies of the submissions may be obtained by emailing PRA@treasury.gov, calling (202) 622–1295, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:**Internal Revenue Service (IRS)**

OMB Number: 1545–0192.

Type of Review: Extension of a currently approved collection.

Title: Tax on Accumulation Distribution of Trusts.

Abstract: Form 4970 is used by a beneficiary of a domestic or foreign trust to compute the tax adjustment attributable to an accumulation distribution. The form is used to verify whether the correct tax has been paid on the accumulation distribution.

Estimated Total Annual Burden Hours: 42,900.

OMB Number: 1545–0228.

Type of Review: Extension of a currently approved collection.

Title: Form 6252—Installment Sale Income.

Abstract: Information is needed to figure and report an installment sale for a casual or incidental sale of personal property, and a sale of real property by someone not in the business of selling real estate. Data is used to determine whether the installment sale has been properly reported and the correct amount of profit is included in income on the taxpayer’s return.

Estimated Total Annual Burden Hours: 1,597,008.

OMB Number: 1545–0865.

Type of Review: Extension of a currently approved collection.

Title: Form 8918—Material Advisor Disclosure Statement.

Abstract: The American Jobs Creation Act of 2004, Public Law 108–357, 118 Stat. 1418, (AJCA) was enacted on October 22, 2004. Section 815 of the AJCA amended section 6111 to require each material advisor with respect to any reportable transaction to make a return (in such form as the Secretary may prescribe) setting forth: (1) Information identifying and describing the transaction; (2) information describing any potential tax benefits expected to result from the transaction; and (3) such other information as the Secretary may prescribe.

Estimated Total Annual Burden Hours: 5,096.

OMB Number: 1545–0940.

Type of Review: Extension of a currently approved collection.

Title: TD 8086—Election for \$10 Million Limitation on Exempt Small Issues of Industrial Development Bonds; Supplemental Capital Expenditure Statements (LR–185–84 Final).

Abstract: The regulation liberalizes the procedure by which the state or local government issuer of an exempt small issue of tax-exempt bonds elects the \$10 million limitation upon the size of such issue and deletes the

requirement to file certain supplemental capital expenditure statements.

Estimated Total Annual Burden Hours: 1,000.

OMB Number: 1545–0945.

Type of Review: Extension of a currently approved collection.

Title: TD 7852—Registration Requirements with Respect to Deb Obligations (NPRM, LR–255–82).

Abstract: The rule requires an issuer of a registration-required obligation and any person holding the obligation as a nominee or custodian on behalf of another to maintain ownership records in a manner which will permit examination by the IRS in connection with enforcement of the Internal Revenue laws.

Estimated Total Annual Burden Hours: 50,000.

OMB Number: 1545–0976.

Type of Review: Revision of a currently approved collection.

Title: Form 990–W, Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations.

Abstract: Form 990–W is used by tax-exempt trusts and tax-exempt corporations to figure estimated tax liability on unrelated business income and on investment income for private foundations and the amount of each installment payment. Form 990–W is a worksheet only. It is not required to be filed.

Estimated Total Annual Burden Hours: 281,493.

OMB Number: 1545–1016.

Type of Review: Extension of a currently approved collection.

Title: Return of Excise Tax on Undistributed Income of Regulated Investment Companies.

Abstract: Form 8613 is used by regulated investment companies to compute and pay the excise tax on undistributed income imposed under section 4982. IRS uses the information to verify that the correct amount of tax has been reported.

Estimated Total Annual Burden Hours: 17,820.

OMB Number: 1545–1060.

Type of Review: Extension of a currently approved collection.

Title: Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests.

Abstract: Form 8288–B is used to apply for a withholding certification from IRS to reduce or eliminate the withholding required by section 1445.

Estimated Total Annual Burden Hours: 29,256.

OMB Number: 1545–1069.

Type of Review: Extension of a currently approved collection.

Title: EE–175–86 (Final) Certain Cash or Deferred Arrangements and Employee and Matching Contributions under Employee Plans: REG–108639–99 (NPRM) Retirement Plans; Cash or Deferred Arrangements.

Abstract: The IRS needs this information to insure compliance with sections 401(k), 401(m), and 4979 of the Internal Revenue Code. Certain additional taxes may be imposed if sections 401(k) and 401(m) are not complied with.

Estimated Total Annual Burden Hours: 1,060,000.–

OMB Number: 1545–1442.

Type of Review: Extension of a currently approved collection.

Title: T.D. 8633—Grantor Trust Reporting Requirements.

Abstract: The information required by these regulations is used by the Internal Revenue Service to ensure that items of income, deduction, and credit of a trust as owned by the grantor or another person are properly reported.

Estimated Total Annual Burden Hours: 920,000.

OMB Number: 1545–1444.

Type of Review: Extension of a currently approved collection.

Title: Form 8844, Empowerment Zone Employment Credit.

Abstract: The empowerment zone employment (EZE) credit is part of the general business credit under section 38. However, unlike the other components of the general business credit, taxpayers are allowed to offset 25 percent of their alternative minimum tax with the EZE credit.

Estimated Total Annual Burden Hours: 237,600.

OMB Number: 1545–1538.

Type of Review: Extension of a currently approved collection.

Title: Notice 97–34, Information Reporting on Transactions With Foreign Trusts and on Large Foreign Gifts.

Abstract: This notice provides guidance on the foreign trust and foreign gift information reporting provisions contained in the Small Business Job Protection Act of 1996.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 3,750.

OMB Number: 1545–1699.

Type of Review: Revision of a currently approved collection.

Title: TD 9002 (TD 9715)—Agent for Consolidated Group; Rev Proc 2015–26 (Rev Proc 2002–43)—Determination of a Substitute Agent for a Consolidated Group.

Abstract: Section 1501 of the Internal Revenue Code (the “Code”) states that

an affiliated group of corporations shall have the privilege of making a consolidated return with respect to the Federal income taxes for the taxable year in lieu of separate returns.

Section 1502 of the Code states that the Secretary of the Treasury shall prescribe such regulations as deemed necessary in order to determine, compute and assess the Federal income tax liability of any affiliated group of corporations making a consolidated Federal income tax return.

The rules in Treas. Reg. §§ 1.1502–77, 1.1502–77A, and 1.1502–77B, Rev. Proc. 2002–43 and Rev. Proc. 2015–26 necessitate collecting information from taxpayers in order for the Commissioner to more effectively communicate with the agent to determine the group’s federal income tax liability.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 400.

OMB Number: 1545–1816.

Type of Review: Extension of a currently approved collection.

Title: TD 9054—Disclosure of Returns and Return Information to Designee of Taxpayer (as amended by TD 9618).

Abstract: Under section 6103(a), returns and return information are confidential unless disclosure is otherwise authorized by the Code. Section 6103(c), as amended in 1996 by section 1207 of the Taxpayer Bill of Rights II, Public Law 104–168 (110 Stat. 1452), authorizes the IRS to disclose returns and return information to such person or persons as the taxpayer may designate in a request for or consent to disclosure, or to any other person at the taxpayer’s request to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. Disclosure is permitted subject to such requirements and conditions as may be prescribed by regulations.

Estimated Total Annual Burden Hours: 800.

OMB Number: 1545–1818.

Type of Review: Extension of a currently approved collection.

Title: Rev. Proc. 2003–38, Commercial Revitalization Deduction.

Abstract: Pursuant to Sec. 1400I of the Internal Revenue Code, this procedure provides the time and manner for states to make allocations of commercial revitalization expenditures to a new or substantially rehabilitated building that is placed in service in a renewal community.

Estimated Total Annual Burden Hours: 200.

OMB Number: 1545–1826.

Type of Review: Extension of a currently approved collection.

Title: Excise Tax on Structured Settlement Factoring Transactions.

Abstract: Form 8876 is used to report and pay the 40% excise tax imposed Under section 5891 on the factoring discount of a structured settlement factoring transaction.

Estimated Total Annual Burden Hours: 560.

OMB Number: 1545–1974.

Type of Review: Revision of a currently approved collection.

Title: Schedule C (Form 1040), Profit or Loss From Business.

Abstract: Schedule C (Form 1040) is used by individuals to report their business income, loss and expenses. The data is used to verify that the items reported on the form is correct and also for general statistical use.

Estimated Total Annual Burden Hours: 72,201,704.

OMB Number: 1545–2001.

Type of Review: Extension of a currently approved collection.

Title: Rev. Proc. 2006–16, Renewal Community Depreciation Provisions.

Abstract: This revenue procedure provides the time and manner for states to make retroactive allocations of commercial revitalization expenditure amounts to certain buildings placed in service in the expanded area of renewal community pursuant to Sec. 1400E(g) of the Internal Revenue Code.

Estimated Total Annual Burden Hours: 150.

OMB Number: 1545–2007.

Type of Review: Revision of a currently approved collection.

Title: Employer's Annual Employment Tax Return.

Abstract: Form 944, Employer's Annual Federal Tax Return, is designed so the smallest employers (those whose annual liability for social security, Medicare, and withheld federal income taxes is \$1,000 or less) will file and pay these taxes only once a year instead of every quarter. Form 944 is also provided in Spanish, Form 944(SP). Employers who discover they under or over withheld income taxes from wages or social security or Medicare tax in a prior year use Form 944–X to report those taxes and either make a payment, claim a refund, or request an abatement. Form 944–X is also available in Spanish, Form 944–X(SP).

Estimated Total Annual Burden Hours: 2,191,570.

OMB Number: 1545–2010.

Type of Review: Extension of a currently approved collection.

Title: Employer's Annual Federal Tax Return (American Samoa, Guam, the

Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands).

Abstract: Form 944–SS and Form 944–PR are designed so the smallest employers (those whose annual liability for social security and Medicare taxes is \$1,000 or less) will have to file and pay these taxes only once a year instead of every quarter.

Estimated Total Annual Burden Hours: 191,200.

OMB Number: 1545–2011.

Type of Review: Extension of a currently approved collection.

Title: Certification of Intent to Adopt a Pre-approved Plan.

Abstract: Use Form 8905 to treat an employer's plan as a pre-approved plan and therefore eligible for the six-year remedial amendment cycle of Part IV of Revenue Procedure 2005–66, 2005–37 I.R.B. 509. This form is filed with other document(s).

Estimated Total Annual Burden Hours: 82,360.

OMB Number: 1545–2123.

Type of Review: Extension of a currently approved collection.

Title: Notice 2009–85, Guidance for Expatriates and Recipients of Foreign Source Gifts and Bequests Under Sections 877A, 2801, and 6039G.

Abstract: Section 301 of the Heroes Earnings Assistance and Relief Tax Act of 2008 (the "Act") enacted new sections 877A and 2801 of the Internal Revenue Code ("Code"), amended sections 6039G and 7701(a), made conforming amendments to sections 877(e) and 7701(b), and repealed section 7701(n). This notice provides guidance regarding certain federal tax consequences under these sections for individuals who renounce U.S. citizenship or cease to be taxed as lawful permanent residents of the United States.

Estimated Total Annual Burden Hours: 420.

OMB Number: 1545–2205.

Type of Review: Revision of a currently approved collection.

Title: Form 1099–K, Payment Card and Third Party Network Transactions.

Abstract: This form is in response to section 3091(a) of Public Law 110–289, the Housing Assistance Tax Act of 2008 (Div. C of the Housing and Economic Recovery Act of 2010). The form reflects payments made in settlement of payment card and third party network transactions for purchases of goods and/or services made with payment cards and through third party networks.

Estimated Total Annual Burden Hours: 4,529,328.

OMB Number: 1545–2233.

Type of Review: Extension of a currently approved collection.

Title: Notice 2012–48—Tribal Economic Development Bonds.

Abstract: This Notice solicits applications for the reallocation of available amounts of national bond issuance authority limitation for tribal economic development bonds ("Tribal Economic Development Bonds") that were previously allocated to eligible issuers by the Internal Revenue Service ("IRS") and that have not been used. This Notice also provides related guidance on: (1) The application requirements and forms for requests for volume cap allocations, and (2) the method that the IRS and the Department of the Treasury will use to allocate the volume cap.

Affected Public: State, Local, or Tribal Governments.

Estimated Total Annual Burden Hours: 1,001.

OMB Number: 1545–2260.

Type of Review: Extension of a currently approved collection.

Title: Suspension of Benefits Under the Multiemployer Pension Reform Act of 2014; Administration of Multiemployer Plan Participant Vote.

Abstract: Respondents are sponsors of collectively bargained retirement trusts in significant financial distress. The MPRA allows a respondent to apply to Treasury for approval to suspend benefit payments. If an application is approved, Treasury must then administer a vote by participants on whether to accept or reject the suspension. The regulation provides detailed voting procedures. The information collection is necessary to establish the voting process.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 14,000.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2016–04340 Filed 2–26–16; 8:45 am]

BILLING CODE 4830–01–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing—March 10, 2016, Washington, DC.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

Name: Dennis Shea, Chairman of the U.S.-China Economic and Security Review Commission. The Commission

is mandated by Congress to investigate, assess, and report to Congress annually on “the national security implications of the economic relationship between the United States and the People’s Republic of China.” Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on Thursday, March 10, 2016, on “China-South Asia Relations.”

Background: This is the third public hearing the Commission will hold during its 2016 report cycle to collect input from academic and industry experts concerning the national security implications of China’s military modernization efforts for the United States. The hearing will explore the economic, geopolitical, and security elements of China’s South Asia strategy, and examine in detail China’s relations with India and Pakistan in particular. In addition, the hearing will assess how China’s evolving engagement in the region impacts U.S. interests. The hearing will be co-chaired by Chairman Dennis Shea and Commissioner Katherine Tobin, Ph.D. Any interested party may file a written statement by March 10, 2016, by mailing to the contact below. A portion of each panel will include a question and answer period between the Commissioners and the witnesses.

Location, Date and Time: Room: TBD. Thursday, March 10, 2016, start time is 9:00 a.m. A detailed agenda for the hearing will be posted to the Commission’s Web site at www.uscc.gov. Also, please check our Web site for possible changes to the hearing schedule. *Reservations are not required to attend the hearing.*

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the hearing should contact Anthony DeMarino, 444 North Capitol Street NW., Suite 602, Washington DC 20001; phone: 202-624-1496, or via email at ademarino@uscc.gov. *Reservations are not required to attend the hearing.*

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106-398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108-7), as amended by Public Law 109-108 (November 22, 2005), as amended by Public Law 113-291 (December 19, 2014).

Date: February 24, 2016

Michael Danis,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2016-04339 Filed 2-26-16; 8:45 am]

BILLING CODE 1137-00-P

DEPARTMENT OF VETERANS AFFAIRS

Genomic Medicine Program Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Genomic Medicine Program Advisory Committee will meet on April 12, 2016, at the U.S. Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004. The meeting will convene at 9:00 a.m. and adjourn at 5:00 p.m. The meeting is open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on using genetic information to optimize medical care for Veterans and to enhance development of tests and treatments for diseases particularly relevant to Veterans.

The Committee will receive program updates and continue to provide insight into optimal ways for VA to incorporate genomic information into its health care program while applying appropriate ethical oversight and protecting the privacy of Veterans. The meeting focus will be on interagency collaborations, development of IT and informatics infrastructure, quality control of genomic data, and data access for the Million Veteran Program. The Committee will also receive an update from the Clinical Genomics Service. Public comments will be received at 3:30 p.m. and are limited to 5 minutes each. Individuals who speak are invited to submit a 1–2 page summary of their comments for inclusion in the official meeting record to Dr. Sumitra Muralidhar, Designated Federal Officer, 810 Vermont Avenue NW., Washington, DC 20420, or by email at sumitra.muralidhar@va.gov. Any member of the public seeking additional information should contact Dr. Muralidhar at (202) 443-5679.

By Direction of the Secretary:

Rebecca Schiller,

Advisory Committee Management Officer.

[FR Doc. 2016-04283 Filed 2-26-16; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that a meeting of the Geriatrics and Gerontology Advisory Committee will be held on April 19–20, 2016, in Room 730 at the Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC. On April 29, the session will begin at 8:30 a.m. and end at 5 p.m. On April 20, the session will begin at 8 a.m. and end at 12 noon. This meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of VA and the Under Secretary for Health on all matters pertaining to geriatrics and gerontology. The Committee assesses the capability of VA health care facilities and programs to meet the medical, psychological, and social needs of older Veterans and evaluates VA programs designated as Geriatric Research, Education, and Clinical Centers.

The meeting will feature presentations and discussions on VA’s geriatrics and extended care programs, aging research activities, updates on VA’s employee staff working in the area of geriatrics (to include training, recruitment and retention approaches), Veterans Health Administration (VHA) strategic planning activities in geriatrics and extended care, recent VHA efforts regarding dementia and program advances in palliative care, and performance and oversight of VA Geriatric Research, Education, and Clinical Centers.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties should provide written comments for review by the Committee to Mrs. Marcia Holt-Delaney, Program Analyst, Geriatrics and Extended Care Services (10P4G), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, or via email at Marcia.Holt-Delaney@va.gov. Individuals who wish to attend the meeting should contact Mrs. Holt-Delaney at (202) 461-6769.

Dated: February 24, 2016.

Rebecca Schiller,

Committee Management Officer.

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Environmental Protection Agency

40 CFR Part 300

Addition of a Subsurface Intrusion Component to the Hazard Ranking System; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA-HQ-SFUND-2010-1086; FRL-9925-69-OLEM]

RIN 2050-AG67

Addition of a Subsurface Intrusion Component to the Hazard Ranking System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to add a subsurface intrusion (SsI) component to the Hazard Ranking System (HRS) which is the principal mechanism that EPA uses to evaluate sites for placement on the National Priorities List (NPL). The subsurface intrusion component (this addition) would expand the number of available options for EPA and state and tribal organizations performing work on behalf of EPA to evaluate potential threats to public health from releases of hazardous substances, pollutants, or contaminants. This addition will allow an HRS evaluation to directly consider human exposure to hazardous substances, pollutants, or contaminants that enter regularly occupied structures through subsurface intrusion in assessing a site's relative risk, and thus, enable subsurface intrusion contamination to be evaluated for placement of sites on the NPL. The agency is not considering changes to the remainder of the HRS except for minor updates reflecting changes in terminology.

DATES: Comments must be received on or before April 29, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-SFUND-2010-1086, to the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or

comment contents located outside of the primary submission (*i.e.* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Terry Jeng, phone: (703) 603-8852, email: jeng.terry@epa.gov, Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mail Code 5204P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; or the Superfund Hotline, phone (800) 424-9346 or (703) 412-9810 in the Washington, DC metropolitan area.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

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I. General Information

A. What is EPA seeking comment on?

EPA is proposing an addition of one new component to one part of the current Hazard Ranking System (HRS). No major structural changes to other parts of the HRS are proposed. EPA is seeking comments on the addition of the subsurface intrusion component to the HRS. Comments on unmodified parts of

the HRS are not being requested and will not be considered if submitted.

B. How does this action apply to me?

This action proposes an addition to the HRS. The HRS is used for evaluating the relative potential risk posed by the uncontrolled release, or potential release, of hazardous substances to human health or the environment. This addition will enable EPA to identify risks posed by subsurface intrusion of hazardous substances into regularly occupied structures for all populations who live and work in areas where the subsurface environment may create exposures. The agency considers that including the evaluation of subsurface intrusion in the HRS serves the public interest by widening EPA's ability to evaluate these threats.

This proposed regulatory change expands the available options for EPA and organizations performing work on behalf of EPA (state and tribal partners) to evaluate potential threats to public health and the environment from subsurface intrusion contamination. State and tribal partners may receive financial assistance from EPA to evaluate sites through a Cooperative Agreement. EPA and states or tribes collaborate closely throughout the Cooperative Agreement process, particularly when identifying sites to be evaluated and establishing priorities for performing evaluations. As necessary, sites where subsurface intrusion threats exist may be evaluated using the HRS and, if warranted, proposed for placement on the NPL. EPA does not expect that this proposed change will result in additional site assessments being conducted per year or placement of more sites on the NPL per year. Rather, given potentially limited budgets and the possibility of increased costs for an SSI site assessment, EPA may conduct fewer assessments per year. The pipeline of sites will be reviewed to identify those sites that pose the highest risk and prioritized accordingly. This is not a change to how EPA currently evaluates and prioritizes sites for the NPL; EPA will simply have an additional mechanism to address sites that pose the greatest risk. Because assessing the worst sites first is a priority, EPA will continue to identify the sites posing the highest risk or potential risk and develop a strategy to assess those sites in a timely manner, while balancing their other site assessment needs.

The addition of a subsurface intrusion component to the HRS affirms that EPA is fulfilling its regulatory requirements by ensuring "to the maximum extent feasible, that the hazard ranking system

accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review." 42 U.S.C. 9605(c)(1), as mandated by the Superfund Amendments and Reauthorization Act (SARA) amendments to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

This proposed addition is necessary because no present authority consistently and comprehensively addresses subsurface intrusion contamination across all non-federal potential sites, particularly when subsurface intrusion is the key exposure pathway. While most states have identified sites with subsurface intrusion contamination issues, not all states have subsurface intrusion programs, and states with subsurface intrusion remediation programs vary in their authority, resources, and remediation criteria. A redirection of resources available through Cooperative Agreement funding is expected to provide for greater national consistency in the identification and evaluation of subsurface intrusion sites.

Additionally, EPA finalized the OSWER Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air, in June 2015. This guide and this proposed addition to the HRS would further the agency's efforts to establish national consistency in evaluating vapor intrusion threats by enabling EPA to use remedial authority under CERCLA.

This proposed regulatory change does not affect the status of sites currently on or proposed to be added to the NPL.

II. Statutory Authority

The authority for these proposed technical modifications to the HRS (40 CFR 300, Appendix A) is in section 105(a)(8)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) enacted in 1980. Under this law, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR 300) must include criteria for determining priorities among releases or threatened releases for the purpose of taking remedial or removal actions. In 1986, Congress passed the Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99 499), which added section 105(c)(1) to CERCLA, requiring EPA to amend the HRS to assure "to the maximum extent feasible, that the hazard ranking system accurately assesses the relative degree of risk to human health and the

environment posed by sites and facilities subject to review." Furthermore, CERCLA section 115 authorizes EPA to promulgate any regulations necessary to carry out the provisions of CERCLA.

III. Background

EPA is proposing this addition to protect human health from the threat posed by subsurface intrusion. By adding this component to the HRS, EPA will be able to consider subsurface intrusion threats when evaluating sites for placement on the NPL and implement the requirements of CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This proposed addition is a technical modification to the current HRS that will allow EPA and its partners to more comprehensively address the releases of hazardous substances into the environment.

A. Why is EPA proposing an addition to the Hazard Ranking System?

Contaminant subsurface intrusion¹ is defined as the migration of hazardous substances, pollutants, or contaminants² from the subsurface environment, or more specifically, the surficial ground water into overlying structures and/or the unsaturated zone. Subsurface intrusion can result in people being exposed to harmful levels of hazardous substances and cause negative health effects. While subsurface intrusion can take multiple forms, the most common form of subsurface intrusion is vapor intrusion. There are several reasons why EPA is proposing this addition to the HRS.

First, the current HRS (40 CFR 300, Appendix A), promulgated December 14, 1990 (hereafter referred to as the current HRS), discussed in more detail in section IV of this preamble, does not consider the threat posed by subsurface intrusion in its evaluation of relative risk posed by a site; therefore, it does not provide a complete assessment of the relative risk that a site may pose to the public. The existing pathways used to evaluate threats posed by hazardous substances do not include those entering a regularly occupied structure from the subsurface. For example, the ground water migration pathway evaluates the threat posed by

¹ *Subsurface intrusion, for the purposes of this preamble, refers to the intrusion of hazardous substances from the subsurface into a structure.*

² *For the purpose of this preamble, the term "hazardous substances, pollutants or contaminants" will be referred to simply as "hazardous substances." See section 1.1, of the current HRS for the definition of a hazardous substance.*

contaminated ground water if there is an indication that ground water is being consumed. Similarly, the soil exposure pathway evaluates the threat posed by contaminated surfaces (e.g., surface soils) if there is an indication of human exposure. The air migration pathway considers the threat posed by hazardous substances released to atmospheric air (ambient air), but does not address indoor air, and has no subsurface component. The surface water migration pathway does not cover subsurface intrusion as it only considers the threat posed by contaminated surface water bodies.

In fact, in a May 2010 report,³ the Government Accountability Office (GAO) concluded that if vapor intrusion sites “are not assessed and, if needed, listed on the NPL, some seriously contaminated hazardous waste sites with unacceptable human exposure may not otherwise be cleaned up.” The GAO recommended that EPA consider vapor intrusion as part of the NPL process; EPA agreed with the GAO recommendation. With the addition of a subsurface intrusion component, a site with vapor intrusion may qualify for the NPL, whereas presently the site may not have qualified using the threats evaluated in the current HRS. Therefore, without this addition, EPA may not be identifying the sites that most warrant further investigation.

Second, EPA is offering this proposal because of the substantial public support for this action. EPA conducted outreach activities to determine the level of interest and support from the public. This included a Notice of Opportunity for Public Input (76 FR 5370, January 31, 2011) and four public listening sessions held across the country. More than 40 written comments, from a diverse group of private citizens, businesses, states, American Indian tribes, environmental action groups, and other governmental agencies, were received during the public comment period. Of the public who attended the listening sessions and provided comments, the majority were supportive of the addition of a subsurface intrusion component to the HRS. In addition, five states and two tribes submitted comments—all in support of the addition. The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) compiled and presented input from 14 states—all but one favoring the addition of subsurface intrusion to the HRS. The

comments opposing the HRS addition were, in general, from industry representatives.

Third, to support development of this proposal, EPA evaluated the need for this proposed addition to the current HRS by identifying the scope of the subsurface intrusion contamination problem. These efforts to identify and classify sites that may pose a subsurface intrusion threat have resulted in the identification of 1,073 sites that may or may not qualify for the NPL but are suspected of having vapor intrusion issues. Many of the sites in this inventory are currently listed in EPA’s Superfund Enterprise Management System⁴ (SEMS). Of the 1,073 identified sites:

- 328 sites are identified as having a suspected subsurface intrusion threat based on SEMS and Agency for Toxic Substances and Disease Registry (ATSDR) key word searches, as well as EPA or state self-identification, but for which no sampling data were obtained
- 532 sites are identified as having characteristics or evidence that indicate subsurface intrusion (e.g., volatile hazardous substance in ground water) may have occurred or will occur.
- 202 sites are identified as having a subsurface intrusion threat documented by subslab, crawl space, or indoor air samples but insufficient HRS-required evaluation factors to qualify for the NPL.
- 11 sites are identified as having a subsurface intrusion threat with documented actual exposure of a sufficient number of targets and sufficient other HRS-required evaluation factors to suggest the site may qualify for the NPL.

EPA is also considering sites with another form of subsurface intrusion, namely, intrusion of contaminated ground water into regularly occupied structures—which is an emerging issue. For example, a site was discovered where shallow (surficial) ground water contaminated with chromium had intruded into residential basements and after the water receded, or evaporated, a precipitate of chromium remained as a residue. The presence of this residue posed a significant threat to public health; however, the site could not be evaluated under the current HRS due to the lack of a mechanism to evaluate human exposure resulting from intrusion of contaminated ground water (subsurface intrusion contamination). The only viable option to place the site on the NPL was to rely on ATSDR to

make a determination that the exposure at the site posed a significant threat to public health. The decision to include sites on the NPL based on a determination by the ATSDR is made infrequently because the HRS is the primary mechanism for placing a site on the NPL.

EPA regional site assessment programs have identified 7 additional sites where intrusion of contaminated ground water is a potential issue and the related threat cannot be evaluated using the current HRS. Under the proposed SsI addition, ground water intrusion would be evaluated using current conditions, which may involve situations where metals have precipitated from water or where volatile substances have entered a structure via infiltrating ground water.

As EPA further explores this emerging issue, the agency considers it likely that other ground water intrusion sites requiring evaluation will be identified. The inventory of sites, identified by EPA, with a possible threat from contaminated vapor or ground water intruding into overlying regularly occupied structures is not representative of the magnitude of the potential scope of sites with subsurface intrusion contamination. EPA identified these sites based on currently available information to initially assess the subsurface intrusion problem. In the case of vapor intrusion, certain states undertook comprehensive efforts to identify and evaluate subsurface intrusion threats, which resulted in the identification of a proportionately higher number of sites with potential vapor intrusion problems in those states. In the case of ground water intrusion, the issue is still emerging. For these reasons, EPA recognizes that a degree of inherent uncertainty is associated with compiling an inventory of sites with potential subsurface intrusion problems and that additional analysis is necessary, especially in cases where little information exists. See Appendix A of the Technical Support Document for this proposed addition (Proposal TSD) for the inventory of vapor intrusion sites. As additional information is gathered and new sites are added to SEMS and undergo the site assessment process, the number of sites with subsurface intrusion threats is likely to change. Nevertheless, the aforementioned illustrates that there currently exists at least 1,073 sites that have significant actual or potential human exposure due to subsurface intrusion, but because of the shortcomings of the current HRS, cannot be evaluated to determine if they warrant addition to the NPL.

³ EPA’s Estimated Costs to Remediate Existing Sites Exceed Current Funding Levels, and More Sites are Expected to Be Added to the National Priorities List, GAO Report to Congressional Requesters, GAO-10-380, May 2010.

⁴ This information was previously stored in a predecessor database called the Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS).

It is also important to emphasize that the inventory of sites compiled (where subsurface intrusion has been identified as a possible issue) does not represent a list of sites that will be placed on the NPL. EPA recognizes that, in many instances, additional information is needed to verify the presence, and to determine the nature/extent, of a subsurface intrusion problem. As such, the inventory should not be considered a list of NPL candidate sites. EPA notes that less than 5% of all sites evaluated through the site assessment process are actually added to the NPL. This percentage is not expected to change significantly with this addition to the HRS.

Finally, EPA has concluded that for non-federal facilities no other national program is able to consistently and comprehensively evaluate and, if warranted, address subsurface intrusion contamination. This topic is further discussed in section V.A.2 of this preamble.

B. What is the history of the hazard ranking system?

In 1980, Congress enacted CERCLA (42 U.S.C. 9601 *et seq.*), commonly called Superfund, in response to the dangers posed by uncontrolled releases of hazardous substances into the environment. To implement section 105(a)(8)(A) of CERCLA and Executive Order 12316 (46 FR 42237, August 20, 1981), EPA revised the NCP on several occasions, with the most recent comprehensive revision occurring on March 8, 1990 (55 FR 8666). The NCP sets forth the guidelines and procedures needed for responding to releases, or potential releases, of hazardous substances. Section 105(a)(8)(A) of CERCLA required EPA to establish:

[C]riteria for determining priorities among releases or threatened releases [of hazardous substances] throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action. Criteria and priorities . . . shall be based upon relative risk or danger to public health or welfare or the environment . . . taking into account to the extent possible the population at risk, the hazard potential of hazardous substances at such facilities, the potential for contamination of drinking water supplies, the potential for direct human contact [and] the potential for destruction of sensitive ecosystems. . . .

To meet this requirement and provide criteria to set priorities, EPA adopted the HRS as Appendix A to the NCP (47 FR 31180, July 16, 1982). The HRS was last revised on December 14, 1990 (55 FR 51532) to include the evaluation of additional threats to ensure a complete

assessment of the relative risk that a site may pose to the public. The HRS is a scoring system used to assess the relative risk associated with actual or potential releases of hazardous substances from a site based on the information that can be collected in a limited, typically one to two day site inspection (SI). The HRS is designed to be applied consistently to each site, enabling sites to be ranked relative to each other with respect to actual or potential hazards. As EPA explained when it originally adopted the HRS, "the HRS is a means for applying uniform technical judgment regarding the potential hazards presented by a facility relative to other facilities. It does not address the feasibility, desirability, or degree of cleanup required."⁵ (47 FR 31220, July 16, 1982).

Section 105(a)(8)(B) of CERCLA requires that the statutory criteria described in section 105(a)(8)(A) be used to prepare a list of national priorities among the known releases, or threatened releases throughout the United States. The list, which is Appendix B of the NCP, is the NPL.

The HRS is a crucial part of the agency's program to address the identification and cleanup of actual and potential releases of hazardous substances because the HRS score is the primary criterion for determining whether a site is to be included on the NPL. The NPL (Appendix B to 40 CFR 300) includes those sites that emerge as potentially posing the most serious threats to public health and the environment and may warrant remedial investigation and possible cleanup under CERCLA. Only sites on the NPL are eligible for Superfund-financed remedial actions. Removal and enforcement actions can be conducted at any site, whether or not it is on the NPL.

In 1986, Congress passed the Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99 499), which added section 105(c)(1) to CERCLA, requiring EPA to amend the HRS to assure "to the maximum extent feasible, that the hazard ranking system accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review." The HRS was previously amended in 1990. This proposed action will amend the HRS to add a subsurface intrusion component to the evaluation.

⁵ Although the HRS is designed to assess the relative risk of a site compared to other sites, it is not designed to be used as a site-specific quantitative risk assessment. Such an assessment is conducted later in the Superfund process, as necessary.

C. What is the impact of this proposed rule?

1. Impact on Current Cleanup Programs, Resources and Cost

This proposed addition to the HRS will have the most significant impact on EPA's Superfund cleanup program. The current HRS considers releases to the ground water, surface water and air, as well as direct exposure to contamination such as soil in identifying releases which warrant further investigation. If promulgated, this proposed rule will not impact the way the current HRS addresses these releases. However, in the course of present HRS assessments, sometimes subsurface intrusion issues are coincident with a ground water or soil contamination problem. The HRS presently does not consider the threat posed at sites by subsurface intrusion problems and direct human exposure, when ground water is not being used as a drinking water source or surficial soils are not contaminated. If promulgated, this proposed rule will for the first time allow the EPA site assessment program to address sites with only subsurface intrusion issues and no coincidental exposure. When hazardous substances are released and enter the subsurface environment, they can move from the subsurface into buildings as a gas, vapor, or liquid. The addition of a subsurface intrusion component to the HRS would enable EPA to directly evaluate at sites the relative degree of risk posed by human exposure to hazardous substances that enter regularly occupied structures through the subsurface environment.

To the extent practicable, EPA attempts to score all pathways that pose significant threats. If the contribution of a pathway is minimal to the overall score, in general, that pathway will not be scored. This proposed regulatory change would expand available options for EPA and organizations performing work on behalf of EPA (state and tribal partners) to evaluate potential threats to public health and the environment from hazardous waste sites. This modification to the HRS, by itself, only augments the criteria for applying the HRS. EPA also does not expect this proposed rulemaking to affect the status of sites currently on or proposed to the NPL. Sites that are currently on or proposed to the NPL have already been evaluated under another pathway (*i.e.*, ground water migration, air migration, surface water migration, or soil exposure) and, consistent with section 105(c)(3) of CERCLA, as amended, would not be re-evaluated. Proposal of

this addition also will not disrupt EPA's listing of sites.

Because federal agencies currently address subsurface intrusion issues as part of their environmental programs, it is unlikely that a significant number of sites will be added to the NPL. However, it could lead to an increase in site assessment activities and related costs. Executive Order 12580 delegates broad CERCLA authority to federal agencies for responding to actual and potential releases of hazardous substances where a release is either on, or the sole source of the release is from, any facility or vessel under the jurisdiction, custody, or control of the federal agency. Federal agencies are required to exercise this authority consistent with the requirements of CERCLA section 120, as amended, and implement regulations under the NCP, for both NPL and non-NPL sites. Therefore, federal agencies are in a position to proactively identify and respond to risks posed by subsurface intrusion of hazardous substances into regularly occupied structures for all populations who live and work in areas where the subsurface environment may create exposures. If it is determined that releases of hazardous substances pose immediate threats to public health and the environment, EPA fully expects that the appropriate federal agency will continue to undertake response actions to address such threats. In fact, some federal agencies, including EPA, have developed or are developing new or updated agency-specific policy and guidance documents to address subsurface intrusion threats.

This proposed addition will impact both resources and costs to federal cleanup programs. EPA does not expect that this proposed change will result in additional site assessments being conducted per year or placement of more sites on the NPL per year. Rather, given potentially limited budgets and the possibility of increased costs for a subsurface intrusion (SsI) site assessment, EPA may conduct fewer assessments per year. The pipeline of sites will be reviewed to identify those sites that pose the highest risk and prioritized accordingly. This is not a change to how EPA currently evaluates and prioritizes sites for the NPL; EPA will simply have an additional mechanism to address sites that pose the greatest risk. Because assessing the worst sites first is a priority, EPA will continue to identify the sites posing the highest risk or potential risk and develop a strategy to assess those sites in a timely manner, while balancing their other site assessment needs.

The proposed addition, which could lead to the inclusion of a site on the NPL, does not itself impose any costs on outside parties; it does not establish that EPA will necessarily undertake response actions, nor does it require any action by a private party or determine liability for site response costs. Costs are limited to screening relevant sites for subsurface intrusion contamination during site inspections and the resulting HRS evaluation and documentation record preparation. Costs that arise from site remedial responses are the result of site-specific decisions made post-listing, not directly from the act of listing itself.

Later decisions that consider information collected under the proposed addition could separately have specific economic costs and benefits (e.g., remediation costs and reduced risk), but these impacts are contingent upon a series of separate and sequential actions after listing a site on the NPL. The addition of subsurface intrusion to the HRS is several regulatory steps removed from imposing costs on private entities.

The HRS addition may increase the costs to government agencies conducting assessments at subsurface intrusion sites because the scope of a typical site inspection may need to be expanded or may require more expensive sampling to collect information for an SsI evaluation. SsI sampling may require additional sampling and different sample types than those collected at other sites. This may result in an increase in some site assessment costs at some sites with possible subsurface intrusion issues. However, SsI site assessment costs at some other sites may be comparable to, or even less than, sites scored under the existing HRS. For example, a site assessment requiring sampling of deep ground water monitoring wells under the existing HRS may cost as much as, or more, than sampling conducted at sites with possible subsurface intrusion issues. The exact cost of any sampling at a site, including sites with possible SsI issues, varies greatly based on site-specific factors (e.g., number and type of samples required, difficulty in establishing sources of contamination or attribution of releases, number of HRS pathways being evaluated, and availability of data from previous sampling events). Additionally, any newly increased costs to government agencies conducting assessments at SsI sites are expected to be minimal because federal agencies should already be identifying and addressing subsurface intrusion as part of their environmental programs. Any increase in the cost of site assessments conducted by EPA for

SsI sites will require EPA to realign and prioritize its site assessment budget to address sites with subsurface intrusion. The addition of an SsI component to the HRS is not expected to result in additional site assessment funding to account for any increase in site assessment costs. Instead, the pipeline of sites will continue to be reviewed under the current site assessment process. If it is found that SsI-contaminated sites potentially pose a greater risk than other sites, then these sites will be prioritized over other sites. EPA will develop a strategy to assess these sites in a timely manner, while balancing other site assessment needs.

2. Children's Environmental Health and Environmental Justice

This rulemaking is not subject to Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks because this rulemaking is expected to only have moderate costs⁶ and this executive order only applies to significant rulemakings. EPA has also found that this rulemaking will have no direct impact on communities considered under Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

Although the rule will not have any direct impact on human health or risk within minority or low-income populations located near potential SsI sites, populations of concern under Executive Order 12898, EPA did consider whether the proposed action might have contingent impacts on these communities if future actions affect remediation of these sites. This analysis concluded that potentially affected sites are located in areas that have slightly higher concentrations of minority populations and populations below the poverty line than surrounding areas. Therefore, any future actions addressing risks in these communities would not contribute to disproportionate adverse impacts on human health.

IV. Hazard Ranking System

A. Purpose

The current HRS serves as a screening tool to evaluate the potential for uncontrolled hazardous substances to cause human health problems or environmental damage at one site relative to other sites evaluated. The pre-remedial portion of the Superfund

⁶ The regulatory impact analysis (RIA) found this rulemaking will only have moderate costs and will not be a significant rulemaking. The RIA for this rulemaking can be found in the official Docket for this action.

program—the portion prior to placing sites on the NPL—is intended to identify those sites which warrant further investigation and possible cleanup under CERCLA. (See Figure 1 for a general depiction of the Superfund Site Assessment process.) During Pre-CERCLA screening, which is the first step of the pre-remedial process, EPA determines if there is indication of a possible significant release. If so, EPA determines if a substance in the release is regulated by CERCLA, whether it is already being addressed, and whether any statutorily mandated limitations on CERCLA response may exist. If EPA determines the release meets these requirements, then the suspected release is listed in EPA’s Superfund Enterprise Management System (SEMS).

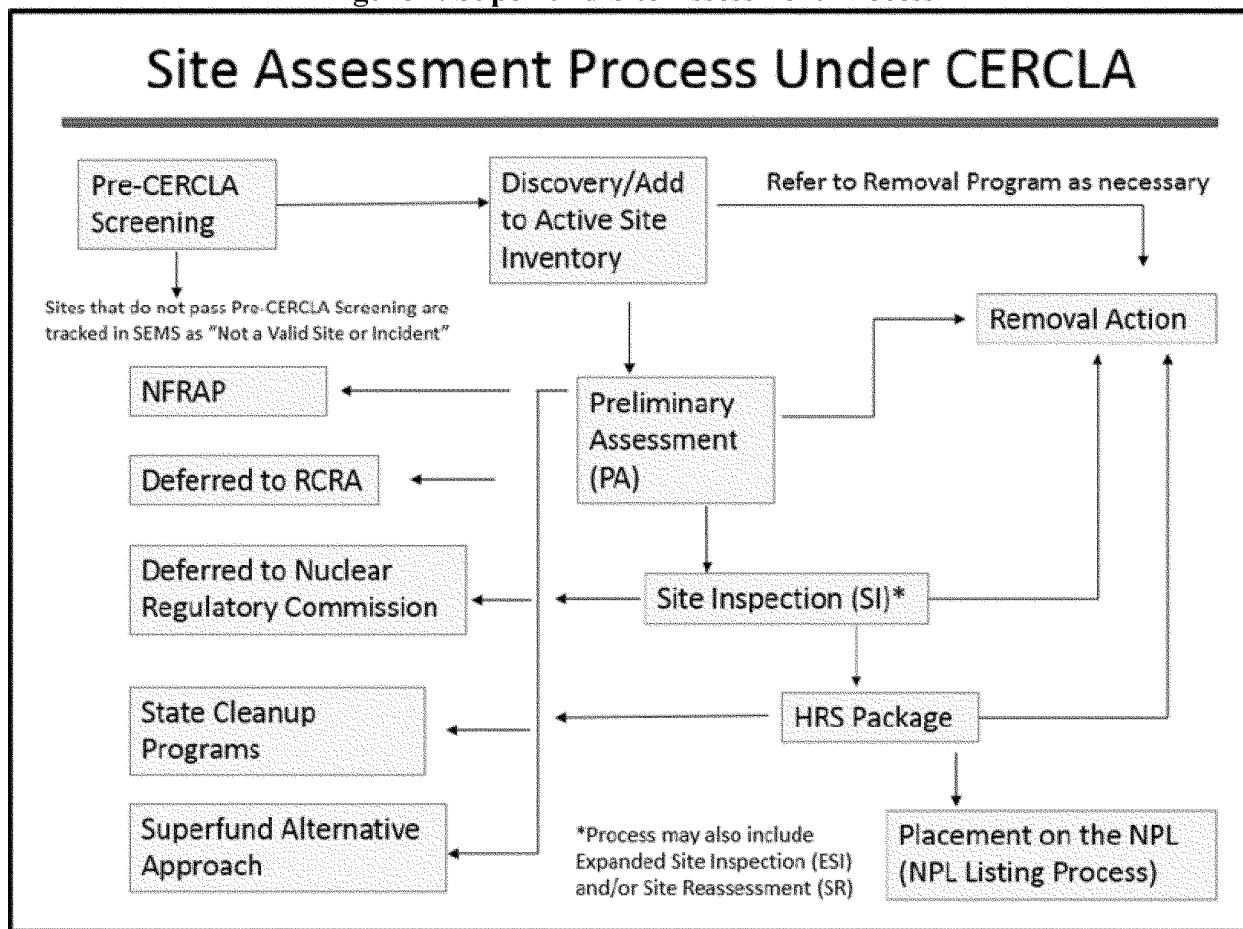
Determining whether hazardous substances, pollutants, or contaminants can be addressed by CERCLA requires the application of site-specific facts to CERCLA statutory requirements and EPA policy. One such statutory requirement is CERCLA’s limit on response actions to some naturally occurring substances. CERCLA expressly limits any response actions

taken in response to a release, or threat of release, of a naturally occurring substance in its unaltered form from a location where it is naturally found, from products which are part of a structure, or into drinking water supplies due to deterioration of the system. (See CERCLA section 104(a)(3) and 104(a)(4) for additional guidance on limitations on response and exception to limitations). Therefore, even though a naturally occurring substance in its unaltered form may potentially be regulated by CERCLA, the response actions taken in response to these releases, or threat of releases, may be expressly limited by CERCLA. For example, although radon and asbestos may qualify as a CERCLA hazardous substance, CERCLA section 104(a)(3) may limit responses to releases of radon or asbestos in some situations where the release is from building products or occurs from in situ natural sources, but section 104(a)(4) identifies specific circumstances that, if present, would allow CERCLA response in such situations. (See also EPA OSWER Directive 9360.3-12, Response Actions at Sites with Contamination Inside

Buildings, August 12, 1993). If EPA finds an eligible release of a CERCLA eligible substance and response actions are permissible under CERCLA, then EPA proceeds to address the release under CERCLA. This may include a preliminary assessment.

A preliminary assessment uses readily available data to determine if there is evidence of an unacceptable potential threat. If based on the results of a preliminary assessment, EPA determines that a site warrants further screening under the CERCLA remedial program, the agency initiates a site inspection as specified in the NCP (40 CFR 300.420). The site inspection usually includes the collection of samples for chemical analysis. Such samples aid in ascertaining what substances are present at the site and whether they are being released. The purpose of the site inspection is to determine if there is an actual or potential threat to human health or the environment, to determine if there is an immediate threat to people or the environment in the area, and to collect sufficient data to enable the site to be scored using the HRS.

Figure 1. Superfund Site Assessment Process



EPA has designed the Superfund program to focus its resources on sites that warrant further investigation. Consequently, the initial studies, the preliminary assessment and site inspection, which are performed on a large number of sites, are relatively modest in scope and cost compared to the remedial investigations and feasibility studies subsequently performed on NPL sites. Because of the need to carry out the initial studies expeditiously, EPA elected to place certain constraints on the data requirement for an HRS evaluation. The required HRS data should be information that, for most sites, can be collected during a screening level site inspection or that are already available. Thus, the HRS does not rely on data that require extensive sampling or repeated sampling over a long period of time. The HRS has also been designed so that it can be applied consistently to a wide variety of sites. The HRS is not a tool for conducting quantitative risk assessment and was designed to be a measure of relative risk among sites rather than absolute risk at an individual site.

The narrow technical modifications being proposed reflect the agency's actions to encompass additional risks posed by releases of hazardous

substances and to address the SARA statutory requirement that EPA amend the HRS to assure "to the maximum extent feasible, that the HRS accurately assesses the relative degree of risk to human health and the environment posed by sites subject to review." Thus, the fundamental purpose and structure of the HRS approach will not be changed when the HRS is amended to include consideration of subsurface intrusion.

B. Structure

The current HRS (40 CFR 300, Appendix A) evaluates four pathways in projecting the relative threat a site poses:

- The ground water migration pathway evaluates the likelihood that hazardous substances will migrate to ground water and contaminate aquifers and drinking water wells that draw on those aquifers.
- The surface water migration pathway evaluates the likelihood that hazardous substances can enter surface water and affect people or the environment. Threats to human health and the environment included in this pathway include drinking water (DW), the human food chain (HFC) (*i.e.*, hazardous substances accumulate in the aquatic organisms that humans in turn consume), and sensitive environments

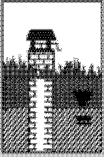






(ENV). The surface water migration pathway is also divided into two "components" reflecting different mechanisms for contaminant transport within each component (*i.e.*, overland/flood migration to surface water component and ground water to surface water migration component).

- The air migration pathway evaluates the likelihood of release of hazardous substances into the atmosphere and the number of people and sensitive environments actually or potentially exposed to hazardous substances carried in the ambient (outdoor) air, including gases and particulates. The air migration pathway does not evaluate releases to indoor air originating from the subsurface.

- The soil exposure pathway evaluates the potential threats to humans and terrestrial environments posed by direct, physical contact with, and subsequent ingestion of, hazardous substances. This pathway includes threats to people living on property where hazardous substances are present in the surface/subsurface, including contaminated soils (resident population threat), and to people living nearby with access to the contaminated area (nearby population threat).

Figure 2 illustrates the general structure of the current HRS.

Figure 2. Structure of the Current HRS

HRS Pathways	Ground Water	Surface Water			Soil Exposure		Air
Factor							
LR / LE Likelihood of Release / Exposure							
WC Waste Characteristics							
T Targets							
	S_{GW}	$S_{SW} = DW + HFC + ENV$			$S_E = Resident + Nearby$		S_A

Ground Water Migration Pathway Score (S_{GW})

Surface Water Migration Pathway Score (S_{SW})

Soil Exposure Pathway Score (S_{SE})

Air Migration Pathway Score (S_A)

The scoring system for each pathway is based on a number of individual factors associated with risk-related conditions at the site. These factors are grouped into three factor categories as discussed below. These categories include factors that are used to characterize the relative risk at the site.

1. Likelihood of release/exposure (*i.e.*, likelihood that hazardous substances have been released or potentially could be released from a source into the environment, or that people or sensitive environments could come into contact with hazardous substances).
2. Waste characteristics (*i.e.*, toxicity, mobility, and/or persistence of the substances in the environment and the quantity of the hazardous substances that have or could be released).
3. Targets (*i.e.*, people or sensitive environments actually or potentially exposed to the release).

An HRS score is determined for a site by summing the score for the four pathways. Specifically, the score for each pathway is obtained by evaluating a set of factors that characterize the potential of the release to cause harm via that pathway. The factors, which

represent toxicity of the hazardous substance, or substances, at a site, waste quantity, and population are multiplied by a weighting factor, yielding the factor value; the factor values are used to assign factor category values. The factor category values are then multiplied together to develop a score for the pathway being evaluated. Finally, the pathway scores are combined according to the root-mean-square equation presented below to determine the HRS score for the site. See also Table 2-1 of the proposed addition (section 2.1.2) for additional discussion regarding the method for calculating an HRS site score.

$$S = \sqrt{\frac{S_{gw}^2 + S_{sw}^2 + S_{se}^2 + S_a^2}{4}}$$

S = site score
 S_{gw} = ground water migration pathway score
 S_{sw} = surface water migration pathway score
 S_{se} = soil exposure pathway score
 S_a = air migration pathway score

By using this formula to assign a site score, the HRS score will be low if all pathway scores are low. However, the final score can be relatively high if one

pathway score is high. This approach was chosen to ensure that the site scores do not deemphasize single-pathway problems, underestimating their importance. EPA considers this an important requirement for the HRS scoring methodology because some extremely dangerous sites pose threats through only one pathway. For example, leaking drums of hazardous substances can contaminate drinking water wells, but if the drums are buried deeply enough and the hazardous substances are not very volatile, they may not release any hazardous substances to the air or to surface water.

It should be emphasized that the existing pathways can address subsurface contamination if it enters into ground water (in the ground water migration pathway), if it enters into surface water (in the surface water migration pathway), if it enters into ambient air (in the air migration pathway) from the soil surface or if it leads to surface soil contamination (in the soil exposure pathway). However, none of these scenarios address intrusion from the subsurface into regularly occupied structures.

Finally, it should also be emphasized that the HRS score does not represent a specific level of risk at a site. Rather, the score serves as a screening-level indicator of the relative risk among sites reflecting the hazardous substance releases or potential releases at sites based on the criteria identified in CERCLA.

V. Approach to HRS Addition

The following sections detail EPA's comprehensive approach to the consideration of exposures to hazardous substances due to subsurface intrusion and the relevant scientific and technical considerations in developing this proposed rule.

A. General Approach

1. What is the need for regulatory action on the HRS?

Without an evaluation of threats posed by subsurface intrusion contamination, the HRS is not a complete assessment and omits a known pathway of human exposure to contamination. EPA considers the addition of subsurface intrusion to the HRS to be consistent with CERCLA section 105 because it will improve the agency's ability to identify sites for further investigation and will enhance EPA's ability, in dialogue with other federal agencies and the states and tribes, to determine the most appropriate state or federal authority to address sites. As is currently the case, EPA often defers to other state and federal cleanup authorities based on the site assessments and HRS evaluations. While some states/tribes have programs to address subsurface intrusion contamination, they often have limited authority and resources, and variable remediation criteria. The availability of the federal remedial authority and the more comprehensive site assessment program should complement and strengthen these programs.

Other EPA programs such as the Resource Conservation and Recovery Act (RCRA) and the Brownfields program have limited authority and ability to address all subsurface intrusion threats. The RCRA Corrective Action/Enforcement is only applicable at sites subject to RCRA permitting or sites reachable by RCRA's enforcement activities. Furthermore, RCRA is a state delegated program and not all states recognize subsurface intrusion as a significant issue, and those that do may have variable remediation criteria. RCRA sites with subsurface intrusion issues may not be addressed in all states. Also, governmental entities with site-specific Brownfields assessment

and/or revolving loan fund cleanup may only use grant funds on the selected eligible property. While subsurface intrusion sites may be eligible for Brownfields cleanup grants, site or property-specific limitations may not allow for permanent remediation where multiple properties may be involved or where Brownfields grant funds, as limited by statute, may not be adequate to fund long-term cleanups.⁷

EPA's removal program has the ability to quickly respond to immediate threats to public health and the environment from the release of hazardous substances, such as subsurface intrusion into a structure through a removal action. A removal action can be implemented regardless of NPL status to eliminate or reduce the threat of a release, or a potential release, of hazardous substances, pollutants or contaminants that pose an imminent and substantial danger to public health. However, removal actions are not intended to necessarily serve as a method for dealing with long term issues such as ground water contamination. Generally, EPA considers vapor intrusion mitigation systems as "interim" or "early" response actions to promptly reduce threats to human health. Installation of vapor intrusion mitigation systems addresses temporary human health problems, but fails to address the source of the problem.

The NCP expresses the preference for response actions that eliminate or substantially reduce the level of contamination in the source medium to acceptable levels, thereby achieving a permanent remedy. U.S. EPA, *OSWER Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air*, OSWER Publication 9200.2-154, June 2015. OSWER's VI guidance states:

The preferred long-term response to the intrusion of vapors into buildings is to eliminate or substantially reduce the level of contamination in the subsurface vapor source (e.g., groundwater, subsurface soil, sewer lines) by vapor-forming chemicals to acceptable-risk levels, thereby achieving a permanent remedy. Remediation of the groundwater plume or a source of vapor-forming chemicals in the vadose zone will eventually eliminate potential exposure pathways and can include the following actions, among others: removal of contaminated soil via excavation; removal of contaminated groundwater with pump-and-treat approaches; decontaminating and/or

rehabilitating sewer lines that harbor vapor-forming chemicals; and, treatment of contaminated soil and groundwater in situ, using technologies such as soil vapor extraction, multiphase extraction, and bioremediation, or natural attenuation.

In the case of vapor intrusion resulting from a subsurface contaminant plume, failing to address the source of contamination and the resulting plume may result in an increased exposure to individuals due to migration and expansion of the plume over time. In this instance, individuals in regularly occupied structures that were previously unaffected by the plume may become negatively impacted by subsurface intrusion. Additionally, a subsurface contaminant plume in a lesser-developed area has the potential to impact future development if left untreated.

There are several other concerns related to only addressing subsurface intrusion problems with a vapor mitigation system. The first concern is that vapor mitigation systems require ongoing monitoring and maintenance throughout the life of the system. Periodic inspections of the vapor mitigation system are necessary to make sure it is operating as designed. Over time the system can degrade, and maintenance will also be necessary, such as replacing the fan in an active sub-slab depressurization system. Non-mechanical failures of the system can occur as well, such as, electric power failure, turning off the fan or ignoring a damaged system.

A vapor intrusion mitigation system is a tool for protecting human health, but may not contribute to the Superfund program's goal of cleaning up uncontrolled hazardous waste sites. Furthermore, EPA still lacks a mechanism to assess human health hazards from vapor intrusion in the current HRS model, and therefore cannot currently evaluate the threat of vapor intrusion as part of its ranking of sites for placement on the NPL.

Under the Superfund remedial program for NPL sites, subsurface intrusion is only addressed at sites placed on the NPL based on threats from other pathways. That is, subsurface intrusion issues are addressed later in the remedial process after placement on the NPL. For example, this may be done as part of EPA's five-year review process. Sites with only subsurface intrusion issues are not being included on the NPL due to the lack of a subsurface intrusion component in the HRS. Therefore, many sites, especially those not evaluated under another HRS pathway or those not scoring high enough under another HRS pathway,

⁷ EPA's *Estimated Costs to Remediate Existing Sites Exceed Current Funding Levels, and More Sites are Expected to Be Added to the National Priorities List*, GAO Report to Congressional Requesters, GAO-10-380, May 2010.

may not be addressed for threats due to subsurface intrusion because they may not qualify for placement on the NPL. As the Government Accountability Office (GAO) states in its May 2010 report:

EPA may not be listing some sites that pose health risks that are serious enough that the sites should be considered for inclusion on the NPL. While EPA is assessing vapor intrusion contamination at listed NPL sites, EPA does not assess the relative risks posed by vapor intrusion when deciding which sites to include on the NPL. By not including these risks, states may be left to remediate those sites without federal assistance, and given states' constrained budgets, some states may not have the ability to clean up these sites on their own. . . . However, if these sites are not assessed and, if needed, listed on the NPL, some seriously contaminated hazardous waste sites with unacceptable human exposure may not otherwise be cleaned up.

EPA proposes the addition of the subsurface component to ensure the HRS does not omit this known pathway of human exposure to contamination and provides a mechanism for complete assessment of SSI threats to human health and the environment.

2. What alternative regulatory options to this action were considered by EPA?

EPA considered alternatives to this proposed regulatory action for addressing the need to evaluate subsurface intrusion threats as discussed below.

Specifically, EPA considered whether existing programs adequately address the risks associated with subsurface intrusion at contaminated sites, as discussed in the previous section. If one or more programs were in place to adequately address concerns from subsurface intrusion, this could obviate the need for EPA action. However, no other authority consistently and comprehensively addresses subsurface intrusion across all potential non-federal sites, particularly when subsurface intrusion is the key exposure route. In particular, state programs vary significantly in addressing subsurface intrusion. In fact, not all states have subsurface intrusion programs, and states with programs vary in their authority, resources, and remediation criteria. The 2004 Interstate Technology and Regulatory Council's (ITRC) Vapor Intrusion Team developed and conducted an on-line survey of state, federal, and tribal agencies regarding vapor intrusion regulations, policy, and guidance. Ninety-six percent (96%) of survey respondents consider vapor intrusion a concern; however, only 11% have a procedure for evaluating vapor intrusion codified into law, while a

larger number of states have developed, or are developing, guidance for addressing vapor intrusion issues. A majority of the states that responded to the survey expressed that their processes for addressing vapor intrusion were only informally adopted by their agencies, and most defer to EPA. The 2009 Vapor Intrusion Pathway: A Guide for State and Territorial Federal Facilities Managers study also surveyed state and territorial subsurface intrusion programs. According to this study, there were no states with a statute directly addressing vapor intrusion or identifying requirements for assessing the risk. Nine states had regulations that address vapor intrusion specifically; three states had regulations under development. Thirty-four states either have guidance for addressing vapor intrusion or are in the process of developing guidance. In addition, the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) has expressed support for the proposed rule and has requested that EPA take leadership on this issue. Since vapor intrusion is projected to be the most significant component of subsurface intrusion, these responses would apply to subsurface intrusion as well. As previously discussed in section V.A.1 of this preamble, other federal programs were reviewed; while some programs could address subsurface intrusion at some sites, they cannot comprehensively address all sites (federal and non-federal).

Two other mechanisms currently exist to place sites on the NPL. First, each state can designate a single site to the NPL as a state top priority site regardless of its HRS score; this can be done only once. (see NCP, 40 CFR 300.425(c)(2)). This state-designated sites option has been implemented for 44 states/territories, and the remaining state options would not be sufficient to address the subsurface intrusion issue nationally and comprehensively, given the projected number of sites with subsurface intrusion problems. Second, sites may be added in response to a health advisory from the ATSDR. (See NCP, 40 CFR 300.425(c)(3)). However, the ATSDR mechanism was designed to be used only when the Agency for Toxic Substances and Disease Registry (ATSDR) designated the threat found to warrant immediate dissociation from the release and other criteria are met. This is not a mechanism that can be used uniformly and consistently. It is highly resource intensive and may not comprehensively address all chronic threats.

Furthermore, CERCLA section 105 clearly mandates that EPA implement

the HRS to take into account "to the extent possible the population at risk, the hazard potential of hazardous substances . . . , the potential for contamination of drinking water supplies and the potential for direct human contact." When the HRS was last revised in 1990, the technology to detect and evaluate subsurface intrusion threats was not sufficiently developed. For example, there were no health-based benchmark concentration values for residences or standardized technologies for sampling indoor air, precision of analytical equipment prior to computerization was limited, and associations between contaminated ground water and soil vapors were not well understood. However, it is now possible for subsurface intrusion threats to be evaluated comprehensively. Therefore, it is now appropriate, given the potential that subsurface intrusion presents for direct human contact, to add to the HRS the consideration of threats due to subsurface intrusion.

3. What public outreach activities did EPA conduct?

Before making the decision to issue this proposed rulemaking, EPA conducted outreach activities to determine interest and support from the public. Thus, on January 31, 2011, EPA published a "Notice of Opportunity for Public Input" (76 FR 5370, January 31, 2011) soliciting stakeholder comment on whether to include a subsurface intrusion component in the HRS. Additionally, EPA sent letters to all federally recognized tribes, asking for their comments on the FR document. During the 75-day public comment period on this action, four listening sessions were held throughout the country (Arlington, VA; San Francisco, CA; Albuquerque, NM; and Edison, NJ). The comments made by a majority of speakers, including members of the public, at the listening sessions were supportive of the potential addition of a subsurface intrusion component into the HRS. Of the 43 written comments received during the public comment period, 35 were in support of adding a vapor intrusion component to the HRS, 6 comments (generally from industry representatives) were opposed to this addition, and 2 comments were neutral. The comments received during the public listening sessions and in response to the "Notice of Opportunity for Public Input" have been reviewed and considered in the development of this proposed rulemaking. EPA has also established a public Web site, <http://www.epa.gov/superfund/vapor-intrusion-and-superfund-program>, providing background information on

why this addition to the HRS is being considered.

4. What peer review process did EPA use?

This proposed rule consists of narrow technical modifications and is an expansion of the current HRS, which was peer reviewed by the agency's Science Advisory Board (SAB). The 1988 SAB review was comprehensive and addressed the basic structure and concepts of the HRS. This proposed addition adheres to the basic structure and concepts of the current HRS, and thus, is consistent with the recommendations of the SAB. The 1988 SAB report focused on the following issues:

- The overall algorithm for the HRS;
- The inclusion of exposure in the HRS;
- How the HRS could be evaluated in the future;
- Work that could be done to provide better documentation for the next revision of the HRS;
- The types of toxicity the HRS should address and how it should do so;
- Distances from an uncontrolled hazardous waste site that are relevant when considering air pollutants from sites; and
- The feasibility of including waste concentration in the HRS and whether large volume waste sites had been treated differently than others in the HRS.

The 1988 SAB report is available in the public docket for this proposed rulemaking.

During development of this proposed HRS update, EPA determined that several subsurface intrusion-specific issues warranted external independent scientific peer review. As a result, EPA has identified elements that have undergone peer review including:

- Consideration of potential for subsurface exposure (intrusion) into regularly occupied structures;
- Determination of hazardous waste quantity for the subsurface intrusion component;
- Population scoring;
- Evaluating populations in multi-story and multi-subunit structures; and
- Evaluation of target values for workers.

The results of the 2011 peer review of the proposed addition are discussed in the Summary of Peer Review Comments and Suggested Responses on the Addition of a Subsurface Intrusion Component to the HRS, which is available in the public docket for this proposed rulemaking. This proposed addition reflects modifications made as a result of EPA's peer review process.

5. How did EPA select the approach for including the addition in the HRS?

The following six concepts were used as the basis for evaluating possible approaches to the HRS addition and the selection of a preferred approach:

1. Limit the proposed addition to the existing HRS structure to avoid confusion by minimizing the portions of the present HRS that would need to be revised.
2. Utilize the existing HRS basic structure and scoring algorithm, and maintain the relative weighting of the different pathways.
3. Base technical decisions on sound and proven science.
4. Ensure the HRS acts as an effective screening tool and minimizes unnecessary resource expenditures, while also minimizing the erroneous inclusion or exclusion of sites for possible NPL placement.
5. Assemble and utilize conceptual site models, case studies, and sensitivity analyses to test the model.
6. Ensure that an HRS scoring evaluation of the soil exposure and subsurface intrusion pathway can be completed using the information and level of effort that are typical of a site inspection or expanded site inspection (ESI).

In the process of developing the proposed rule, EPA identified multiple options that are consistent with the above concepts. Based on literature reviews and agency experience, EPA projected the range of conditions at which the proposed addition might be applied. Using the basic structure of the current HRS, EPA tested each option by simulating the scores for typical scenarios. Using the results of these studies, EPA selected the option that best met the above criteria. To verify that the selected option would provide comparable results at actual sites, EPA tested the scoring algorithm using existing subsurface intrusion data from actual sites. The results of these studies demonstrate that the proposed addition functioned as expected. See section 8.0 of the Technical Support Document for this proposed addition (Proposal TSD) for supplemental information regarding EPA's testing efforts.

B. Technical Considerations to Maintaining the Current HRS Structure and Algorithm

1. Maintaining the Current Ground Water, Surface Water, and Air Migration Pathways

The current approach for scoring the ground water, surface water, and air migration pathways is not being altered by the proposed addition of a subsurface

intrusion component. Therefore, EPA is not soliciting comments on these pathways and will not respond to comments that are submitted on these pathways.

2. Addition of the New Component to the Soil Exposure Pathway

EPA is proposing to add the subsurface intrusion threat to the present soil exposure pathway, which already considers direct exposure to receptors. This pathway is proposed to be restructured and renamed the soil exposure and subsurface intrusion pathway. The restructured pathway will retain unchanged the existing two soil exposure threats (resident population and nearby population) in the pathway as one component. The threat posed by subsurface intrusion is proposed to be added as a new component.

The internal structure of the soil exposure component, including the two soil exposure threats within that component, remains unchanged. Therefore, EPA is not soliciting comments on the soil exposure component of the proposed soil exposure and subsurface intrusion pathway, nor will it respond to comments that are submitted on the soil exposure component.

The soil exposure pathway was selected for modification because its structure already focuses on populations actually coming into or potentially coming into direct contact with hazardous substances. The present soil exposure pathway addresses direct contact with contamination outside of structures. The new subsurface intrusion component also addresses direct contact with contamination that has already been demonstrated to have entered into regularly occupied structures or where the contamination is present beneath the regularly occupied structures and is likely to enter into regularly occupied structures. See section VI.A of this preamble for further discussion.

C. Supporting Materials

The proposed addition to the HRS is discussed in the following primary documents: (1) The proposed rule, (2) this preamble, (3) the Proposal TSD (including all supporting appendices), (4) the regulatory impact analysis (RIA). The proposed rule identifies the proposed changes to the NCP and focuses on the specific mechanics of scoring sites with the new component. This preamble provides an overview of the proposed HRS addition, along with an explanation of any modifications and the supporting justification. The Proposal TSD contains a more detailed

explanation of the technical basis for the proposed additions to the HRS, along with descriptions of the options considered, analyses that were used to evaluate the performance of the new subsurface intrusion component, and technical literature that was used in the development of the addition. The Proposal TSD is available to help guide the evaluation of subsurface intrusion sites. The Proposal TSD follows the same general outline as the preamble, with one section describing the necessary narrow technical modifications that affect multiple pathways, and the remaining sections describing the addition of the subsurface intrusion component to the current soil exposure pathway. The Proposal TSD contains a description of the current HRS, the options considered, and the technical justifications for the option chosen. In addition, the Proposal TSD references

other supporting documents that provide an even greater level of detail on the proposed additions.

These four documents are available to the public in the Docket for this rulemaking. To facilitate public review, EPA has prepared an index to the proposed rule, the preamble to the proposed rule, and the Proposal TSD with detailed cross referencing of issues. This index is available in the public Docket. See the **ADDRESSES** section of this preamble for further information.

VI. Discussion of the Proposed SsI Addition to the HRS

This section first discusses why the evaluation of the relative risk posed by subsurface intrusion has been added as a component to the same HRS pathway as for soil exposure. It then discusses how the evaluation will be performed using a structure consistent with the other threats, components, and

pathways in the HRS, but taking into account the unique parameters impacting the probability of exposure to subsurface intrusion.

A. Addition Within a Restructured Soil Exposure Pathway

EPA is proposing to add the evaluation of the relative risk posed by subsurface intrusion of hazardous substances into regularly occupied structures by restructuring the soil exposure pathway in the current HRS to include subsurface intrusion. As noted previously, no changes are being proposed for the other three pathways in the present HRS. The restructured soil exposure pathway is proposed to be renamed the soil exposure and subsurface intrusion pathway to reflect both components of the restructured pathway. See Figure 3 for a depiction of how the proposed addition fits into the HRS structure.

Figure 3. HRS Structure with Proposed Addition

HRS Pathways	Ground Water	Surface Water			Soil Exposure and Subsurface Intrusion		Air
					Soil Exposure	Subsurface Intrusion	
Factor							
LR / LE Likelihood of Release / Exposure							
WC Waste Characteristics							
T Targets							
	S_{GW}	$S_{SW} = DW + HFC + ENV$			$S_{SESSI} = \text{Soil Exposure} + \text{Subsurface Intrusion}$ (where: Soil Exposure = Resident + Nearby)		S_A

Ground Water Migration Pathway Score (S_{GW})

Surface Water Migration Pathway Score (S_{SW})

Soil Exposure and Subsurface Intrusion Pathway Score (S_{SESSI})

Air Migration Pathway Score (S_A)

The threat posed by subsurface intrusion is proposed to be added to the soil exposure pathway because both consider the relative risk posed by direct contact with existing contamination areas. As identified in the preamble to the 1988 **Federal Register** document proposing the current HRS (53 FR 51997–52000, December 23, 1988), the soil exposure pathway, proposed in 1988 to be named the “onsite exposure” pathway, was added to the HRS to address the threat posed by direct contact with existing contamination and focused on ingestion of contaminated soil. This is in contrast with the other existing HRS pathways, which evaluate the relative risk posed by actual or potential migration of contamination from an original release location (called a “source” in HRS terminology) via ground water, surface water, or ambient air to other locations where exposure may occur. Given that the relative risk posed by subsurface intrusion is also due to direct contact with contamination already present in, or likely to be intruding into, regularly occupied structures and no further migration away from the existing contamination areas need occur, EPA considers it appropriate to incorporate the subsurface intrusion threat in the same direct exposure pathway that includes the soil exposure relative risk. See section 6.0 of the 1988 Revised HRS Technical Support Document (1988 Revised HRS TSD) for supplemental information (originally referred to as the onsite exposure pathway).

The existing soil exposure pathway will be retained as one component of the restructured pathway, with the two threats within the present soil exposure pathway, resident and nearby populations, being retained as threats within the soil exposure component. The scoring of the soil exposure component will remain unaltered, but the score will be assigned as the soil exposure component score, not the pathway score. (See section 5.1 of the Proposed HRS Addition.) The proposed subsurface intrusion component will be added as a new component of the restructured soil exposure and subsurface intrusion pathway. As discussed in greater detail below, it will have the same basic structure, scoring, and weighting as other parts of the HRS.

The score for the restructured pathway is based on a combination of the two component scores—soil exposure and subsurface intrusion. The soil exposure component score is added to the subsurface intrusion component score to determine the pathway score. The two component scores are proposed to be additive because the populations

may be subjected to exposures via both routes: The soil exposure component reflects exposures to people when outside a structure and focuses on ingestion and the subsurface intrusion component reflects exposures inside a structure and focuses on inhalation. Hence, the addition of the two component scores reflects the potential cumulative risk of multiple exposure routes and is not double counting the relative risk.

A maximum pathway score is not contingent on scoring both the soil exposure and subsurface intrusion components. It is possible for a site to have only one component evaluated and still reach the maximum pathway score. Because the scoring of the soil exposure component is not being altered, this component would contribute the same score to the overall site score absent the addition of subsurface intrusion.

B. Subsurface Intrusion Component Addition

The structure of the current HRS is basically the same for all individual pathways, components, and/or threats. This structure was first used in the original HRS (47 FR 31220, 1982) and was only slightly altered when the HRS was revised in 1990 (55 FR 51532, December 14, 1990) to fit pathway-specific parameters and to address comments on the proposed rule. See also section 2.2 of the 1988 Revised HRS TSD for supplemental information. The design of the HRS reflects a conceptual understanding of how hazardous substance releases from CERCLA sites can result in risks to public health and welfare and the environment. The risk scenario at these sites is a function of:

- The probability of exposure to (or releases to a medium in a migration pathway of) hazardous substances,
- The expected magnitude and duration of the releases or exposures,
- The toxicity or other potential adverse effects to a receptor (target) from the releases,
- The probability that the release will reach a receptor and the expected change in the concentration of hazardous substances during the movement from the location of the contamination to the receptors,
- The expected dose to the receptor, and
- The expected number and character of the receptors.

The above considerations are addressed in three factor categories: likelihood of exposure (or release), waste characteristics, and targets.

The following subsections describe the structure of the proposed subsurface

intrusion component and how this structure is consistent conceptually with the existing structure of the other HRS pathways and components: (1) New definitions, (2) delineation of areas of subsurface intrusion, (3) likelihood of exposure, (4) waste characteristics, (5) targets, and (6) calculating and incorporating the subsurface intrusion component score into the HRS site score. For background on why this structure was selected by EPA and peer reviewed by the SAB, see section 2.0 of the 1988 Revised HRS TSD.

1. New Definitions—See Section 1.1 of the Proposed HRS Addition⁸

EPA is proposing that 14 new definitions be added to the HRS, section 1.1, with additional modifications to existing definitions. EPA is adding these new definitions to aid the site evaluator in establishing the environmental boundaries that are being evaluated in this component (*e.g.*, contamination in or above the surficial aquifer), in identifying factors unique to the subsurface intrusion component (*e.g.*, channelized flow through which soil gas transports with no resistance), and to ensure consistent application of the HRS.

2. Delineation of Areas of Subsurface Intrusion—See Section 5.2.0 of the Proposed HRS Addition

EPA is proposing to include in the subsurface intrusion component evaluation two areas in which exposure due to subsurface intrusion contamination exists or is likely to exist: (1) Areas of observed exposure—areas in which contaminant intrusion into regularly occupied structures has been documented, and (2) areas of subsurface contamination—areas in which subsurface contamination underlying regularly occupied structures (such as in surficial ground water or soil vapor) has been documented, but at which either sampling of indoor air has not documented that subsurface contamination has entered a regularly occupied structure or no sampling of indoor air has been undertaken. See Figure 4 for an illustration of the two areas. Additionally, special considerations are given to buildings with multiple subunits and multiple levels (*e.g.*, apartment buildings) when establishing areas of subsurface intrusion. For a more detailed discussion on the selection of these areas, see section 6.0 of the Proposal TSD.

⁸ For references to a specific section of the proposed HRS addition, please refer to the regulatory text of the proposed rulemaking.

a. Area of Observed Exposure (AOE)— See Section 5.2.0 of the Proposed HRS Addition

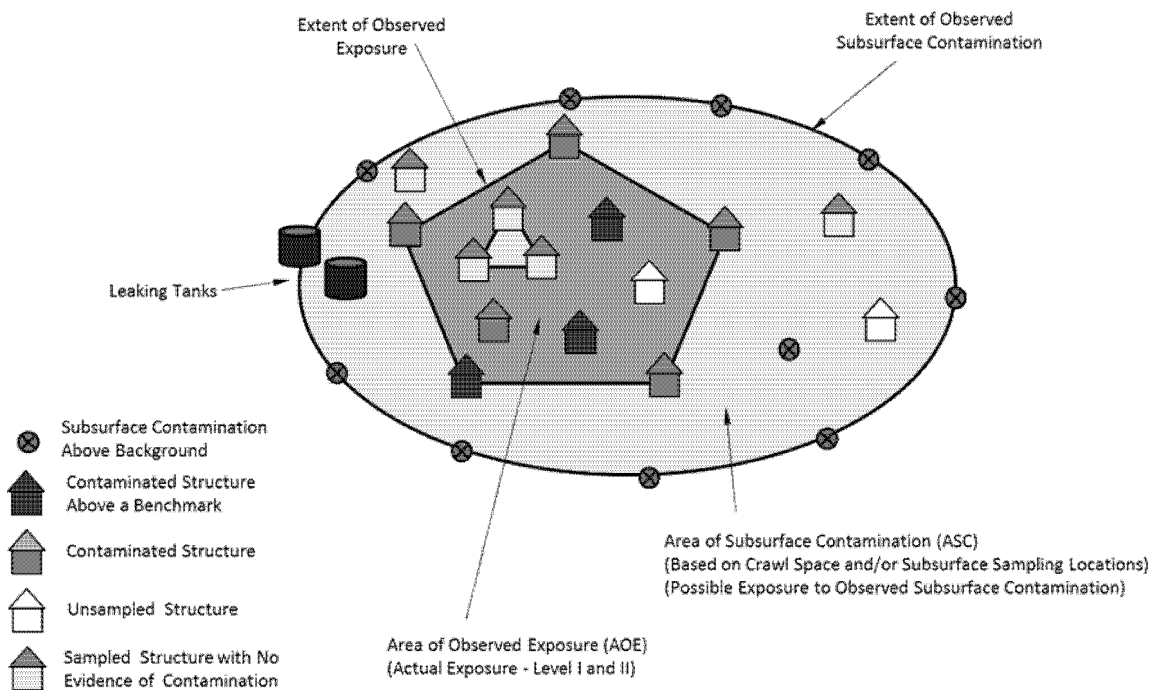
EPA is proposing to identify an area (or areas) of observed exposure at a site based on the location of regularly occupied structures with documented contamination resulting from subsurface intrusion attributable to the site being evaluated. The area encompassed by such structures constitutes the area of observed exposure (AOE). Other regularly occupied structures within this encompassed area (or areas) will also be inferred to be in the AOE unless available information indicates otherwise. Populations occupying structures within the AOE are considered exposed to subsurface contamination for HRS scoring purposes, and thus, are included in the HRS evaluation. See section 6.0 of the Proposal TSD for further discussion on the delineation of an AOE and the rationale for the inclusion of this area in an HRS evaluation.

b. Area of Subsurface Contamination (ASC)—See Section 5.2.0 of the Proposed HRS Addition

EPA is proposing to also identify an area (or areas) of subsurface contamination as an area outside that of the AOE, but for which subsurface contamination has been documented at levels meeting observed release criteria (contamination at levels significantly above background and the significant increase can be attributed at least in part to the site). The contamination would be present either in surficial ground water samples, in slab or semi-enclosed or enclosed crawl space samples, in subsurface soil samples, or in soil gas samples in the unsaturated zone. An ASC may also include regularly occupied structures where indoor air sampling has not documented that an observed exposure has occurred. (See current HRS section 2.3 for observed release criteria.) In addition, EPA is proposing to limit the delineation of an ASC based on the location of subsurface volatile hazardous substances. However, non-volatile hazardous substances may be used to establish an ASC if they have also been documented in an observed exposure.

Populations in regularly occupied structures within an ASC are considered potentially contaminated, but are weighted less in the HRS evaluation than those populations in an AOE. The populations in an ASC are assigned a weighting value ranging from 0.1 to 0.9 depending on such factors as the distance of subsurface contamination to a regularly occupied structure's foundation and the sample media (see section 5.2.1.3.2.3 of the Proposed HRS Addition). The ASC is included in the HRS evaluation because there is currently contamination below regularly occupied structures in the ASC, and although a sampling event has not documented intrusion into these structures, based on previous studies, it is likely that intrusion has occurred or could occur when suitable climatic and lifestyle conditions were or are present. The populations in the ASC are weighted less to reflect the relatively lower demonstrated risk in the ASC in comparison to the AOE. See section 6.0 of the Proposal TSD for further discussion on the delineation of an ASC and the rationale for inclusion of this area in an HRS evaluation.

Figure 4. Areas of Observed Exposure or Subsurface Contamination



c. Other Area of Subsurface Intrusion Considered: Potential Migration Zone

In the three current HRS migration pathways (ground water, surface water,

and air migration pathways), a projected present and future migration distance called the target distance limit is assigned based on studies performed when the HRS was revised in 1988.

Targets (receptors) within that distance are considered either actually or potentially exposed and the values assigned to these receptors are weighted based on the level of contamination, the

distance from a source, and the possible amount of hazardous substance dilution.

As a result, EPA considered including within the subsurface intrusion component an approach for incorporating populations subject to future migration (outside the ASC) similar to that used for the ground water migration pathway. The approach included a standard 4-mile distance (modified if site-specific geologic information indicates otherwise) radiating either in all directions or only in the probable downgradient direction from each source at a site to establish this future migration zone. This approach could account for the possibility of future horizontal migration of either volatile substances in contaminated ground water or as a soil gas beyond the demonstrated boundaries of the subsurface contamination and subsequently into regularly occupied structures (*i.e.*, a potential future migration zone). This might happen, for example, if hazardous substance plumes expand or migrate due to the additional release of hazardous substances, shift side-to-side due to ground water gradient changes resulting from seasonal variations or tidal influences, or change direction due to the sequencing of dry and wet years or pumping at municipal water supply or other well fields. Additionally, natural and anthropogenic influences, such as utility corridors, fracture patterns, karst features, or buried stream channels or other geologic heterogeneity may alter or enhance hazardous substance migration.

However, EPA's confidence in the present science to accurately project hazardous substance migration through both the ground water and the unsaturated zone is limited. Several fate and transport models, many based on the Johnson and Ettinger Model, currently exist and are used to project vapor migration and predict contaminant vapor intrusion into a structure. The ability of a site assessor to accurately evaluate the potential future migration of subsurface hazardous substances would rely heavily on the ability to gather site-specific data in all areas of future migration in the relatively short time period and with minimal resources available when data collection for an HRS evaluation is performed (*i.e.*, during the site inspection). EPA's review of existing models indicate that in most instances, to obtain acceptable projections, extensive site-specific data collection efforts and often multiple rounds of site investigations are required to develop an accurate model

for projecting the future extent of vapor migration, especially in the unsaturated zone. As discussed in section 2.5 of the 1988 TSD, the ". . . misapplication of a model or the use of incomplete data would, of course, result in less accuracy . . . [and] a very conservative model may also increase the frequency with which sites that do not pose significant risks are placed on the NPL."

Therefore, after thorough review of this option, the agency has chosen not to include the consideration of future subsurface contaminant migration in the proposed subsurface intrusion component. The possibility of placing sites on the NPL based on speculative projections with no demonstrated risk of actual exposure is too significant. The exclusion of this option in the proposed HRS addition does not directly prevent a site from being considered for listing on the NPL based on demonstrated intrusion, nor does it restrict future investigations from expanding the site boundaries or re-evaluating a site if further studies indicate that the extent of contamination at a site may have increased due to future migration. Please refer to section 6.0 of the Proposal TSD for supplemental information regarding consideration of a potential migration zone.

3. Likelihood of Exposure—See Section 5.2.1.1 of the Proposed HRS Addition

A key factor considered in the HRS relative risk ranking is whether any exposure has occurred and if not, whether there is a probability that exposure could occur. This is termed the likelihood of exposure for the subsurface intrusion component. For purposes of an exposure assessment, not only must subsurface intrusion have occurred, but the structure must be regularly occupied. Consistent with other HRS pathways and components, likelihood of exposure is evaluated in two ways within the proposed subsurface intrusion component. The first step is to determine whether contamination has entered a regularly occupied structure; if this has occurred, "observed exposure" is established. If an observed exposure can be demonstrated in at least one structure, the likelihood of exposure category value is assigned the highest possible score. If observed exposure has not been documented, the second step is to evaluate the "potential for exposure." The potential for exposure factor is assigned a score lower than that given when an observed exposure has been documented. How to evaluate the likelihood of exposure is discussed below. See section 4.0 of the Proposal

TSD for supplemental information regarding likelihood of exposure.

a. Observed Exposure—See Section 5.2.1.1.1 of the Proposed HRS Addition

For HRS purposes, an observed exposure is established if it can be documented that a hazardous substance from the site being evaluated has moved through the subsurface and has entered at least one regularly occupied structure. When it can be documented that subsurface intrusion has occurred, the likelihood of exposure is assigned its maximum value. The HRS identifies for all the pathways a consistent approach for establishing observed exposure (or observed release in migration pathways) and is discussed in section 2.3 of the current HRS. Also, the requirements for establishing observed exposure (or observed releases) are equivalent to those used to establish releases throughout the HRS. See section 2.6 of the 1988 Revised HRS TSD for supplemental information. Consistent with the current HRS structure, EPA is proposing to establish observed exposure in the subsurface intrusion component by any of the following methods:

i. Observed Exposure by Direct Observation—See Section 5.2.1.1.1 of the Proposed HRS Addition

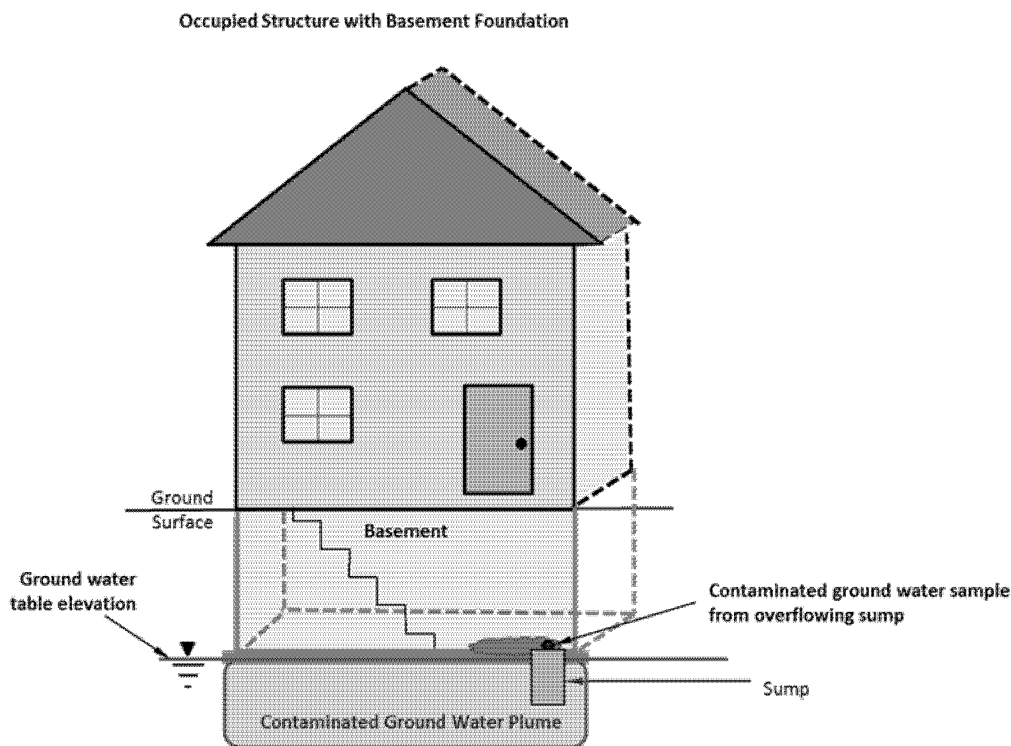
The identification of an observed exposure by direct observation can be based on a solid, liquid, or gaseous hazardous substance attributable to the site being observed or known to have entered a regularly occupied structure from the subsurface. This finding will generally require the observation that a solid, liquid, or gas is entering the structure, and can be documented from a sample of the material that shows the hazardous substance is present due to the release from the site being evaluated. For example, this type of direct exposure could be documented if: (1) Contaminated vapors are found in a sample from a sump open to the regularly occupied structure, and (2) the same hazardous substances are found in subsurface samples collected beneath the regularly occupied structure or otherwise can be demonstrated as having emanated from known contamination underlying the structure. Another example would be if chromium precipitate is found in basements subject to ground water flooding and it is known that a chromium contaminant plume is present, and its presence is not from indoor sources. In neither example would a significant increase above a background contaminant level be required. For exposures to intruded ground water, EPA is proposing

documented observed exposure by direct observation as the only method for establishing likelihood of exposure. Figure 5 below depicts an additional example of documenting observed

exposure by direct observation through collection of a contaminated water sample taken from the sump of an occupied structure that is known to be subject to flooding. Other methods may

also be used to establish direct observation depending on site-specific conditions. See section 4.0 of the Proposal TSD for further information.

Figure 5. Observed Exposure by Direct Observation Example: Intrusion of Contaminated Ground Water



ii. Observed Exposure by Chemical Analysis—See Section 5.2.1.1.1 of the Proposed HRS Addition

Observed exposure by “chemical analysis” is established by comparing hazardous substance concentrations in background and release samples that have been chemically analyzed. The concentration of one or more hazardous substance in one or more indoor air sample taken from a regularly occupied structure (termed the “release sample”) is compared to the concentration at appropriate background locations and under appropriate background conditions. If the chemical analyses document a significant increase over background levels and if at least part of the significant increase can be shown to be attributable to a release from the site being evaluated, then observed exposure by chemical analysis has been documented. This option for establishing observed exposure differs from observed exposure by direct observation in that comparison of the hazardous substance concentration in a release sample to a background level is required. This method for establishing

observed exposure by chemical analysis is outlined in detail below.

Background levels for this situation, in some cases, may be determined by chemical analysis of samples from similar environments collected from outside the area impacted by the release, or releases, from the site being evaluated. While the appropriate sample locations to be used to establish this background level will vary based on site-specific conditions, an appropriate background level needs to account for both outdoor air concentrations and indoor air concentrations in structures of similar construction type (*e.g.*, basement, slab-on-grade) within the vicinity. This is to ensure that the background level represents the concentration of a hazardous substance in the absence of the subsurface intrusion. In some cases it may be possible to use published studies on typical background concentrations in establishing an appropriate background level. See section 4.0 of the Proposal TSD for further discussion on background levels.

The first step in determining if observed exposure by chemical analysis has occurred is to document that the magnitude of the difference between the background level concentration and the release sample concentration is sufficient to rule out the possibility that neither the difference nor the similarity is due to variation in site conditions; and to ensure the sampling and analytical procedures are precise and can be replicated. The magnitude of this “significant increase” was established for all HRS pathways based on studies peer reviewed by the Science Advisory Board when the HRS was last revised in 1990. See section 2.6 of the 1988 Revised HRS TSD for supplemental information.

A significant increase is generally identified to have occurred if the release sample hazardous substance concentration is above quantification limits and at least three times the background level, provided the background sample concentrations for the hazardous substance are found at or above appropriate detection limits. If the hazardous substance background

level is below the appropriate detection limit, any quantifiable level of the hazardous substance detected in the targeted structure is considered to have a concentration significantly above background.

The second step in determining if observed exposure by chemical analysis has occurred is to document that at least part of the significant increase can be attributed to a release from the site being evaluated. This step is required for establishing observed releases or observed exposures in all HRS pathways. See section 2.3 of the current HRS and section 2.6 of the 1988 Revised HRS TSD for supplemental information. This step is conducted to ensure that the increase is due to the release being evaluated and not from other potential contaminant sources located in the vicinity. (See section 4.0 of the Proposal TSD for further discussion.) For the proposed subsurface intrusion component, establishing significant increase over background is particularly critical because many of the projected intrusion contaminants are solvents and, in particular, chlorinated solvents. Chlorinated solvents are commonly found in multiple household and commercial cleaning products and in various consumer goods found in regularly occupied structures. These products present a substantial challenge for discerning the contribution from the environmental release that is being evaluated. Therefore, it is critical that a significant increase in these hazardous substances be documented as coming from the subsurface and not simply emanating from these products.

It is suggested that the evidence to support this determination include multiple lines of evidence, including determining outdoor air hazardous

substance concentrations; finding the hazardous substance at the source facility, site, or release being investigated; and finding the hazardous substance in subsurface samples. (See section 4.0 of the Proposal TSD regarding lines of evidence.) In addition, actions should be taken to ensure that sources of the hazardous substances inside a structure (*e.g.*, household chemicals) have been removed from the structure prior to sampling. Establishing attribution to the site in some situations, however, may be straightforward to document, such as when the hazardous substance is manmade, unique, and not used in consumer products and thus, there would be no need to follow all the steps identified above to establish attribution. EPA expects that future advancement in methods for establishing the source of indoor contamination will be helpful for drawing conclusions about attribution.

In summary, if it is demonstrated that there is a significant increase in hazardous substance levels in a regularly occupied structure and it is demonstrated that the significant increase in the contamination is in part due to the release from subsurface intrusion being evaluated, then an observed release by chemical analysis has been established.

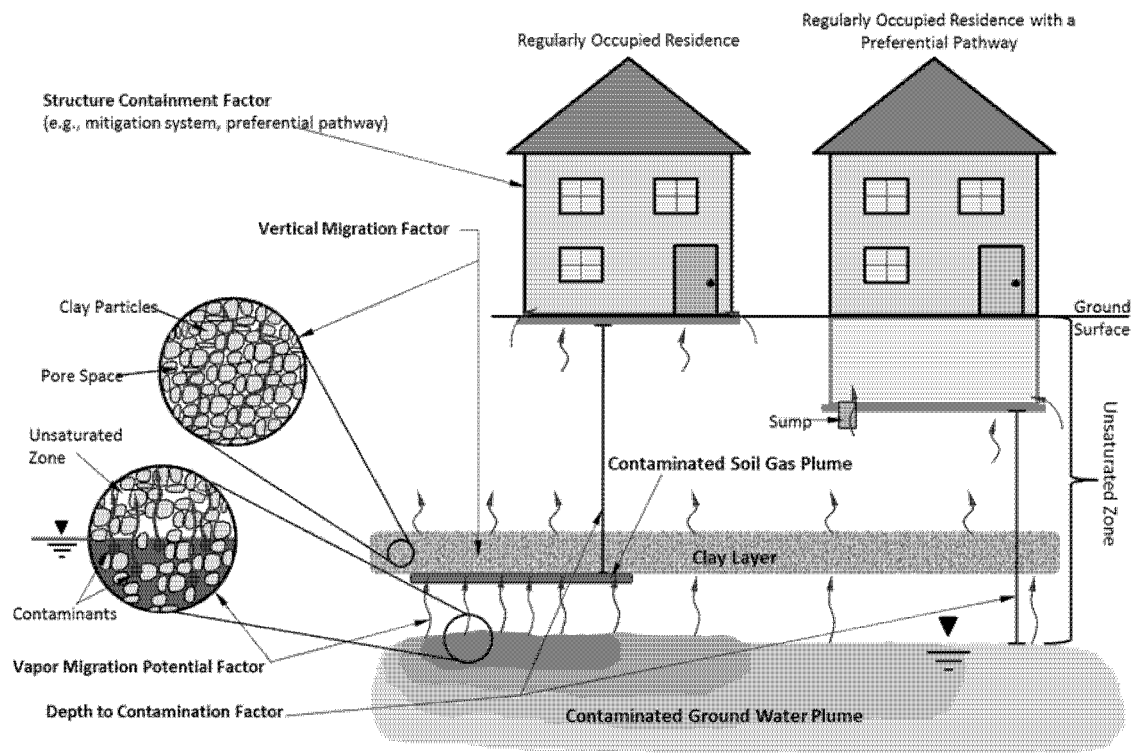
b. Potential for Exposure—See Section 5.2.1.1.2 of the Proposed HRS Addition

When an observed exposure has not been established, EPA is proposing to evaluate the potential for exposure within structures located in an ASC using the subsurface intrusion component. Given that within an ASC, contamination has been demonstrated to be below or in the subsurface encompassing regularly occupied structures, it is probable that exposure

to the intruding hazardous substance has occurred but that sampling has not been performed at the time the exposure took place. As explained in section 4.0 of the Proposal TSD, the factors affecting when intrusion will occur and the rate of subsurface intrusion are extremely time-, site-, and climate-specific. Sampling may not have been performed in these structures for a number of reasons, or, even if performed during the limited time period (due to resource limitations, site inspections are conducted over a limited period of time, usually 1 to 2 days) of a site inspection, the sampling may have been conducted during conditions in which the subsurface intrusion was not occurring, or occurring at levels not detectable or differentiable from that in background sources of the hazardous substance. Therefore, it is important that the potential for exposure be included as a consideration when evaluating subsurface intrusion threats, especially when volatile substances are documented in the subsurface below regularly occupied structures.

As also explained in section 4.0 of the Proposal TSD, EPA is proposing to evaluate the potential for exposure for the subsurface intrusion component using the same concept and framework used to estimate the potential to release in other pathways. (See section 2.3 of current HRS.) As depicted in Figure 6 below, this involves predicting the probability of exposure in an area of subsurface contamination based on structural containment features of the regularly occupied structure and the route characteristics in the subsurface, including hazardous substance physical and chemical properties and physical subsurface properties that influence the probability that intrusion is occurring.

Figure 6. Potential for Exposure



$$\text{Potential for Exposure} = \text{Structure Containment} \times (\text{Depth to Contamination} + \text{Vertical Migration} + \text{Vapor Migration Potential})$$

i. Structure Containment—See Section 5.2.1.1.2.1 of the Proposed HRS Addition

Containment within the current HRS is used to consider barriers that restrict the movement of hazardous substances. See the preamble to the 1988 Revised HRS (53 FR 51985, December 23, 1988) for supplemental information. For the proposed subsurface intrusion component, the containment features considered represent structural features that block the movement of hazardous substances so as to minimize or prevent indoor exposures resulting from subsurface intrusion into a regularly occupied structure. As is consistent with the current HRS, EPA is proposing containment factor values that range from zero to ten where a low containment factor value indicates a low chance for exposure. For example, in Table 5–12 of the proposed HRS addition, a structure with no visible open preferential pathways from the subsurface has a lower containment value than a structure with documented open preferential pathways (e.g., sumps, foundation cracks) represent a situation in which a greater probability for subsurface intrusion to occur is present. Populations in structures that show no

possible Ssl intrusion route are not evaluated in this new component. Supplemental information regarding containment and the factor values specified in Table 5–12 is provided in section 4.0 of the Proposal TSD.

ii. Route Characteristics—See Section 5.2.1.1.2 of the Proposed HRS Addition

The HRS uses “route characteristics” to index the relative degree to which hazardous substances move into or have already moved into specific areas, such as from a source into ground water, or for the subsurface intrusion component into a regularly occupied structure (see the 1988 TSD and section 4.0 of the Proposal TSD for supplemental information). These characteristics represent the physical and chemical properties of the specific hazardous substances and the media in which they must have moved through or could move through. To determine which route characteristics are appropriate for evaluating potential exposure to subsurface hazardous substances, EPA examined the literature to identify the modeling methods that are currently used to estimate the levels of hazardous substance exposure. Numerous route characteristics and the relationship of these and site-specific input requirements were identified. EPA also

gave careful consideration to ensure that route characteristic factors may be measured or calculated on a site-specific basis in a manner appropriate with current HRS evaluations. See section 4.0 of the Proposal TSD for supplemental information evaluated as part of this process.

EPA reviewed existing sensitivity analyses and performed further analyses to evaluate the intrinsic relationships among the examined route characteristics to identify those that have the greatest impact on potential for exposure. Based on the agency’s analysis, three factors represented the greatest impact on potential for exposure and for which sufficient site-specific information could be collected during a site inspection: (1) Depth to contamination, (2) vertical migration, and (3) vapor migration potential. These three factors are described in the following sections.

a. Depth to Contamination—See Section 5.2.1.1.2.2 of the Proposed HRS Addition

The depth to contamination factor represents the vertical distance between contamination (either in soil, soil gas, or surficial ground water) and the lowest horizontal point of an overlying regularly occupied structure (e.g., a

basement floor). This distance represents how far a hazardous substance would have to travel through the subsurface to intrude into that structure. Based on available data, the probability of exposure decreases as the depth to contamination increases. In addition, as part of EPA's sensitivity analysis in developing route characteristics, at depths greater than 150 feet it became increasingly unlikely that exposure would occur. This is reflected in Table 5-13 (section 5.2.1.1.2.2 of the Proposed HRS Addition). EPA is proposing depth to contamination factor values ranging from zero to ten, where increasing depth results in a lower factor value.

EPA is also proposing to give special consideration in two situations in which it is likely that exposure has occurred. One situation is when subsurface profiles may be impacted by channelized flow features, such as fractured bedrock or karst. The other situation is at locations where the contamination is measured directly below the structure (e.g., in subslab or enclosed/semi-enclosed crawl space samples). These features reflect a situation with a high probability of exposure to intruded hazardous substances because of limited resistance to migration of the substances into the structure. See section 4.0 of the Proposal TSD for supplemental information on how the depths to contamination were weighted when assigning the factor values to different distances.

b. Vertical Migration—See Section 5.2.1.1.2.3 of the Proposed HRS Addition

The vertical migration factor considers the geologic makeup of materials between a regularly occupied structure and the hazardous substance plume and the rate at which substances are likely to have moved through the materials. EPA is proposing to index vertical migration based on two factors: Effective porosity (or equivalently, the permeability) of geologic materials and the thickness of the lowest porosity layer.

Factor values for effective porosity (as it relates to permeability) of geologic materials range from one to four and are based solely on the typical range of porosity of subsurface materials (e.g., gravel, sand, silt and clay). These factor values are used in conjunction with the thickness of the lowest porosity layer (greater than 1 foot thickness) to establish a vertical migration factor value, ranging from one to fifteen.

As part of the vertical migration factor, EPA identified soil moisture content to potentially be a significant

route characteristic variable. Thus, to incorporate soil moisture in EPA's assessment of potential for exposure, the agency used published "average soil moisture content" values for specific soil types. These averages were used to develop effective porosity/permeability factor values. See section 4.0 of the Proposal TSD for supplemental information.

c. Vapor Migration Potential—See Section 5.2.1.1.2.4 of the Proposed HRS Addition

The vapor migration potential factor is based on hazardous substance-specific chemical properties, including both the vapor pressure and Henry's constant values for hazardous substances associated with the site. This factor evaluates the volatile nature of these hazardous substances and is projected to be the most influential route characteristic factor on calculating potential for exposure based on a sensitivity analysis using subsurface migration modeling. When calculating the vapor migration potential, a factor value is determined only for the most volatile hazardous substance based on vapor pressure and Henry's constant values. Those values are used to establish the vapor migration potential factor value. See section 4.0 of the Proposal TSD for supplemental information on this topic.

iii. Calculation of the Potential for Exposure Factor Value—See Section 5.2.1.1.2.5 of the Proposed HRS Addition

Consistent with potential to release determinations in the HRS, the potential for exposure for this component is calculated by summing all route characteristic factor values and multiplying the sum by the containment factor value to determine a potential for exposure factor value.

c. Calculation of the Likelihood of Exposure Factor Category Value—See Section 5.2.1.1.3 of the Proposed HRS Addition

As in all HRS pathways and components, the likelihood of exposure factor category value is assigned based on the higher of the observed exposure (or release) value or the potential for exposure (or release) value. The maximum value assigned for the likelihood of exposure factor category is 550 and is assigned if observed exposure is documented. If observed exposure is not documented, the value assigned when evaluating potential for exposure ranges between 0 and 500. This approach is consistent with the current HRS structure. See sections 2.2

of the 1988 Revised HRS TSD for supplemental information regarding this approach.

4. Waste Characteristics—See Section 5.2.1.2 of the Proposed HRS Addition

The waste characteristics factor category is based on factors that are related to the relative risk considerations included in the basic HRS structure: (1) The toxicity or other potential adverse effects to a receptor from the releases, (2) the potential to degrade in the subsurface prior to intruding into a regularly occupied structure, and (3) the expected magnitude and duration of the exposure. The factors considered in determining the waste characteristics factor category value are the toxicity of the hazardous substances, the ability of the hazardous substance to degrade, and an estimate of the quantity of the hazardous substances to which occupants could be exposed. Consistent with the soil exposure component, the assigned factor values are multiplied together to determine this category value for the subsurface intrusion component. (See sections 2.2 and 2.4 of the 1988 Revised HRS TSD for further discussion on the structure of this factor category and how it fits within the overall HRS structure.) How and why these factors are proposed to be included in this factor category is discussed below.

a. Toxicity/Degradation—See Section 5.2.1.2.1 of the Proposed HRS Addition

The combined toxicity/degradation factor includes consideration of both the toxicity and the possibility for degradation of hazardous substances being evaluated for HRS purposes.

The toxicity factor in the overall HRS structure reflects the toxicity of a hazardous substance associated with a release or exposure, and is assigned the same factor value for all the pathways and components in the current HRS. As in all HRS pathways and components, it is proposed to be assigned the same corresponding factor value as for other parts of the HRS. The rationale for the assignment of the factor value is discussed in the section 2.3 of the 1988 Revised HRS TSD. This toxicity factor is based on the toxicity of the substances present at a site. In the HRS addition, a different factor value is proposed to be assigned to each hazardous substance that an occupant has been or is potentially exposed to. The factor value is driven by the magnitude of each hazardous substance's acute and chronic toxicity to humans. The toxicity factor value is directly related to the concentration at which the hazardous

substance is known to have a health effect: The more toxic the chemical, the higher the toxicity value. Any hazardous substance identified in an observed exposure within the AOE or meeting the observed release criteria in either the AOE or ASC will be assigned a toxicity factor value. The method for assigning this value is contained in section 2.4.1.1 of the current HRS (40 CFR 300, Appendix A) and is discussed in section 2.3 of the 1988 Revised HRS TSD.

The degradation factor represents the possibility for a substance to degrade in the subsurface prior to intruding into a regularly occupied structure. The potential of a substance to degrade has been identified as a significant factor in numerous studies evaluating the potential for intrusion by a vapor. The possibility that a substance may degrade is both a substance- and location-specific evaluation that is influenced by factors such as molecular structure, makeup of the immediate subsurface geology, and the presence or absence of oxygen within intervening unsaturated soils.

Because many of the site-specific characteristics impacting the rate of degradation are considered beyond the scope of a typical site investigation, EPA is proposing to evaluate degradation based on the substance being evaluated, the depth to contamination, and if appropriate environmental conditions are present to ensure that sufficient degradation will occur to diminish the threat. Based on EPA's review of the current literature and research on this topic, the assigned degradation factor is limited to three possible factor values, two for substances that are readily degradable and the appropriate environmental factors are present, and one for when either of these parameters are not present.

EPA seeks public input on the following question regarding the degradation factor: *Is there a way to determine the presence and extent of biologically active soil at a site during a limited site investigation? If so, what soil characteristics should EPA consider to determine whether biologically active soil is documented to be present?*

EPA proposes the degradation factor also be based on the half-life of a substance, with the half-life being determined by biodegradation and hydrolysis rates. If this information is not available then a hazardous substance's estimated half-life will be based on the substance's chemical structure, unless available information indicates otherwise. Substances with relatively low structural complexity, such as petroleum and petroleum-like

substances (having straight carbon chain or simple ring structures), have the greatest potential to degrade in the subsurface while halogenated and polyaromatic ringed substances (e.g., tetrachloroethylene, PCBs) are less likely to significantly degrade as result of subsurface microbial activity.

If it has been documented that a hazardous substance has been found to have entered a regularly occupied structure, regardless of the substance or the site conditions, the degradation value is assigned to reflect the likelihood that the substance is not significantly degrading in the subsurface. Also, if the substance is a daughter, or degradation product, of a parent substance that is also present, then the degradation factor will reflect this relationship. Parent and daughter substances are assigned values to reflect that the daughter substance will be continuously created by degradation of the parent substance. See also section 5.0 of the Proposal TSD for additional discussion regarding the inclusion of a degradation factor.

The toxicity and degradation factors are multiplied together to assign a combined factor value. If multiple substances are present, the highest combined factor value is selected for use in determining the waste characteristics factor category value, as discussed below.

b. Hazardous Waste Quantity—See Section 5.2.1.2.2 of the Proposed HRS Addition

In the basic HRS structure used in all pathways and components, the hazardous waste quantity factor reflects the risk consideration related to the magnitude and duration of either the release for a migration pathway or the exposure for an exposure pathway. In other words, for an exposure pathway, the risk posed by a release of hazardous substances is directly related to the amount of hazardous substances to which receptors (targets) are exposed and the length of the exposure.

As explained in the preamble to the 1990 HRS and in the 1988 Revised HRS TSD, an estimate of the waste quantity associated with a site was the best surrogate for the amount of hazardous substances that receptors were exposed to and that the duration of the exposure was probably correlated to the magnitude of the exposure. In the current three migration pathways (ground water, surface water, air), the hazardous waste quantity factor reflects the total amount of hazardous substances in sources at the site to take into account not only where contamination has already migrated to,

but also future migration of contamination to other locations. For the soil exposure pathway, however, the estimate does not include the total amount in or released from the site sources, but only the amount of hazardous substance in the top two feet of contaminated soils sources and in the surface portions of other source types in an area of observed contamination. (See section 5.0.1 of the current HRS.)

EPA is proposing that since the subsurface intrusion component also focuses on exposure and not the amount of hazardous substances that might migrate to targets in the future, the waste quantity factor value for this component should also reflect only the amount of hazardous substances that people currently are exposed to, that is, the amount in regularly occupied structures. EPA is proposing a four-tiered hierarchical approach consistent with the current HRS (see section III.C of the preamble of the current HRS (55 FR 51542, December 14, 1990)) as well as minimum waste quantity factors (see section 2.4.2 of the current HRS). The minimum waste quantity factors are included because of insufficient information at many sites to adequately estimate waste quantity with confidence, as discussed in section I of the preamble to the current HRS (55 FR 51533, December 14, 1990). The current HRS establishes a minimum waste quantity factor value of 10 for each pathway or component at sites with no actually contaminated targets and a waste quantity factor value of 100 for the migration pathways if observed exposure has been documented. (See section 2.4.2 of the current HRS.)

It is proposed for the estimation of waste quantity for the subsurface intrusion component, that regularly occupied structures within the AOE and ASC be considered. For sites at which the component waste quantity (the sum waste quantities for all occupied structures in the AOE and ASC) is below 10, it is proposed that a minimum factor of 10 should apply the same as in other pathways and components. This minimum factor reflects that in a limited site inspection, it is likely that information on the actual waste quantity at a site may not be available and a lower value would likely underestimate the actual conditions. Furthermore, if any target is subject to Level I or II contaminant concentrations a minimum hazardous waste quantity factor value of 100 could be assigned.

EPA seeks public input on the following question regarding the calculation of hazardous waste quantity: *How could EPA further take into account the differences in dilution and*

air exchange rates in large industrial buildings as compared to smaller residential and commercial structures when calculating the hazardous waste quantity for the HRS SsI Addition?

The component waste quantity is the sum of all the waste quantities for all the regularly occupied structures found in both the AOE and ASC. The component waste quantity factor value assigned is then based on the magnitude of this sum, subject to minimum values. See section 5.0 of the Proposal TSD for supplemental information regarding this topic.

c. Calculation of the Waste Characteristics Factor Category Value—See Section 5.2.1.2.3 of the Proposed HRS Addition

As in all HRS pathways and components, the waste characteristics category value is the product of the toxicity/degradation factor value (or the functional equivalent) and the hazardous waste quantity factor value, scaled so as to be weighted consistently in all pathways. Similar to the likelihood of exposure factor category, the waste characteristics factor category is subject to a maximum value to maintain the balance between factor categories. This approach is consistent with the current HRS structure. See sections 2.2 and 2.4 of the 1988 Revised HRS TSD for supplemental information regarding this approach.

5. Targets—See section 5.2.1.3 of the Proposed HRS Addition

The targets factor is based upon estimates of the expected dose to each receptor and the number and type of receptors present. In a human health risk assessment, it is critical to understand the nature and extent of exposure to individuals, populations, and resources. The relative risk assessment embodied within the current HRS uses the targets factor as an index of the nature and extent of exposure to individuals, populations, resources, if appropriate for the migration or exposure route being evaluated, sensitive environments. This will remain the same in the proposed HRS addition, except sensitive environments will not be considered an eligible target.

a. Identification of Eligible Targets—See Section 5.2.1.3 of the Proposed HRS Addition.

The target factors evaluated by all pathways under the current HRS include the following:

- The most exposed individual (*i.e.*, nearest well for ground water migration, nearest intake for drinking water threat, food chain individual for human food

chain threat, resident individual for resident population threat, and nearest individual for nearby population threat and air migration),

- Populations (including residents, workers, students, and those in daycare),
- Resources (including economic and cultural uses of contaminated resources),
- Sensitive environments (except for the ground water migration pathway). (Examples of sensitive environments include government designated protected areas (*e.g.*, national wildlife refuge), wetlands and critical habitat known to be used by a State or Federally-designated threatened or endangered species.)

See sections 2.5 and 5.1.3 of the current HRS for supplemental information on how eligible targets are identified.

Given that the subsurface intrusion component is proposed to be included as an exposure component within the modified soil exposure and subsurface intrusion pathway, the agency is proposing to use the same target categories used in the current soil exposure pathway, including exposed individual, resident populations, workers, and resources. However, unlike the current soil exposure pathway, workers are proposed to be evaluated as exposed individuals and as part of the population within an area of subsurface contamination instead of being evaluated under a separate worker factor value. See section 5.2.0 and its subsections of the proposed HRS addition. Additionally, sensitive environments are not being considered as eligible targets because exposures related to subsurface intrusion are limited to indoor areas and it is unlikely that sensitive environments would be exposed. See section 5.2.1.3 of the proposed HRS addition.

EPA seeks public input on the following question regarding subsurface source strength: *The HRS SsI Addition considers source strength in delineating ASCs and AOE, in scoring likelihood of exposure, in assigning waste quantity specifically when estimating hazardous constituent quantity and in weighting targets in an ASC. The HRS algorithm for all pathways incorporates the consideration of source strength in determining an HRS site score. Could EPA further take into account source strength in performing an HRS evaluation?*

b. Exposed Individual and Levels of Exposure—See Section 5.2.1.3.1 of the Proposed HRS Addition

This section introduces the methods used to identify and establish the levels of contamination and benchmarks proposed to be used within the subsurface intrusion component. Additionally, the exposed individual factor is discussed, as well as how to apply a factor value based on the benchmarks and the resulting levels of exposure.

i. Identifying Levels of Exposure and Benchmarks for Subsurface Intrusion—See Section 5.2.1.3.1 of the Proposed HRS Addition

For all current HRS pathways, the magnitude of the values assigned to the individual and population factors depend on the concentration of the contamination to which the receptors (targets) are exposed. If receptors are exposed to hazardous substance levels that meet observed release criteria, they are identified as actually contaminated; however, if the receptors are not exposed to hazardous substances that meet the observed release criteria but are within the target area being evaluated, they may be considered potentially contaminated. Potential targets are evaluated because a typical site inspection may not identify the extent of contamination. A site inspection typically includes 1 to 3 days of sampling and investigation activities. These limited investigations may not adequately characterize the annual or longer term indoor exposure levels (see page 4 of the 1988 SAB report and section 6.0 of the Proposal TSD), especially in the case of subsurface intrusion where seasonal and temporal fluctuations can significantly impact the rate of subsurface intrusion.

Actually contaminated targets are further divided into two categories based on whether the hazardous substance concentrations are above standard health-based benchmarks (or for environmental receptors, ambient water quality criteria). If so, they are identified as Level I; if they are not, they are identified as Level II. See section 2.5.2 of the current HRS for a discussion of applicable benchmarks.

EPA is proposing to use a similar target weighting structure in the subsurface intrusion component. (See sections 5.2.1.3.1 and 5.2.1.3.2 of the proposed HRS addition.) Those targets in the AOE are considered actually contaminated, whereas, those in the ASC are considered potentially contaminated. The targets in an AOE are further divided into Level I and II, based

on whether the hazardous substance concentrations are at or above identified health-based benchmarks. EPA is proposing to use the following benchmarks for the subsurface intrusion component:

- Screening concentrations for cancer
- Screening concentrations for noncancer toxicological responses

Targets associated with an observed exposure by direct observation are only considered subject to Level II contamination in all parts of the HRS and EPA is proposing that this remains consistent in the subsurface intrusion component. Furthermore, because intrusion by contaminated ground water is documented by direct observation only, targets residing within a structure subject to intrusion by contaminated ground water are also proposed to be evaluated as Level II (see section 2.5 of the proposed HRS addition).

The targets within an ASC are also further divided based on the type of sample (e.g., gas, soil, water) and the distance of the sample from the targets (e.g., the depth of the sample below the structure). Weighting factors ranging from 0.1 to 0.9 are then assigned accordingly as discussed below in section 5.c.ii. See also section III.H. of the preamble to the current HRS (55 FR 51547, December 14, 1990) for supplemental information.

ii. Exposed Individual—See Section 5.2.1.3.1 of the Proposed HRS Addition

The standard HRS approach for scoring targets includes a measure reflecting the maximum level of exposure to individuals. The evaluation of exposed individuals is proposed to include individuals living, attending school or day care, or working in a regularly occupied structure. The reasonably maximally exposed individuals are those individuals in the eligible target population that are expected to be exposed to the highest concentration of the hazardous substance in question for a significant time. See section V.C.9 of the preamble to the proposed 1988 HRS (53 FR 51978, December 28, 1988) for supplemental information.

EPA is proposing to retain the basic scoring approach used throughout the current HRS for evaluating the exposed individual factor. As is consistent with all pathways, a value of 50 points is assigned if there is any individual exposed to Level I concentrations or 45 points if there is any individual exposed to Level II concentrations. If there are no individuals exposed to Level I or Level II concentrations, but at least one individual is living, attending school or

day care, or working in a regularly occupied structure within an ASC, EPA proposes to assign a value of 20. See section 2.5 of the current HRS for supplemental information as to how EPA addresses exposed individuals within the HRS structure.

c. Population—See Section 5.2.1.3.2 of the Proposed HRS Addition

The population factor is evaluated using media-specific, health-based benchmarks as discussed above. EPA proposes the population factor include all populations qualifying as exposed individuals, including residents, students, workers and those attending day care. However, workers are weighted slightly differently than other exposed individuals to reflect that a worker's exposure is limited to the time present in a workplace. Additionally, as workers may be employed on a full-time or part-time basis, the number of workers present in a structure or subunit is proposed to be adjusted by an appropriate factor reflecting this difference in exposure durations. EPA is proposing to retain the current scoring methodology for weighting populations used throughout the HRS, with actual exposure more heavily weighted than those potentially exposed. The proposed subsurface intrusion component will evaluate populations based on the number of individuals located within an identified AOE (i.e., those populations exposed to Level I and Level II concentrations) and the number of individuals located within an ASC (i.e., potential contamination as determined based on subsurface sampling), which is further subdivided as described in subsection ii below.

i. Weighting of Targets in the Area of Observed Exposure (AOE)—See Sections 5.2.1.3.2.1 and 5.2.1.3.2.2 of the Proposed HRS Addition

EPA is proposing to establish an AOE based on documented contamination meeting observed exposure criteria (either by direct observation or chemical analysis). Consistent with the weighting of populations throughout the HRS (see section 2.5 of the current HRS), the proposed subsurface intrusion component will weight targets subject to Level I contaminant concentrations by a factor of 10 and weight targets subject to Level II contaminant concentrations by a factor of 1. As noted previously, eligible populations also include individuals working in regularly occupied structures. However, the number of workers present in a regularly occupied structure will be adjusted to reflect that their exposure is limited to the time they are in a

workplace. Therefore, the number of full- and part-time workers in a structure or subunit will be identified and divided by an appropriate factor prior to being summed with the number of other individuals present. If information is unavailable to classify a worker as full- or part-time, that worker will be evaluated as full-time.

For example, if a single residence occupied by a family of four was observed to be exposed to hazardous substance concentrations above a media-specific, health-based benchmark, the number of residents would be multiplied by 10 for a factor value of 40. However, if that same family was exposed to a hazardous substance and the hazardous substance concentration was below the applicable benchmark but met the criteria for observed exposure, the number of residents would be multiplied by 1 for a factor value of 4. To ensure the entire population within an AOE is included in the HRS evaluation, both Level I and Level II factor values are counted and summed together.

Within the AOE, EPA is proposing to consider as actually contaminated those populations in regularly occupied structures for which observed exposures have not been established but the structures are surrounded by regularly occupied structures in which observed exposures have been identified, unless evidence indicates otherwise. This action is proposed because it is considered likely that if these structures were sampled during the correct conditions, observed exposures would be identified at levels similar to those in surrounding structures. Targets inferred to be exposed to this contamination will be weighted as Level II as there are no actual sample results to compare against benchmarks. However, EPA has included an exception to allow for situations where site-specific conditions clearly document that there may be no observed exposures in these structures. The rule language states that targets can be inferred to have observed exposures in these situations "unless available information indicates otherwise". This concept of inferred exposure is also included in the existing soil exposure pathway and in the air migration pathway.

In the case of multi-story/multi-subunit structures, all regularly occupied subunits on a level with an observed exposure and all levels below are considered to be within an AOE, unless available information indicates otherwise. For multi-story/multi-subunit structures located within an AOE, but where an observed exposure has not been documented, only those

regularly occupied spaces on the lowest level are considered to be within an AOE, unless available information indicates otherwise. (See sections 5.0.1 and 6.3 of the current HRS.)

ii. Weighting of Targets in the Area of Subsurface Contamination (ASC)—See Section 5.2.1.3.2.3 of the Proposed HRS Addition

EPA is proposing to establish an ASC as defined by documented ground water, slab, soil, semi-enclosed or enclosed crawl space, or soil gas contamination meeting observed release criteria. These areas are included in the subsurface intrusion component due to the potential that limited sampling conducted during a site inspection may not identify that subsurface intrusion is occurring because of the high temporal and spatial variability associated with detecting subsurface intrusion. Temporal and spatial differences can significantly impact the rate at which volatile hazardous substances enter a structure. However, when an ASC has been defined, that area represents a location where subsurface hazardous substances have the potential to intrude into a structure. EPA is limited in its extent of preliminary screening activities, and a single indoor air sampling event is unlikely to identify the full threat posed by subsurface intrusion.

As is consistent with the 1990 HRS, EPA is proposing to weight these potentially exposed targets at a value less than those targets that have been identified to be actually exposed. Due to the variability in subsurface intrusion rates, the potential weighting factor values for targets within an ASC range from 0.1 to 0.9 and depend on where the subsurface contamination has been found. Using EPA's vapor intrusion attenuation factors published in 2012 and basic subsurface contaminant transport concepts, EPA developed a relatively proportional weighting for potential targets based on the sampling media being considered. This range of weighting factors represents the proportional probability of a target to be exposed as a result of contaminant intrusion from the subsurface in a variety of likely sampling scenarios. The potential target weighting factors presented in the proposed addition do not directly correspond to attenuation factors in themselves. Instead, the relative weighting between these values is based on the published attenuation factors. These weighting factors are presented in this manner to project that contaminants found in a crawl space sample, for example, are more likely to attenuate less before entering into an

overlying structure, and thus more likely to pose a threat, as opposed to those found in a shallow ground water sample.

EPA is proposing that the weighting of potential targets also reflect the distance to or the depth at which contamination is found. For any contamination found at a horizontal or vertical distance of five feet or less from a regularly occupied structure's foundation, EPA is proposing to assign a minimum weighting factor of 0.4 regardless of the sample medium. Similarly, EPA is proposing to assign a weighing factor of 0.1 to any contamination found or inferred at depths greater than 30 feet regardless of sampling medium. These minimum weighting values are in response to an analysis of the data used in deriving published attenuation values. The attenuation values were published based on real-world sampling data collected from numerous sites across the United States. The majority of sampling data collected as part of this effort came from sites where contamination was generally found at depths less than 30 feet. Therefore, EPA considers the attenuation factors and relative weightings between them to only be appropriate for shallower depths. The minimum value for the upper five feet allows consideration of sites where contamination is found at extremely shallow depths and therefore has a minimal vertical distance to travel before intruding into a regularly occupied structure.

In the case of multi-story/multi-subunit structures, all regularly occupied subunits on a level above one where an observed exposure has been documented or inferred, or where a gaseous indoor air sample meeting observed release criteria is present, are considered to be located within an ASC, unless available information indicates otherwise. For multi-story/multi-subunit structures located only within an ASC, only those regularly occupied subunits within the lowest level are considered in an HRS evaluation.

EPA proposes eligible populations include individuals living in, or attending school or day care in the structure, and workers in regularly occupied structures. The number of workers is adjusted to reflect that their exposure is limited to the time they are in a workplace. Therefore, the number of full- and part-time workers in a structure or subunit will be divided by an appropriate factor prior to being summed with the number of other individuals present. If information is unavailable to classify a worker as full-

or part-time, that worker will be evaluated as full-time.

The proposed weighting factors for exposed individuals in any structure within an ASC are based on the probability of contamination entering into occupied structures from the subsurface. The weighting factors reflect depth to contamination, sample type, and media. The magnitude of the factor is also based on attenuation factors from current scientific literature including EPA's 2012 vapor intrusion attenuation factors publication. Additional information regarding this analysis is presented in section 6.0 of the Proposal TSD.

d. Resources—See Section 5.2.1.3.3 of the Proposed HRS Addition

The resources target factor is evaluated in all pathways under the current HRS. A factor value of five is assigned if at least one resource is present and a factor value of zero if no resource is present. Eligible resources are pathway-, component-, or threat-specific. These resources represent uses of a contaminated medium or area where exposures occur and are not covered by the other identified targets. For example, resources within the air migration pathway include commercial agriculture or silviculture and major/designated recreation areas. The resident population threat also includes commercial livestock production or grazing. See section III.I of the preamble to the current HRS (55 FR 51549, December 14, 1990) for supplemental information.

Because subsurface intrusion is limited to indoor spaces, EPA is proposing to include regularly occupied structures that are located within a defined AOE or ASC (as previously discussed in section VI.B.2 of this preamble) and in which populations, not including those already counted as exposed individuals, may be exposed to contamination due to subsurface intrusion. For example, libraries, recreational facilities, and religious or tribal structures used by individuals, may qualify as eligible resources.

e. Calculation of the Targets Factor Category Value—See Section 5.2.1.3.4 of the Proposed HRS Addition

As is done throughout the HRS, EPA is proposing to sum all of the target factor values together to establish a target factor category value in calculating the proposed subsurface intrusion component score. Unlike the likelihood of exposure and waste characteristics factor category values in all HRS pathways, which are subject to maximum values, the target factor

category is not limited in the current HRS. This is to ensure that all individuals, populations, resources, and sensitive environments are included; thereby, representing the full relative risk associated with the identified threat. It is also consistent with the direction of CERCLA section 105 to amend the HRS “to the maximum extent feasible” to address “the relative degree of risk to human health and the environment” by putting the emphasis on the number of receptors exposed to contamination.

6. Calculation and Incorporation of the SsI Component Score Into the HRS Site Score

The following subsections summarize the calculation of the subsurface intrusion component score, how the component score is then used in the calculation of the soil exposure and subsurface intrusion pathway score, and how, in turn, the pathway score is subsequently incorporated into the HRS site score.

a. Calculation of the SsI Component Score—See Section 5.2.2 of the Proposed HRS Addition

EPA is proposing to calculate the subsurface intrusion component score using the same algorithm as in other components and pathways of the HRS. (See section 2.2 of the 1988 Revised HRS TSD.) This involves multiplying the likelihood of exposure factor category value times the waste characteristics factor category value times the targets factor category value and dividing that value by a weighting factor so that it has equal magnitude to other component scores (subject to a maximum value). The values are multiplied to reflect that it is the product of these values that represents a relative risk level.

In a relative risk (or in a site-specific risk) assessment, the use of the product of the factor category values is considered appropriate because the magnitude of each of the factor category values reflects the probability of exposure occurring; Likelihood of releases reflects the probability of exposure actually occurring, waste characteristics reflects the probable quantity and duration of the exposure, and targets reflect the probable number of receptors at risk. Thus, since each factor category value reflects a probability in a series of events, the overall probability associated with the series is the product of the individual probabilities. For example, if any factor category value is zero, such as when there are no targets exposed or potentially exposed to subsurface

intrusion, the component score is zero, consistent with there being no risk due to subsurface intrusion.

b. Incorporation of the SsI Component Score Into the Soil Exposure and Subsurface Intrusion Pathway Score—See Section 5.3 of the Proposed HRS Addition

The score for this restructured pathway is proposed to be a combination of two component scores. The subsurface intrusion component score is added to the soil exposure component score (subject to a maximum value) to determine the pathway score. The two component scores are proposed to be additive because the populations may be subjected to exposures separately via both routes: The soil exposure component reflects exposures to people when outside a structure and focuses on ingestion, while the subsurface intrusion component reflects exposures to people when inside a structure and focuses on inhalation. Hence, the addition of the two component scores reflects the cumulative potential risk and is not double counting the relative risk.

In addition, a pathway score can be assigned without scoring both the soil exposure and subsurface intrusion components using this approach. It is possible for a site to have only one component evaluated and still reach the same pathway score as under the current HRS. It should be observed that because the scoring of the soil exposure component is not being altered, the soil exposure component would contribute the same score to the overall site score as it would if the subsurface intrusion component is not added.

c. Incorporation of the Soil Exposure and Subsurface Intrusion Pathway Score Into a Site Score—See Section 2.1.1 of the Proposed HRS Addition

EPA is not proposing any changes to the methodology used to assign an overall site score due to the addition of the subsurface intrusion component to the soil exposure pathway and renaming that pathway the soil exposure and subsurface intrusion pathway. The overall site score remains a function of four pathway scores and the same weighting is given to each pathway score as in the current HRS. See section 2.2 of the 1988 Revised HRS TSD for supplemental information on why the existing methodology was chosen.

7. Example Site Scoring Scenarios

To evaluate the proposed subsurface intrusion component and factor category weighting, EPA developed three conceptual site scenarios: One that

would not qualify for the NPL (score below 28.50); one that would qualify marginally for the NPL (score of about 28.50); and one that should clearly qualify for the NPL (site score considerably above 28.50).

The first scenario consists of a ground water plume contaminated with a hazardous substance with moderate toxicity that underlies approximately 3 acres of a residential neighborhood comprised of single-family detached homes. Indoor air samples have been collected from inside two homes and have reported hazardous substance concentrations above background, but below the applicable benchmarks. Additionally, several other occupied structures were sampled for indoor air and slab contaminant concentrations; however, no other detections of hazardous substances were observed. This site would not qualify for the NPL based on available information (*i.e.*, score below 28.50).

The second scenario also consists of a ground water plume contaminated with a hazardous substance with moderate toxicity as in the first scenario, but it has a considerably larger plume and more targets. The ground water plume underlies approximately 20 acres of a residential neighborhood and commercial area comprised of single-family detached homes, a daycare facility, and a single-story office building. Indoor air samples collected inside 19 homes, the daycare facility, and office building have hazardous substance concentrations above the applicable benchmark. Indoor air samples in 5 homes, the daycare facility with approximately 25 children enrolled and 6 full-time and 2 part-time workers, and the office building with 18 full-time workers have hazardous substance concentrations above background, but below the applicable benchmark. The homes and daycare facility were checked for indoor sources of hazardous substances prior to sampling and such sources were removed if found. This site would likely qualify for the NPL based on available information (*i.e.*, score of about 28.50).

The third scenario consists of a ground water plume contaminated with a highly toxic hazardous substance and a larger number of targets than the second scenario. The plume underlies approximately 25 acres of a residential neighborhood and hazardous substance concentrations above a benchmark were detected in indoor air samples from 25 homes and one daycare with approximately 25 children enrolled and 5 full-time workers. Hazardous substance concentrations above background but below benchmarks were

detected within 15 homes. The homes and daycare facility were checked for indoor sources of hazardous substances prior to sampling and such sources were removed if found. Based on available information, this site would qualify for the NPL and would likely achieve the maximum HRS score for a single component and pathway (*i.e.*, 50.00).

Further evaluation of the varying factor values and resulting HRS site scores, along with further discussion of these three scenarios is presented in section 8.1.c of the Proposal TSD.

VII. Summary of Proposed Updates to the HRS (Sections 2, 5, 6, and 7)

A. Addition of an SsI Component to the HRS (Sections 2, 5, and 7)

1. Chapter 5

The proposed addition of a subsurface intrusion component is proposed to be added to the existing Soil Exposure pathway as section 5.2 in Chapter 5 to the current HRS. The new pathway name is proposed as the Soil Exposure and Subsurface Intrusion Pathway. The existing method for evaluating the soil exposure threat will remain unchanged.

2. Chapter 2

Evaluations Common to All Pathways is proposed to be updated to reflect the addition of the subsurface intrusion component to the existing soil exposure pathway. The evaluations for the current four pathways remain unchanged and a comparable evaluation will be added for the subsurface intrusion component.

3. Chapter 7

Sites Containing Radioactive Substances currently reflects how radioactive substances are evaluated in the context of the four current HRS pathways. Updates will be made to reflect how radioactive substances are evaluated using the proposed subsurface intrusion component.

B. Terminology Updates Affecting Specific Sections of the HRS (Sections 2, 5 and 6)

During the development of this proposed addition to the HRS, the agency determined that the following terms should be updated to reflect current terminology and procedures used by EPA in performing risk assessments.

1. Ambient Water Quality Criteria

Ambient Water Quality Criteria (AWQC) are now identified also as National Recommended Water Quality Criteria (NRWQC). In addition, the acute AWQC are now identified as the

Criterion Maximum Concentration (CMC) and the chronic criteria are referred to as the Criterion Continuous Concentration (CCC). (See section 1.1 of the proposed HRS addition.) These criteria are used to determine the level of threat to environmental targets.

2. Reference Concentrations

For inhalation exposures, EPA is adopting the use of Reference Concentrations (RfCs) instead of Reference Doses (RfDs) when determining non-cancer related risk levels. RfCs are used in determining the level of threat to human targets due to possible inhalation and when determining the toxicity of the substances.

3. Cancer Unit Risk

For inhalation exposures, EPA is adopting the use of Inhalation Unit Risk (IUR) instead of cancer slope factors in determining cancer-related risk levels. IURs are used in determining the level of threat to human targets due to possible inhalation and when determining the toxicity of the substances.

4. Weight-of-Evidence Groupings

The 2005 EPA weight-of-evidence groupings supporting the designation of a substance as a human carcinogen have been incorporated into the HRS algorithm for determining the toxicity factor value. (The former EPA weight-of-evidence categories included as part of the 1990 HRS have been retained as EPA has not yet completed assigning all substances to the revised categories and are doing so at the time the EPA substance literature reviews are updated.)

VIII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. This action may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the EO. Any changes made in response to OMB recommendations have been documented in the docket.

EPA prepared an analysis of the potential costs and benefits associated

with this action. This analysis, Addition of a Subsurface Intrusion (SsI) Component to the Hazard Ranking System (HRS): Regulatory Impact Analysis is available in the docket for this action.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2050-0095.

This proposed regulatory change will only affect how EPA and organizations performing work on behalf of EPA (state or tribal partners) conduct site assessments and HRS scoring at sites where certain environmental conditions exist. This proposed regulatory change will result in data collection at these types of sites to allow evaluation under the HRS. EPA expects that the total number of site assessments performed and the number of sites added to the NPL per year will not increase, but rather expects that there will be a realignment and reprioritization of its internal resources and state cooperative agreement funding.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This proposed regulatory change enables the HRS evaluation to directly consider human exposure to hazardous substances that enter building structures through subsurface intrusion. This addition to the HRS would not impose direct impacts on any other entities. For additional discussion on this subject see section 4.9 of the Regulatory Impact Analysis (see the docket for this action).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and

responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. EPA's evaluation of a site using the HRS does not impose any costs on a tribe (except those already in a cooperative agreement relationship with EPA). Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this action, EPA consulted with tribal officials through meetings and correspondence, including a letter sent to all federally recognized tribes asking for comment on the "Notice of Opportunity for Public Input" that was published in the **Federal Register** on January 31, 2011 (76 FR 5370), and public listening sessions regarding the decision to proceed with the development of this action. All tribal comments indicated support for this action.

EPA specifically solicits additional comment on this proposed action from tribal officials.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The site assessment activities affected by this rule are limited in scope and number and rely on existing energy distribution systems. Further, we have concluded that this proposed rule would not significantly expand the energy demand for site assessments, and would not require an entity to conduct any action that would require significant energy use, that would significantly affect energy supply, distribution, or usage. Thus, Executive

Order 13211 does not apply to this action.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. The results of this evaluation are contained in section III.C.4 of this preamble and section 4.3 (and all subsections) and Appendix C of the Regulatory Impact Analysis for this proposed rulemaking. A copy of the Addition of a Subsurface Intrusion (SsI) Component to the Hazard Ranking System (HRS): Regulatory Impact Analysis is available in the docket for this action.

K. Executive Order 12580: Superfund Implementation

Executive Order 12580, section 1(d), states that revisions to the NCP shall be made in consultation with members of the National Response Team (NRT) prior to publication for notice and comment. Revisions shall also be made in consultation with the Director of the Federal Emergency Management Agency (FEMA) and the Nuclear Regulatory Commission (NRC) to avoid inconsistent or duplicative requirements in the emergency planning responsibilities of those agencies. Executive Order 12580 delegates responsibility for revision of the NCP to EPA.

The agency has complied with Executive Order 12580 to the extent that it is related to the addition of a new component to the HRS, through consultation with members of the NRT.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: February 3, 2016.

Gina McCarthy,
Administrator.

For the reasons set out in the preamble, Title 40, Chapter 1 of the Code of Federal Regulations is proposed to be amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

■ 2. Amend Appendix A to Part 300:

■ a. In section 1.1 by:

■ i. Amending by removing the definition heading "Ambient Water Quality Criteria (AWQC) and adding "Ambient Water Quality Criteria (AWQC)/National Recommended Water Quality Criteria", in its place; and removing the text "maximum acute or chronic toxicity" and adding "maximum acute (Criteria Maximum Concentration or CMC) or chronic (Criterion Continuous Concentration or CCC) toxicity." in its place;

■ ii. Adding in alphabetical order the definitions "Channelized flow" and "Crawl space";

■ iii. Revising the definitions "Distance weight" and "Half-life";

■ iv. Amending the definition "HRS pathway" by removing the word "soil," and adding "soil exposure and subsurface intrusion," in its place;

■ v. Adding in alphabetical order the definitions "Indoor air", "Inhalation Unit Risk (IUR)", "Occupied structures", "Preferential subsurface intrusion pathways"; and "Reference concentration (RfC)";

■ vi. Revising the definition "Reference dose (RfD)"; "Screening concentration", and "Slope factor (also referred to as cancer potency factor)";

■ vii. Adding in alphabetical order the definitions "Soil gas", "Soil porosity", "Subslab", "Subsurface Intrusion", "Surficial ground water", "Unit Risk", and "Unsaturated Zone"; and

■ viii. Revising the introductory text of the definition "Weight-of-evidence".

■ b. Revising section 2.0 to include sections 2.0 through 2.5.2;

■ c. Revising section 5.0 to include sections 5.0 through 5.3;

■ d. In section 6.0 by revising Table 6–14, entitled "Health-Based Benchmarks for Hazardous Substances in Air"; and

■ e. In section 7.0 by:

■ i. Revising the table entitled "Table 7–1. HRS Factors Evaluated Differently For Radionuclides";

■ ii. Under Table 7–1, the second undesignated paragraph, revising the third sentence ;

■ iii. Revising sections 7.1, 7.1.1, and 7.1.2; 7.2.3; 7.2.4; 7.2.5.1, 7.2.5.1.1 through 7.2.5.1.3; 7.2.5.2; 7.2.5.3; 7.3, 7.3.1, and 7.3.2; and

■ iv. Adding section 7.3.3.

The revisions and additions read as follows:

Appendix A of Part 300—Hazard Ranking System

* * * * *

1.1 Definitions

* * * * *

Channelized flow: Natural geological or manmade features such as karst, fractures, lava tubes, and utility conduits (e.g., sewer lines), which allow ground water and/or soil gas to move through the subsurface environment more easily.

* * * * *

Crawl space: The enclosed or semi-enclosed area between a regularly occupied structure's foundation (e.g., pier and beam construction) and the ground surface. Crawl space samples are collected to determine the concentration of hazardous substances in the air beneath a regularly occupied structure.

* * * * *

Distance weight: Parameter in the HRS air migration pathway, ground water migration pathway, and the soil exposure component of the soil exposure and subsurface intrusion pathway that reduces the point value assigned to targets as their distance increases from the site. [unitless].

* * * * *

Half-life: Length of time required for an initial concentration of a substance to be halved as a result of loss through decay. The HRS considers five decay processes for determining surface water persistence: Biodegradation, hydrolysis, photolysis, radioactive decay, and volatilization. The HRS considers two decay processes for determining subsurface intrusion degradation: Biodegradation and hydrolysis.

* * * * *

Indoor air: The air present within a structure.

Inhalation Unit Risk (IUR): The upper-bound excess lifetime cancer risk estimated to result from continuous exposure to an agent (i.e., hazardous substance) at a concentration of 1µg/m3 in air.

* * * * *

Occupied structures: Structures with enclosed air space, either where people are present on a regular basis or that were previously occupied but vacated due to a site-related hazardous substance(s).

* * * * *

Preferential subsurface intrusion pathways: Subsurface features such as animal burrows, cracks in walls, spaces around utility lines or drains through which a hazardous substance moves

more easily into a regularly occupied structure.

* * * * *

Reference concentration (RfC): An estimate of a continuous inhalation exposure to the human population that is likely to be without an appreciable risk of deleterious effects during a lifetime.

Reference dose (RfD): An estimate of a daily oral exposure to the human population that is likely to be without an appreciable risk of deleterious effects during a lifetime.

* * * * *

Screening concentration: Media-specific benchmark concentration for a hazardous substance that is used in the HRS for comparison with the concentration of that hazardous substance in a sample from that media. The screening concentration for a specific hazardous substance corresponds to its reference concentration for inhalation exposures or reference dose for oral exposures, as appropriate, and, if the substance is a human carcinogen with either a weight-of-evidence classification of A, B, or C, or a weight-of-evidence classification of carcinogenic to humans, likely to be carcinogenic to humans or suggestive evidence of carcinogenic potential, to that concentration that corresponds to its 10^-6 individual lifetime excess cancer risk for inhalation exposures or for oral exposures, as appropriate.

* * * * *

Slope factor (also referred to as cancer potency factor): Estimate of the probability of response (for example, cancer) per unit intake of a substance over a lifetime. The slope factor is typically used to estimate upper-bound probability of an individual developing cancer as a result of exposure to a particular level of a human carcinogen with either a weight-of-evidence classification of A, B, or C, or a weight-of-evidence classification of carcinogenic to humans, likely to be carcinogenic to humans or having suggestive evidence of carcinogenic potential. [(mg/kg-day)^-1 for non-radioactive substances and (pCi)^-1 for radioactive substances].

Soil gas: The gaseous elements and compounds in the small spaces between particles of soil.

Soil porosity: The degree to which the total volume of soil is permeated with pores or cavities through which fluids (including air or gas) can move. It is typically calculated as the ratio of the pore spaces within the soil to the overall volume of the soil.

* * * * *

Subslab: The area immediately beneath a regularly occupied structure with a basement foundation or a slab-on-grade foundation. Subslab samples are collected to determine the concentration of hazardous substances in the soil gas beneath a home or building.

Subsurface Intrusion: The migration of hazardous substances from the unsaturated zone and/or the surficial ground water into overlying structures.

Surficial ground water: The uppermost saturated zone, typically unconfined.

* * * * *

Unit Risk: The upper-bound excess lifetime cancer risk estimated to result from continuous exposure to an agent (i.e., hazardous substance) at a concentration of 1 µg/L in water, or 1 µg/m³ in air.

Unsaturated Zone: The portion of subsurface between the land surface and the zone of saturation. It extends from the ground surface to the surficial water table (excluding localized or perched water).

* * * * *

Weight-of-evidence: EPA classification system for characterizing the evidence supporting the designation of a substance as a human carcinogen. The EPA weight-of-evidence groupings, depending on the date EPA updated the profile, include either:

* * * * *

2.0 Evaluations Common to Multiple Pathways

2.1 Overview. The HRS site score (S) is the result of an evaluation of four pathways:

- Ground Water Migration (S_{gw}).
- Surface Water Migration (S_{sw}).
- Soil Exposure and Subsurface Intrusion (S_{sessi}).
- Air Migration (S_a).

The ground water and air migration pathways use single threat evaluations, while the surface water migration and soil exposure and subsurface intrusion pathways use multiple threat evaluations. Three threats are evaluated for the surface water migration pathway: Drinking water, human food chain, and environmental. These threats are evaluated for two separate migration components—overland/flood migration and ground water to surface water migration. Two components are evaluated for the soil exposure and subsurface intrusion pathway: Soil exposure and subsurface intrusion. The soil exposure component evaluates two threats: Resident population and nearby population, and the subsurface

intrusion component is a single threat evaluation.

The HRS is structured to provide a parallel evaluation for each of these pathways, components and threats. This section focuses on these parallel evaluations, starting with the calculation of the HRS site score and the individual pathway scores.

2.1.1 Calculation of HRS site score. Scores are first calculated for the individual pathways as specified in sections 2 through 7 and then are combined for the site using the following root-mean-square equation to determine the overall HRS site score, which ranges from 0 to 100:

$$S = \sqrt{\frac{S_{gw}^2 + S_{sw}^2 + S_{sessi}^2 + S_a^2}{4}}$$

2.1.2 Calculation of pathway score. Table 2–1, which is based on the air migration pathway, illustrates the basic parameters used to calculate a pathway score. As Table 2–1 shows, each pathway (component or threat) score is the product of three “factor categories”: Likelihood of release, waste characteristics, and targets. (The soil exposure and subsurface intrusion pathway uses likelihood of exposure rather than likelihood of release.) Each of the three factor categories contains a set of factors that are assigned numerical values and combined as specified in sections 2 through 7. The factor values

are rounded to the nearest integer, except where otherwise noted.

2.1.3 Common evaluations. Evaluations common to all four HRS pathways include:

- Characterizing sources.
- Identifying sources (and, for the soil exposure and subsurface intrusion pathway, areas of observed contamination, areas of observed exposure and/or areas of subsurface contamination (see sections 5.1.0 and 5.2.0)).
- Identifying hazardous substances associated with each source (or area of observed contamination, or observed exposure, or subsurface contamination).
- Identifying hazardous substances available to a pathway.

TABLE 2–1—SAMPLE PATHWAY SCORESHEET

Factor category	Maximum value	Value assigned
Likelihood of Release		
1. Observed Release	550	
2. Potential to Release	500	
3. Likelihood of Release (higher of lines 1 and 2)	550	
Waste Characteristics		
4. Toxicity/Mobility	(a)	
5. Hazardous Waste Quantity	(a)	
6. Waste Characteristics	100	
Targets		
7. Nearest Individual:		
7a. Level I	50	
7b. Level II	45	
7c. Potential Contamination	20	
7d. Nearest Individual (higher of lines 7a, 7b, or 7c)	50	
8. Population	(b)	
8a. Level I	(b)	
8b. Level II	(b)	
8c. Potential Contamination	(b)	
8d. Total Population (lines 8a+8b+8c)	(b)	
9. Resources	5	
10. Sensitive Environments	(b)	
10a. Actual Contamination	(b)	
10b. Potential Environments	(b)	
10c. Sensitive Environments (lines 10a+10b)	(b)	
11. Targets (lines 7d+8d+9+10c)	(b)	
12. Pathway Score is the product of Likelihood of Release, Waste Characteristics, and Targets, divided by 82,500. Pathway scores are limited to a maximum of 100 points.		

^a Maximum value applies to waste characteristics category. The product of lines 4 and 5 is used in Table 2–7 to derive the value for the waste characteristics factor category.

^b There is no limit to the human population or sensitive environments factor values. However, the pathway score based solely on sensitive environments is limited to a maximum of 60 points.

- Scoring likelihood of release (or likelihood of exposure) factor category.
 - Scoring observed release (or observed exposure or observed contamination).
 - Scoring potential to release when there is no observed release.
- Scoring waste characteristics factor category.
 - Evaluating toxicity.
 - Combining toxicity with mobility, persistence, degradation and/or bioaccumulation (or ecosystem bioaccumulation) potential, as appropriate to the pathway (component or threat).
- Evaluating hazardous waste quantity.
 - Combining hazardous waste quantity with the other waste characteristics factors.
 - Determining waste characteristics factor category value.
- Scoring targets factor category.

—Determining level of contamination for targets.

These evaluations are essentially identical for the three migration pathways (ground water, surface water, and air). However, the evaluations differ in certain respects for the soil exposure and subsurface intrusion pathway.

Section 7 specifies modifications that apply to each pathway when evaluating sites containing radioactive substances.

Section 2 focuses on evaluations common at the pathway, component and threat levels. Note that for the ground water and surface water migration pathways, separate scores are calculated for each aquifer (see section 3.0) and each watershed (see sections 4.1.1.3 and 4.2.1.5) when determining the pathway scores for a site. Although the evaluations in section 2 do not vary when different aquifers or watersheds are scored at a site, the specific factor values (for example, observed release, hazardous waste quantity, toxicity/mobility) that result from these evaluations can vary by aquifer and by

watershed at the site. This can occur through differences both in the specific sources and targets eligible to be evaluated for each aquifer and watershed and in whether observed releases can be established for each aquifer and watershed. Such differences in scoring at the aquifer and watershed level are addressed in sections 3 and 4, not section 2.

2.2 Characterize sources. Source characterization includes identification of the following:

- Sources (and areas of observed contamination, areas of observed exposure or areas of subsurface contamination) at the site.
- Hazardous substances associated with these sources (or areas of observed contamination, areas of observed exposure or areas of subsurface contamination).
- Pathways potentially threatened by these hazardous substances.

Table 2–2 presents a sample worksheet for source characterization.

2.2.1 Identify sources. For the three migration pathways, identify the sources at the site that contain hazardous substances. Identify the migration pathway(s) to which each source applies. For the soil exposure and subsurface intrusion pathway, identify areas of observed contamination, areas of observed exposure, and/or areas of subsurface contamination at the site (see sections 5.1.0 and 5.2.0).

Table 2–2—Sample Source Characterization Worksheet

Source: _____
 A. Source dimensions and hazardous waste quantity.
 Hazardous constituent quantity: _____
 Hazardous wastestream quantity: _____
 Volume: _____
 Area: _____
 Area of observed contamination: _____
 Area of observed exposure: _____
 Area of subsurface contamination: _____
 B. Hazardous substances associated with the source.

2.2.2 *Identify hazardous substances associated with a source.* For each of the three migration pathways, consider those hazardous substances documented in a source (for example, by sampling, labels, manifests, oral or written statements) to be associated with that source when evaluating each pathway. In some instances, a hazardous substance can be documented as being present at a site (for example, by labels, manifests, oral or written statements), but the specific source(s) containing that hazardous substance cannot be documented. For the three migration pathways, in those instances when the specific source(s) cannot be documented for a hazardous substance, consider the hazardous substance to be present in each source at the site, except sources for which definitive information indicates that the hazardous substance was not or could not be present.

For an area of observed contamination in the soil exposure component of the soil exposure and subsurface intrusion pathway, consider only those hazardous substances that meet the criteria for observed contamination for that area (see section 5.1.0) to be associated with that area when evaluating the pathway.

For an area of observed exposure or area of subsurface contamination (see section 5.2.0) in the subsurface intrusion component of the soil exposure and subsurface intrusion pathway, consider only those hazardous substances that:

- Meet the criteria for observed exposure, or
- Meet the criteria for observed release in an area of subsurface contamination and has a vapor pressure greater than or equal to one torr or a Henry's constant greater than or equal to 10^{-5} atm-m³/mol, or
- Meet the criteria for an observed release in a structure within, or in a sample from below, an area of observed exposure and has a vapor pressure greater than or equal to one torr or a Henry's constant greater than or equal to 10^{-5} atm-m³/mol.

2.2.3 *Identify hazardous substances available to a pathway.* In evaluating each migration pathway, consider the following hazardous substances available to migrate from the sources at the site to the pathway:

- Ground water migration.
- Hazardous substances that meet the criteria for an observed release (see section 2.3) to ground water.

— All hazardous substances associated with a source with a ground water containment factor value greater than 0 (see section 3.1.2.1).

- Surface water migration—overland/flood component.

— Hazardous substances that meet the criteria for an observed release to surface water in the watershed being evaluated.

— All hazardous substances associated with a source with a surface water containment factor value greater than 0 for the watershed (see sections 4.1.2.1.2.1.1 and 4.1.2.1.2.2.1).

- Surface water migration—ground water to surface water component.

— Hazardous substances that meet the criteria for an observed release to ground water.

— All hazardous substances associated with a source with a ground water containment factor value greater than 0 (see sections 4.2.2.1.2 and 3.1.2.1).

- Air migration.

— Hazardous substances that meet the criteria for an observed release to the atmosphere.

— All gaseous hazardous substances associated with a source with a gas containment factor value greater than 0 (see section 6.1.2.1.1).

— All particulate hazardous substances associated with a source with a particulate containment factor value greater than 0 (see section 6.1.2.2.1).

- For each migration pathway, in those instances when the specific source(s) containing the hazardous substance cannot be documented, consider that hazardous substance to be available to migrate to the pathway when it can be associated (see section 2.2.2) with at least one source having a containment factor value greater than 0 for that pathway.

In evaluating the soil exposure and subsurface intrusion pathway, consider the following hazardous substances available to the pathway:

- Soil exposure component—resident population threat.

— All hazardous substances that meet the criteria for observed contamination at the site (see section 5.1.0).

- Soil exposure component—nearby population threat.

— All hazardous substances that meet the criteria for observed contamination at areas with an attractiveness/accessibility factor

value greater than 0 (see section 5.1.2.1.1).

- Subsurface intrusion component.

— All hazardous substances that meet the criteria for observed exposure at the site (see section 5.2.0).

— All hazardous substances with a vapor pressure greater than or equal to one torr or a Henry's constant greater than or equal to 10^{-5} atm-m³/mol that meet the criteria for an observed release in an area of subsurface contamination (see section 5.2.0).

— All hazardous substances that meet the criteria for an observed release in a structure within, or in a sample from below, an area of observed exposure (see section 5.2.0).

2.3 *Likelihood of release.* Likelihood of release is a measure of the likelihood that a waste has been or will be released to the environment. The likelihood of release factor category is assigned the maximum value of 550 for a migration pathway whenever the criteria for an observed release are met for that pathway. If the criteria for an observed release are met, do not evaluate potential to release for that pathway. When the criteria for an observed release are not met, evaluate potential to release for that pathway, with a maximum value of 500. The evaluation of potential to release varies by migration pathway (see sections 3, 4 and 6).

Establish an observed release either by direct observation of the release of a hazardous substance into the media being evaluated (for example, surface water) or by chemical analysis of samples appropriate to the pathway being evaluated (see sections 3, 4 and 6). The minimum standard to establish an observed release by chemical analysis is analytical evidence of a hazardous substance in the media significantly above the background level. Further, some portion of the release must be attributable to the site. Use the criteria in Table 2–3 as the standard for determining analytical significance. (The criteria in Table 2–3 are also used in establishing observed contamination for the soil exposure component and for establishing areas of observed exposure and areas of subsurface contamination in the subsurface intrusion component of the soil exposure and subsurface intrusion pathway, see section 5.1.0 and section 5.2.0). Separate criteria apply to radionuclides (see section 7.1.1).

TABLE 2–3—OBSERVED RELEASE CRITERIA FOR CHEMICAL ANALYSIS

Sample Measurement < Sample Quantitation Limit.^a
No observed release is established.

TABLE 2-3—OBSERVED RELEASE CRITERIA FOR CHEMICAL ANALYSIS—Continued

Sample Measurement ≥ Sample Quantitation Limit.^a

An observed release is established as follows:

- If the background concentration is not detected (or is less than the detection limit), an observed release is established when the sample measurement equals or exceeds the sample quantitation limit.^a
- If the background concentration equals or exceeds the detection limit, an observed release is established when the sample measurement is 3 times or more above the background concentration.

^a If the sample quantitation limit (SQL) cannot be established, determine if there is an observed release as follows:

If the sample analysis was performed under the EPA Contract Laboratory Program, use the EPA contract-required quantitation limit (CRQL) in place of the SQL.

If the sample analysis is not performed under the EPA Contract Laboratory Program, use the detection limit (DL) in place of the SQL.

2.4 *Waste characteristics.* The waste characteristics factor category includes the following factors: Hazardous waste quantity, toxicity, and as appropriate to the pathway or threat being evaluated, mobility, persistence, degradation, and/or bioaccumulation (or ecosystem bioaccumulation) potential.

2.4.1 *Selection of substance potentially posing greatest hazard.* For all pathways (components and threats), select the hazardous substance potentially posing the greatest hazard for the pathway (component or threat) and use that substance in evaluating the waste characteristics category of the pathway (component or threat). For the three migration pathways (and threats), base the selection of this hazardous substance on the toxicity factor value for the substance, combined with its mobility, persistence, and/or bioaccumulation (or ecosystem bioaccumulation) potential factor values, as applicable to the migration pathway (or threat). For the soil exposure component of the soil exposure and subsurface intrusion pathway, base the selection on the toxicity factor alone. For the subsurface intrusion component of the soil exposure and subsurface intrusion pathway, base the selection on the toxicity factor value for the substance, combined with its degradation factor value. Evaluation of the toxicity factor is specified in section 2.4.1.1. Use and evaluation of the mobility, persistence, degradation, and/or bioaccumulation (or ecosystem bioaccumulation) potential factors vary by pathway (component or threat) and are specified under the appropriate pathway (component or threat) section. Section 2.4.1.2 identifies the specific factors that are combined with toxicity in evaluating each pathway (component or threat).

2.4.1.1 *Toxicity factor.* Evaluate toxicity for those hazardous substances at the site that are available to the pathway being scored. For all pathways and threats, except the surface water environmental threat, evaluate human toxicity as specified below. For the surface water environmental threat, evaluate ecosystem toxicity as specified in section 4.1.4.2.1.1.

Establish human toxicity factor values based on quantitative dose-response parameters for the following three types of toxicity:

- **Cancer**—Use slope factors (also referred to as cancer potency factors) combined with weight-of-evidence ratings for carcinogenicity for all exposure routes except inhalation. Use inhalation unit risk (IUR) for inhalation exposure. If an inhalation unit risk or a slope factor is not available for a substance, use its ED₁₀ value to estimate a slope factor as follows:

$$\text{Slope factor} = \frac{1}{6 (ED_{10})}$$

- **Noncancer toxicological responses of chronic exposure**—use reference dose (RfD) or reference concentration (RfC) values as applicable.

- **Noncancer toxicological responses of acute exposure**—use acute toxicity parameters, such as the LD₅₀.

Assign human toxicity factor values to a hazardous substance using Table 2-4, as follows:

- If RfD/RfC and slope factor/inhalation unit risk values are available for the hazardous substance, assign the substance a value from Table 2-4 for each. Select the higher of the two values assigned and use it as the overall toxicity factor value for the hazardous substance.
- If either an RfD/RfC or slope factor/inhalation unit risk value is available,

but not both, assign the hazardous substance an overall toxicity factor value from Table 2-4 based solely on the available value (RfD/RfC or slope factor/inhalation unit risk).

- If neither an RfD/RfC nor slope factor/inhalation unit risk value is available, assign the hazardous substance an overall toxicity factor value from Table 2-4 based solely on acute toxicity. That is, consider acute toxicity in Table 2-4 only when both RfD/RfC and slope factor/IUR values are not available.

- If neither an RfD/RfC, nor slope factor/inhalation unit risk, nor acute toxicity value is available, assign the hazardous substance an overall toxicity factor value of 0 and use other hazardous substances for which information is available in evaluating the pathway.

TABLE 2-4—TOXICITY FACTOR EVALUATION

	Assigned value
Chronic toxicity (Human)	
Reference dose (RfD) (mg/kg-day):	
RfD < 0.0005	10,000
0.0005 ≤ RfD < 0.005	1,000
0.005 ≤ RfD < 0.05	100
0.05 ≤ RfD < 0.5	10
0.5 ≤ RfD	1
RfD not available	0
Reference concentration (RfC) (mg/m ³):	
RfC < 0.0001	10,000
0.0001 ≤ RfC < 0.006	1,000
0.006 ≤ RfC < 0.2	100
0.2 ≤ RfC < 2.0	10
2.0 ≤ RfC	1
RfC not available	0

Carcinogenicity (Human)

A or Carcinogenic to humans	B or Likely to be carcinogenic to humans	C or Suggestive evidence of carcinogenic potential	Assigned value
Weight-of-evidence^a/Slope factor (mg/kg-day) -¹			
0.5 ≤ SF ^b	5 ≤ SF	50 ≤ SF	10,000

Carcinogenicity (Human)

A or Carcinogenic to humans	B or Likely to be carcinogenic to humans	C or Suggestive evidence of carcinogenic potential	Assigned value
0.05 ≤ SF < 0.5	0.5 ≤ SF < 5	5 ≤ SF < 50	1,000
SF < 0.05	0.05 ≤ SF < 0.5	0.5 ≤ SF < 5	100
—	SF < 0.05	SF < 0.5	10
Slope factor not available	Slope factor not available	Slope factor not available	0

Weight-of-evidence^a/Inhalation unit risk (μg/m³)

0.00004 ≤ IUR ^c	0.0004 ≤ IUR	0.004 ≤ IUR	10,000
0.00001 ≤ IUR < 0.00004	0.0001 ≤ IUR < 0.0004	0.001 ≤ IUR < 0.004	1,000
IUR < 0.00001	0.00001 ≤ IUR < 0.0001	0.0001 ≤ IUR < 0.001	100
—	< 0.00001	IUR < 0.0001	10
Inhalation unit risk not available	Inhalation unit risk not available	Inhalation unit risk not available	0

^aA, B, and C, as well as Carcinogenic to humans, Likely to be carcinogenic to humans, and Suggestive evidence of carcinogenic potential refer to weight-of-evidence categories. Assign substances with a weight-of-evidence category of D (inadequate evidence of carcinogenicity) or E (evidence of lack of carcinogenicity), as well as inadequate information to assess carcinogenic potential and not likely to be carcinogenic to humans a value of 0 for carcinogenicity.

^bSF = Slope factor.

^cIUR = Inhalation Unit Risk.

Acute Toxicity (Human)

Oral LD ₅₀ (mg/kg)	Dermal LD ₅₀ (mg/kg)	Dust or mist LC ₅₀ (mg/l)	Gas or vapor LC ₅₀ (ppm)	Assigned value
LD ₅₀ < 5	LD ₅₀ < 2	LC ₅₀ < 0.2	LC ₅₀ < 20	1,000
5 ≤ LD ₅₀ < 50	2 ≤ LD ₅₀ < 20	0.2 ≤ LC ₅₀ < 2	20 ≤ LC ₅₀ < 200	100
50 ≤ LD ₅₀ < 500	20 ≤ LD ₅₀ < 200	2 ≤ LC ₅₀ < 20	200 ≤ LC ₅₀ < 2,000	10
500 ≤ LD ₅₀	200 ≤ LD ₅₀	20 ≤ LC ₅₀	2,000 ≤ LC ₅₀	1
LD ₅₀ not available	LD ₅₀ not available	LD ₅₀ not available	LD ₅₀ not available	0

If a toxicity factor value of 0 is assigned to all hazardous substances available to a particular pathway (that is, insufficient toxicity data are available for evaluating all the substances), use a default value of 100 as the overall human toxicity factor value for all hazardous substances available to the pathway. For hazardous substances having usable toxicity data for multiple exposure routes (for example, inhalation and ingestion), consider all exposure routes and use the highest assigned value, regardless of exposure route, as the toxicity factor value.

For HRS purposes, assign both asbestos and lead (and its compounds) a human toxicity factor value of 10,000.

Separate criteria apply for assigning factor values for human toxicity and ecosystem toxicity for radionuclides (see sections 7.2.1 and 7.2.2).

2.4.1.2 Hazardous substance selection. For each hazardous substance evaluated for a migration pathway (or threat), combine the human toxicity factor value (or ecosystem toxicity factor value) for the hazardous substance with a mobility, persistence, and/or bioaccumulation (or ecosystem bioaccumulation) potential factor value as follows:

- Ground water migration.

—Determine a combined human toxicity/mobility factor value for the

hazardous substance (see section 3.2.1).

- Surface water migration—overland/flood migration component.

—Determine a combined human toxicity/persistence factor value for the hazardous substance for the drinking water threat (see section 4.1.2.2.1).

—Determine a combined human toxicity/persistence/bioaccumulation factor value for the hazardous substance for the human food chain threat (see section 4.1.3.2.1).

—Determine a combined ecosystem toxicity/persistence/bioaccumulation factor value for the hazardous substance for the environmental threat (see section 4.1.4.2.1).

- Surface water migration—ground water to surface water migration component.

—Determine a combined human toxicity/mobility/persistence factor value for the hazardous substance for the drinking water threat (see section 4.2.2.2.1).

—Determine a combined human toxicity/mobility/persistence/bioaccumulation factor value for the hazardous substance for the human food chain threat (see section 4.2.3.2.1).

—Determine a combined ecosystem toxicity/mobility/persistence/

bioaccumulation factor value for the hazardous substance for the environmental threat (see section 4.2.4.2.1).

- Air migration.
- Determine a combined human toxicity/mobility factor value for the hazardous substance (see section 6.2.1).

Determine each combined factor value for a hazardous substance by multiplying the individual factor values appropriate to the pathway (or threat). For each migration pathway (or threat) being evaluated, select the hazardous substance with the highest combined factor value and use that substance in evaluating the waste characteristics factor category of the pathway (or threat).

For the soil exposure and subsurface intrusion pathway, determine toxicity and toxicity/degradation factor values as follows:

- Soil exposure and subsurface intrusion—soil exposure component.
- Select the hazardous substance with the highest human toxicity factor value from among the substances that meet the criteria for observed contamination for the threat evaluated and use that substance in evaluating the waste characteristics factor category (see section

- 5.1.1.2.1).
- Soil exposure and subsurface intrusion—subsurface intrusion component.
 - Determine a combined human toxicity/degradation factor value for each hazardous substance being evaluated that:
 - Meets the criteria for observed exposure, or
 - Meets the criteria for observed release in an area of subsurface contamination and has a vapor pressure greater than or equal to one torr or a Henry's constant greater than or equal to 10^{-5} atm-m³/mol, or
 - Meets the criteria for an observed release in a structure within, or in a sample from below, an area of observed exposure and has a vapor pressure greater than or equal to one torr or a Henry's constant greater than or equal to 10^{-5} atm-m³/mol.
 - Select the hazardous substance with the highest combined factor value and use that substance in evaluating the waste characteristics factor category (see sections 5.2.1.2.1 and 5.2.1.2).

2.4.2 Hazardous waste quantity.

Evaluate the hazardous waste quantity factor by first assigning each source (or area of observed contamination, area of observed exposure or area of subsurface contamination) a source hazardous waste quantity value as specified below. Sum these values to obtain the hazardous waste quantity factor value for the pathway being evaluated.

In evaluating the hazardous waste quantity factor for the three migration pathways, allocate hazardous substances and hazardous wastestreams to specific sources in the manner specified in section 2.2.2, except: Consider hazardous substances and hazardous wastestreams that cannot be allocated to any specific source to constitute a separate "unallocated source" for purposes of evaluating only this factor for the three migration pathways. Do not, however, include a hazardous substance or hazardous wastestream in the unallocated source for a migration pathway if there is definitive information indicating that the substance or wastestream could only have been placed in sources with a containment factor value of 0 for that migration pathway.

In evaluating the hazardous waste quantity factor for the soil exposure component of the soil exposure and subsurface intrusion pathway, allocate to each area of observed contamination only those hazardous substances that

meet the criteria for observed contamination, for that area of observed contamination and only those hazardous wastestreams that contain hazardous substances that meet the criteria for observed contamination for that area of observed contamination. Do not consider other hazardous substances or hazardous wastestreams at the site in evaluating this factor for the soil exposure component of the soil exposure and subsurface intrusion pathway.

In evaluating the hazardous waste quantity factor for the subsurface intrusion component of the soil exposure and subsurface intrusion pathway, allocate to each area of observed exposure or area of subsurface contamination only those hazardous substances and hazardous wastestreams that contain hazardous substances that:

- Meet the criteria for observed exposure, or
- Meet the criteria for observed release in a structure within, or in a sample from below, an area of observed exposure and has a vapor pressure greater than or equal to one torr or a Henry's constant greater than or equal to 10^{-5} atm-m³/mol, or
- Meet the criteria for an observed release in a structure within, or in a sample from below, an area of observed exposure and has a vapor pressure greater than or equal to one torr or a Henry's constant greater than or equal to 10^{-5} atm-m³/mol.

Do not consider other hazardous substances or hazardous wastestreams at the site in evaluating this factor for the subsurface intrusion component of the soil exposure and subsurface intrusion pathway. When determining the hazardous waste quantity for multi-subunit structures, use the procedures identified in section 5.2.1.2.2.

2.4.2.1 *Source hazardous waste quantity.* For each of the three migration pathways, assign a source hazardous waste quantity value to each source (including the unallocated source) having a containment factor value greater than 0 for the pathway being evaluated. Consider the unallocated source to have a containment factor value greater than 0 for each migration pathway.

For the soil exposure component of the soil exposure and subsurface intrusion pathway, assign a source hazardous waste quantity value to each area of observed contamination, as applicable to the threat being evaluated.

For the subsurface intrusion component of the soil exposure and subsurface intrusion pathway, assign a source hazardous waste quantity value to each regularly occupied structure within an area of observed exposure or

an area of subsurface contamination that has a structure containment factor value greater than 0.

For determining all hazardous waste quantity calculations except for an unallocated source or an area of subsurface contamination, evaluate using the following four measures in the following hierarchy:

- Hazardous constituent quantity.
- Hazardous wastestream quantity.
- Volume.
- Area.

For the unallocated source, use only the first two measures. For an area of subsurface contamination, evaluate non-radioactive hazardous substances using only the last two measures and evaluate radioactive hazardous substances using hazardous wastestream quantity only. See also section 7.0 regarding the evaluation of radioactive substances.

Separate criteria apply for assigning a source hazardous waste quantity value for radionuclides (see section 7.2.5).

2.4.2.1.1 *Hazardous constituent quantity.* Evaluate hazardous constituent quantity for the source (or area of observed contamination) based solely on the mass of CERCLA hazardous substances (as defined in CERCLA section 101(14), as amended) allocated to the source (or area of observed contamination), except:

- For a hazardous waste listed pursuant to section 3001 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6901 *et seq.*, determine its mass for the evaluation of this measure as follows:

—If the hazardous waste is listed solely for Hazard Code T (toxic waste), include only the mass of constituents in the hazardous waste that are CERCLA hazardous substances and not the mass of the entire hazardous waste.

— If the hazardous waste is listed for any other Hazard Code (including T plus any other Hazard Code), include the mass of the entire hazardous waste.

- For a RCRA hazardous waste that exhibits the characteristics identified under section 3001 of RCRA, as amended, determine its mass for the evaluation of this measure as follows:

—If the hazardous waste exhibits only the characteristic of toxicity (or only the characteristic of EP toxicity), include only the mass of constituents in the hazardous waste that are CERCLA hazardous substances and not the mass of the entire hazardous waste.

—If the hazardous waste exhibits any other characteristic identified under

section 3001 (including any other characteristic plus the characteristic of toxicity [or the characteristic of EP toxicity]), include the mass of the entire hazardous waste.

Based on this mass, designated as C, assign a value for hazardous constituent quantity as follows:

- For the migration pathways, assign the source a value for hazardous constituent quantity using the Tier A equation of Table 2–5.
- For the soil exposure and subsurface intrusion pathway—soil exposure component, assign the area of observed contamination a value using

the Tier A equation of Table 5–2 (section 5.1.1.2.2).

- For the soil exposure and subsurface intrusion pathway—subsurface intrusion component, assign the area of observed exposure a value using the Tier A equation of Table 5–18 (section 5.2.1.2.2).

If the hazardous constituent quantity for the source (or area of observed contamination or area of observed exposure) is adequately determined (that is, the total mass of all CERCLA hazardous substances in the source and releases from the source [or in the area of observed contamination or area of observed exposure] is known or is

estimated with reasonable confidence), do not evaluate the other three measures discussed below. Instead assign these other three measures a value of 0 for the source (or area of observed contamination or area of observed exposure) and proceed to section 2.4.2.1.5.

If the hazardous constituent quantity is not adequately determined, assign the source (or area of observed contamination or area of observed exposure) a value for hazardous constituent quantity based on the available data and proceed to section 2.4.2.1.2.

TABLE 2–5—HAZARDOUS WASTE QUANTITY EVALUATION EQUATIONS

Tier	Measure	Units	Equation for assigning value ^a
A	Hazardous constituent quantity (C)	lb	C
B ^b	Hazardous wastestream quantity (W)	lb	W/5,000
C ^b	Volume (V).		
	Landfill	yd ³	V/2,500
	Surface impoundment	yd ³	V/2.5
	Surface impoundment (buried/backfilled)	yd ³	V/2.5
	Drums ^c	gallon	V/2.5
	Tanks and containers other than drums	yd ³	V/2.5
	Contaminated soil	yd ³	V/2,500
	Pile	yd ³	V/2.5
	Other	yd ³	V/2.5
D ^b	Area (A).		
	Landfill	ft ²	A/3,400
	Surface impoundment	ft ²	A/13
	Surface impoundment (buried/backfilled)	ft ²	A/13
	Land treatment	ft ²	A/270
	Pile ^d	ft ²	A/13
	Contaminated soil	ft ²	A/34,000

^a Do not round to nearest integer.

^b Convert volume to mass when necessary: 1 ton = 2,000 pounds = 1 cubic yard = 4 drums = 200 gallons.

^c If actual volume of drums is unavailable, assume 1 drum = 50 gallons.

^d Use land surface area under pile, not surface area of pile.

2.4.2.1.2 *Hazardous wastestream quantity.* Evaluate hazardous wastestream quantity for the source (or area of observed contamination or area of observed exposure) based on the mass of hazardous wastestreams plus the mass of any additional CERCLA pollutants and contaminants (as defined in CERCLA section 101[33], as amended) that are allocated to the source (or area of observed contamination or area of observed exposure). For a wastestream that consists solely of a hazardous waste listed pursuant to section 3001 of RCRA, as amended or that consists solely of a RCRA hazardous waste that exhibits the characteristics identified under section 3001 of RCRA, as amended, include the mass of that entire hazardous waste in the evaluation of this measure.

Based on this mass, designated as W, assign a value for hazardous wastestream quantity as follows:

- For the migration pathways, assign the source a value for hazardous wastestream quantity using the Tier B equation of Table 2–5.
- For the soil exposure and subsurface intrusion pathway—soil exposure component, assign the area of observed contamination a value using the Tier B equation of Table 5–2 (section 5.1.1.2.2).
- For the soil exposure and subsurface intrusion pathway—subsurface intrusion component, assign the area of observed exposure a value using the Tier B equation of Table 5–18 (section 5.2.1.2.2).

Do not evaluate the volume and area measures described below if the source

is the unallocated source or if the following condition applies:

- The hazardous wastestream quantity for the source (or area of observed contamination) is adequately determined—that is, total mass of all hazardous wastestreams and CERCLA pollutants and contaminants for the source and releases from the source (or for the area of observed contamination) is known or is estimated with reasonable confidence.

If the source is the unallocated source or if this condition applies, assign the volume and area measures a value of 0 for the source (or area of observed contamination) and proceed to section 2.4.2.1.5. Otherwise, assign the source (or area of observed contamination) a value for Hazardous wastestream quantity based on the available data and proceed to section 2.4.2.1.3.

2.4.2.1.3 *Volume*. Evaluate the volume measure using the volume of the source (or the volume of the area of observed contamination, area of observed exposure, or area of subsurface contamination). For the soil exposure and subsurface intrusion pathway, restrict the use of the volume measure to those areas of observed contamination, areas of observed exposure, or areas of subsurface contamination as specified in sections 5.1.1.2.2 and 5.2.1.2.2.

Based on the volume, designated as V, assign a value to the volume measure as follows:

- For the migration pathways, assign the source a value for volume using the appropriate Tier C equation of Table 2–5.
- For the soil exposure and subsurface intrusion pathway—soil exposure component, assign the area of observed contamination a value for volume using the appropriate Tier C equation of Table 5–2 (section 5.1.1.2.2).
- For the soil exposure and subsurface intrusion pathway—subsurface intrusion component, assign the value based on the volume of the regularly occupied structures within the area of observed exposure or area of subsurface contamination using the Tier C equation of Table 5–18 (section 5.2.1.2.2).

If the volume of the source (or volume of the area of observed contamination, area of observed exposure, or area of subsurface contamination, if applicable) can be determined, do not evaluate the area measure. Instead, assign the area measure a value of 0 and proceed to section 2.4.2.1.5. If the volume cannot be determined (or is not applicable for the soil exposure and subsurface intrusion pathway), assign the source (or area of observed contamination, area of observed exposure, or area of subsurface contamination) a value of 0 for the volume measure and proceed to section 2.4.2.1.4.

2.4.2.1.4 *Area*. Evaluate the area measure using the area of the source (or the area of the area of observed contamination, area of observed exposure, or area of subsurface contamination). Based on this area, designated as A, assign a value to the area measure as follows:

- For the migration pathways, assign the source a value for area using the appropriate Tier D equation of Table 2–5.
- For the soil exposure and subsurface intrusion pathway—soil exposure component, assign the area of observed contamination a value for area using the appropriate Tier D equation of Table 5–2 (section 5.1.1.2.2).

- For the soil exposure and subsurface intrusion pathway—subsurface intrusion component, assign a value based on the area of regularly occupied structures within the area of observed exposure or area of subsurface contamination using the Tier D equation of Table 5–18 (section 5.2.1.2.2).

2.4.2.1.5 *Calculation of source hazardous waste quantity value*. Select the highest of the values assigned to the source (or areas of observed contamination, areas of observed exposure, or areas of subsurface contamination) for the hazardous constituent quantity, hazardous wastestream quantity, volume, and area measures. Assign this value as the source hazardous waste quantity value. Do not round to the nearest integer.

2.4.2.2 *Calculation of hazardous waste quantity factor value*. Sum the source hazardous waste quantity values assigned to all sources (including the unallocated source) or areas of observed contamination, areas of observed exposure, or areas of subsurface contamination for the pathway being evaluated and round this sum to the nearest integer, except: If the sum is greater than 0, but less than 1, round it to 1. Based on this value, select a hazardous waste quantity factor value for the pathway from Table 2–6.

TABLE 2–6—HAZARDOUS WASTE QUANTITY FACTOR VALUES

Hazardous waste quantity value	Assigned value
0	0
1 ^a to 100	1
Greater than 100 to 10,000	100
Greater than 10,000 to 1,000,000	10,000
Greater than 1,000,000	1,000,000

^aIf the hazardous waste quantity value is greater than 0, but less than 1, round it to 1 as specified in text.

^bFor the pathway, if hazardous constituent quantity is not adequately determined, assign a value as specified in the text; do not assign the value of 1.

For a migration pathway, if the hazardous constituent quantity is adequately determined (see section 2.4.2.1.1) for all sources (or all portions of sources and releases remaining after a removal action), assign the value from Table 2–6 as the hazardous waste quantity factor value for the pathway. If the hazardous constituent quantity is not adequately determined for one or more sources (or one or more portions of sources or releases remaining after a removal action) assign a factor value as follows:

- If any target for that migration pathway is subject to Level I or Level II

concentrations (see section 2.5), assign either the value from Table 2–6 or a value of 100, whichever is greater, as the hazardous waste quantity factor value for that pathway.

- If none of the targets for that pathway is subject to Level I or Level II concentrations, assign a factor value as follows:

—If there has been no removal action, assign either the value from Table 2–6 or a value of 10, whichever is greater, as the hazardous waste quantity factor value for that pathway.

—If there has been a removal action:

- Determine values from Table 2–6 with and without consideration of the removal action.
- If the value that would be assigned from Table 2–6 without consideration of the removal action would be 100 or greater, assign either the value from Table 2–6 with consideration of the removal action or a value of 100, whichever is greater, as the hazardous waste quantity factor value for the pathway.
- If the value that would be assigned from Table 2–6 without consideration of the removal action would be less than 100, assign a value of 10 as the hazardous waste quantity factor value for the pathway.

For the soil exposure component of the soil exposure and subsurface intrusion pathway, if the hazardous constituent quantity is adequately determined for all areas of observed contamination, assign the value from Table 2–6 as the hazardous waste quantity factor value. If the hazardous constituent quantity is not adequately determined for one or more areas of observed contamination, assign either the value from Table 2–6 or a value of 10, whichever is greater, as the hazardous waste quantity factor value.

For the subsurface intrusion component of the soil exposure and subsurface intrusion pathway, if the hazardous constituent quantity is adequately determined for all areas of observed exposure, assign the value from Table 2–6 as the hazardous waste quantity factor value. If the hazardous constituent quantity is not adequately determined for one or more areas of observed exposure, assign either the value from Table 2–6 or assign a factor value as follows:

- If any target for the subsurface intrusion component is subject to Level I or Level II concentrations (see section 2.5), assign either the value from Table 2–6 or a value of 100, whichever is

greater, as the hazardous waste quantity factor value for this component.

- If none of the targets for the subsurface intrusion component is subject to Level I or Level II concentrations and if there has been a removal action, assign a factor value as follows:

—Determine the values from Table 2–6 with and without consideration of the removal action.

—If the value that would be assigned from Table 2–6 without consideration of the removal action would be 100 or greater, assign either the value from Table 2–6 with consideration of the removal action or a value of 100, whichever is greater, as the hazardous waste quantity factor value for the component.

—If the value that would be assigned from Table 2–6 without consideration of the removal action would be less than 100, assign a value of 10 as the hazardous waste quantity factor value for the component.

- Otherwise, if none of the targets for the subsurface intrusion component is subject to Level I or Level II concentrations and there has not been a removal action, assign a value from Table 2–6 or a value of 10, whichever is greater.

2.4.3 Waste characteristics factor category value. Determine the waste characteristics factor category value as specified in section 2.4.3.1 for all pathways and threats, except the surface water-human food chain threat and the surface water-environmental threat. Determine the waste characteristics factor category value for these latter two threats as specified in section 2.4.3.2.

2.4.3.1 Factor category value. For the pathway (component or threat) being evaluated, multiply the toxicity or combined factor value, as appropriate, from section 2.4.1.2 and the hazardous waste quantity factor value from section 2.4.2.2, subject to a maximum product of 1x10⁸. Based on this waste characteristics product, assign a waste characteristics factor category value to the pathway (component or threat) from Table 2–7.

TABLE 2–7—WASTE CHARACTERISTICS FACTOR CATEGORY VALUES

Waste characteristics product	Assigned value
0	0
Greater than 0 to less than 10	1
10 to less than 1x10 ²	2
1x10 ² to less than 1x10 ³	3
1x10 ³ to less than 1x10 ⁴	6
1x10 ⁴ to less than 1x10 ⁵	10
1x10 ⁵ to less than 1x10 ⁶	18
1x10 ⁶ to less than 1x10 ⁷	32

TABLE 2–7—WASTE CHARACTERISTICS FACTOR CATEGORY VALUES—Continued

Waste characteristics product	Assigned value
1x10 ⁷ to less than 1x10 ⁸	56
1x10 ⁸ to less than 1x10 ⁹	100
1x10 ⁹ to less than 1x10 ¹⁰	180
1x10 ¹⁰ to less than 1x10 ¹¹	320
1x10 ¹¹ to less than 1x10 ¹²	560
1x10 ¹²	1,000

2.4.3.2 Factor category value, considering bioaccumulation potential. For the surface water-human food chain threat and the surface water-environmental threat, multiply the toxicity or combined factor value, as appropriate, from section 2.4.1.2 and the hazardous waste quantity factor value from section 2.4.2.2, subject to:

- A maximum product of 1x10¹², and
- A maximum product exclusive of the bioaccumulation (or ecosystem bioaccumulation) potential factor of 1x10⁸.

Based on the total waste characteristics product, assign a waste characteristics factor category value to these threats from Table 2–7.

2.5 Targets. The types of targets evaluated include the following:

- Individual (factor name varies by pathway, component, and threat).
- Human population.
- Resources (these vary by pathway, component, and threat).
- Sensitive environments (included for the surface water migration pathway, air migration pathway, and soil exposure component of the soil exposure and subsurface intrusion pathway).

The factor values that may be assigned to each type of target have the same range for each pathway for which that type of target is evaluated. The factor value for most types of targets depends on whether the target is subject to actual or potential contamination for the pathway and whether the actual contamination is Level I or Level II:

- Actual contamination: Target is associated either with a sampling location that meets the criteria for an observed release (or observed contamination or observed exposure) for the pathway or with an observed release based on direct observation for the pathway (additional criteria apply for establishing actual contamination for the human food chain threat in the surface water migration pathway, see sections 4.1.3.3 and 4.2.3.3). Sections 3 through 6 specify how to determine the targets associated with a sampling location or with an observed release

based on direct observation. Determine whether the actual contamination is Level I or Level II as follows:

—Level I:

- Media-specific concentrations for the target meet the criteria for an observed release (or observed contamination or observed exposure) for the pathway and are at or above media-specific benchmark values. These benchmark values (see section 2.5.2) include both screening concentrations and concentrations specified in regulatory limits (such as Maximum Contaminant Level (MCL) values), or
- For the human food chain threat in the surface water migration pathway, concentrations in tissue samples from aquatic human food chain organisms are at or above benchmark values. Such tissue samples may be used in addition to media-specific concentrations only as specified in sections 4.1.3.3 and 4.2.3.3.

—Level II:

- Media-specific concentrations for the target meet the criteria for an observed release (or observed contamination or observed exposure) for the pathway, but are less than media-specific benchmarks. If none of the hazardous substances eligible to be evaluated for the sampling location has an applicable benchmark, assign Level II to the actual contamination at the sampling location, or
- For observed releases or observed exposures based on direct observation, assign Level II to targets as specified in sections 3, 4, 5, and 6, or
- For the human food chain threat in the surface water migration pathway, concentrations in tissue samples from aquatic human food chain organisms, when applicable, are below benchmark values.

—If a target is subject to both Level I and Level II concentrations for a pathway (or threat), evaluate the target using Level I concentrations for that pathway (or threat).

- Potential contamination: Target is subject to a potential release (that is, target is not associated with actual contamination for that pathway or threat).

Assign a factor value for individual risk as follows (select the highest value that applies to the pathway or threat):

- 50 points if any individual is exposed to Level I concentrations.
- 45 points if any individual is exposed to Level II concentrations.

- Maximum of 20 points if any individual is subject to potential contamination. The value assigned is 20 unless reduced by a distance or dilution weight appropriate to the pathway.

Assign factor values for population and sensitive environments as follows:

- Sum Level I targets and multiply by 10. (Level I is not used for sensitive environments in the soil exposure component of the soil exposure and subsurface intrusion and air migration pathways.)

- Sum Level II targets.
- Multiply potential targets in all but the soil exposure and subsurface intrusion pathway by distance or dilution weights appropriate to the pathway, sum, and divide by 10. Distance or dilution weighting accounts for diminishing exposure with increasing distance or dilution within the different pathways. For targets within an area of subsurface contamination in the subsurface intrusion component of the soil exposure and subsurface intrusion pathway, multiply by a weighting factor as directed in section 5.2.1.3.2.3.

- Sum the values for the three levels.

In addition, resource value points are assigned within all pathways for welfare-related impacts (for example, impacts to agricultural land), but do not depend on whether there is actual or potential contamination.

2.5.1 Determination of level of actual contamination at a sampling location. Determine whether Level I concentrations or Level II concentrations apply at a sampling location (and thus to the associated targets) as follows:

- Select the benchmarks applicable to the pathway (component or threat) being evaluated.

- Compare the concentrations of hazardous substances in the sample (or comparable samples) to their benchmark concentrations for the pathway (component or threat), as specified in section 2.5.2.

- Determine which level applies based on this comparison.

- If none of the hazardous substances eligible to be evaluated for the sampling location has an applicable benchmark, assign Level II to the actual contamination at that sampling location for the pathway (component or threat).

In making the comparison, consider only those samples, and only those hazardous substances in the sample, that meet the criteria for an observed release (or observed contamination or observed exposure) for the pathway, except: Tissue samples from aquatic human food chain organisms may also be used as specified in sections 4.1.3.3

and 4.2.3.3 of the surface water-human food chain threat. If any hazardous substance is present in more than one comparable sample for the sampling location, use the highest concentration of that hazardous substance from any of the comparable samples in making the comparisons.

Treat sets of samples that are not comparable separately and make a separate comparison for each such set.

2.5.2 Comparison to benchmarks.

Use the following media-specific benchmarks for making the comparisons for the indicated pathway (or threat):

- Maximum Contaminant Level Goals (MCLGs)—ground water migration pathway and drinking water threat in surface water migration pathway. Use only MCLG values greater than 0.

- Maximum Contaminant Levels (MCLs)—ground water migration pathway and drinking water threat in surface water migration pathway.

- Food and Drug Administration Action Level (FDAAL) for fish or shellfish—human food chain threat in surface water migration pathway.

- EPA Ambient Water Quality Criteria (AWQC/National Recommended Water Quality Criteria) for protection of aquatic life—environmental threat in surface water migration pathway.

- EPA Ambient Aquatic Life Advisory Concentrations (AALAC)—environmental threat in surface water migration pathway.

- National Ambient Air Quality Standards (NAAQS)—air migration pathway.

- National Emission Standards for Hazardous Air Pollutants (NESHAPs)—air migration pathway. Use only those NESHAPs promulgated in ambient concentration units.

- Screening concentration for cancer corresponding to that concentration that corresponds to the 10^{-6} individual cancer risk for inhalation exposures (air migration pathway or subsurface intrusion component of the soil exposure and subsurface intrusion pathway) or for oral exposures (ground water migration pathway; drinking water and human food chain threats in surface water migration pathway; and soil exposure and subsurface intrusion pathway).

- Screening concentration for noncancer toxicological responses corresponding to the RfC for inhalation exposures (air migration pathway and subsurface intrusion component of the soil exposure and subsurface intrusion pathway) or RfD for oral exposures (ground water migration pathway; drinking water and human food chain threats in surface water migration

pathway; and soil exposure and subsurface intrusion pathway).

Select the benchmark(s) applicable to the pathway (component or threat) being evaluated as specified in sections 3 through 6. Compare the concentration of each hazardous substance from the sampling location to its benchmark concentration(s) for that pathway (component or threat). Use only those samples and only those hazardous substances in the sample that meet the criteria for an observed release (or observed contamination or observed exposure) for the pathway, except: Tissue samples from aquatic human food chain organisms may be used as specified in sections 4.1.3.3 and 4.2.3.3. If the concentration of any applicable hazardous substance from any sample equals or exceeds its benchmark concentration, consider the sampling location to be subject to Level I concentrations for that pathway (or threat). If more than one benchmark applies to the hazardous substance, assign Level I if the concentration of the hazardous substance equals or exceeds the lowest applicable benchmark concentration.

If no hazardous substance individually equals or exceeds its benchmark concentration, but more than one hazardous substance either meets the criteria for an observed release (or observed contamination or observed exposure) for the sample (or comparable samples) or is eligible to be evaluated for a tissue sample (see sections 4.1.3.3 and 4.2.3.3), calculate the indices I and J specified below based on these hazardous substances.

For those hazardous substances that are carcinogens (that is, those having either a carcinogen weight-of-evidence classification of A, B, or C or a weight-of-evidence classification of carcinogenic to humans, likely to be carcinogenic to humans, or suggestive evidence of carcinogenic potential), calculate an index I for the sample location as follows:

$$I = \sum_{i=1}^n \frac{C_i}{SC_i}$$

Where:

C_i = Concentration of hazardous substance i in sample (or highest concentration of hazardous substance i from among comparable samples).

SC_i = Screening concentration for cancer corresponding to that concentration that corresponds to its 10^{-6} individual cancer risk for applicable exposure (inhalation or oral) for hazardous substance i .

n = Number of applicable hazardous substances in sample (or comparable

samples) that are carcinogens and for which an SC_i is available.

For those hazardous substances for which an RfD or RfC is available, calculate an index J for the sample location as follows:

$$I = \sum_{j=1}^m \frac{C_j}{CR_j}$$

Where:

C_j = Concentration of hazardous substance j in sample (or highest concentration of hazardous substance j from among comparable samples).

CR_j = Screening concentration for noncancer toxicological responses corresponding to RfD or RfC for applicable exposure (inhalation or oral) for hazardous substance j.

m = Number of applicable hazardous substances in sample (or comparable samples) for which a CR_j is available.

If either I or J equals or exceeds 1, consider the sampling location to be subject to Level I concentrations for that pathway (component or threat). If both I and J are less than 1, consider the sampling location to be subject to Level II concentrations for that pathway (component or threat). If, for the sampling location, there are sets of samples that are not comparable, calculate I and J separately for each such set, and use the highest calculated values of I and J to assign Level I and Level II.

See sections 7.3.1 and 7.3.2 for criteria for determining the level of contamination for radioactive substances.

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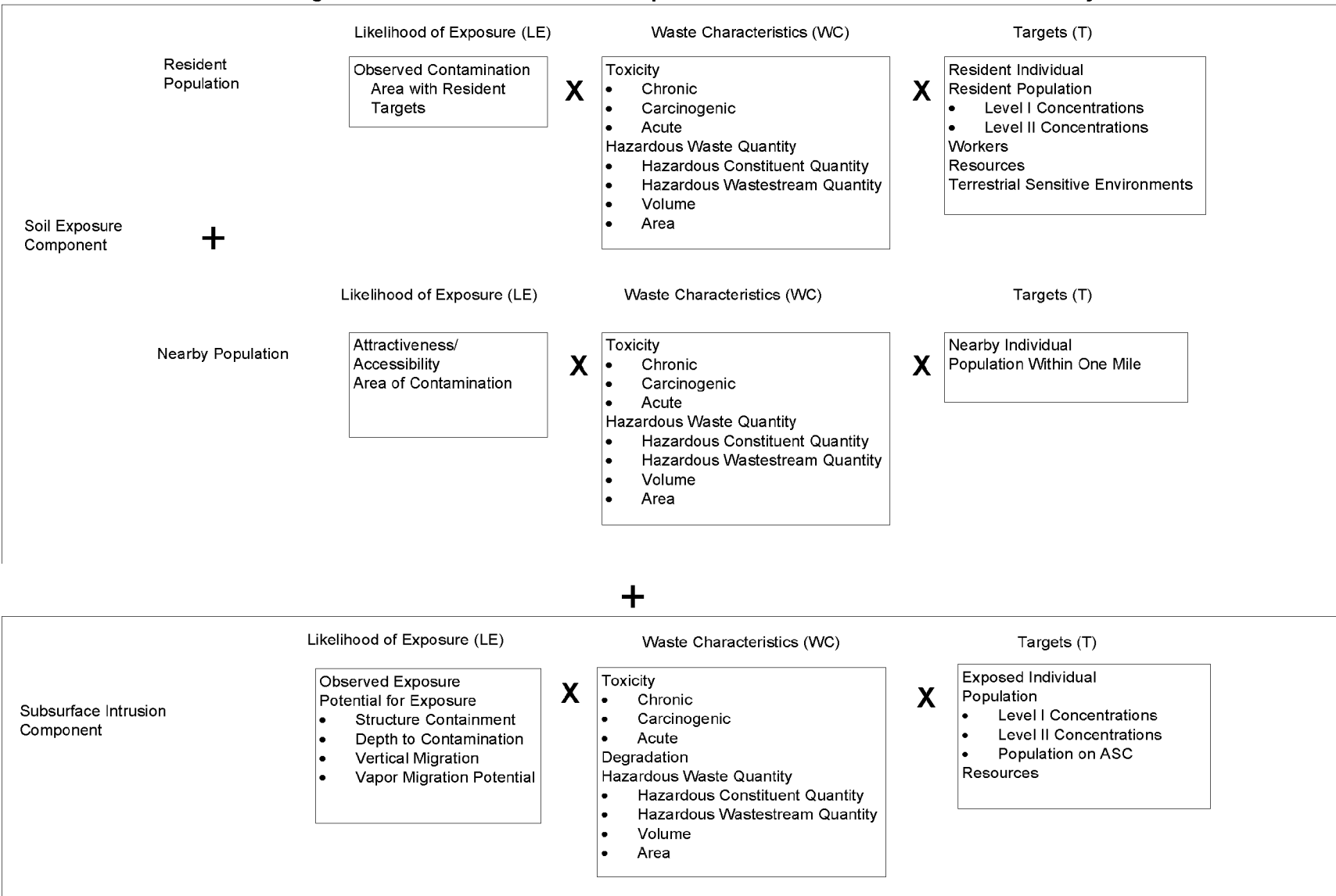
5.0 Soil Exposure and Subsurface Intrusion Pathway

5.0. *Exposure components.* Evaluate the soil exposure and subsurface intrusion pathway based on two exposure components:

- Soil exposure component (see section 5.1).
- Subsurface intrusion component (see section 5.2).

Score one or both components considering their relative importance. If only one component is scored, assign its score as the soil exposure and subsurface intrusion pathway score. If both components are scored, sum the two scores and assign it as the soil exposure and subsurface intrusion pathway score, subject to a maximum of 100.

Figure 5-1 Overview of the Soil Exposure and Subsurface Intrusion Pathway



5.1 Soil exposure component. Evaluate the soil exposure component

based on two threats: Resident population threat and nearby

population threat. Evaluate both threats based on three factor categories:

Likelihood of exposure, waste characteristics, and targets. Figure 5-1 indicates the factors included within each factor category for each type of threat.

Determine the soil exposure component score (S_{se}) in terms of the factor category values as follows:

$$S_{se} = \frac{\sum_{i=1}^2 (LE_i)(WC_i)(T_i)}{SF}$$

Where:

LE_i = Likelihood of exposure factor category value for threat i (that is, resident

population threat or nearby population threat).
 WC_i = Waste characteristics factor category value for threat i .
 T_i = Targets factor category value for threat i .
 SF = Scaling factor.

Table 5-1 outlines the specific calculation procedure.

TABLE 5-1—SOIL EXPOSURE COMPONENT SCORESHEET

Factor categories and factors	Maximum value	Value assigned
Resident Population Threat		
Likelihood of Exposure		
1. Likelihood of Exposure	550	.....
Waste Characteristics		
2. Toxicity	(a)	.....
3. Hazardous Waste Quantity	(a)	.....
4. Waste Characteristics	100	.....
Targets		
5. Resident Individual	50	.....
6. Resident Population:		
6a. Level I Concentrations	(b)	.....
6b. Level II Concentrations	(b)	.....
6c. Resident Population (lines 6a + 6b)	(b)	.....
7. Workers	15	.....
8. Resources	5	.....
9. Terrestrial Sensitive Environments	(c)	.....
10. Targets (lines 5 + 6c + 7 + 8 + 9)	(b)	.....
Resident Population Threat Score		
11. Resident Population Threat (lines 1x4x10)	(b)	.....
Nearby Population Threat		
Likelihood of Exposure		
12. Attractiveness/Accessibility	100	.....
13. Area of Contamination	100	.....
14. Likelihood of Exposure	500	.....
Waste Characteristics		
15. Toxicity	(a)	.....
16. Hazardous Waste Quantity	(a)	.....
17. Waste Characteristics	100	.....
Targets		
18. Nearby Individual	1	.....
19. Population Within 1 Mile	(b)	.....
20. Targets (lines 18 + 19)	(b)	.....
Nearby Population Threat Score		
21. Nearby Population Threat (lines 14x17x20)	(b)	.....
Soil Exposure Component Score		
22. Soil Exposure Component Score ^d (S_{se}), (lines [11+21]/82,500, subject to a maximum of 100)	100	.....

^a Maximum value applies to waste characteristics category.

^b Maximum value not applicable.

^c No specific maximum value applies to factor. However, pathway score based solely on terrestrial sensitive environments is limited to maximum of 60.

^d Do not round to nearest integer.

5.1.0 *General considerations.*

Evaluate the soil exposure component based on areas of observed contamination:

- Consider observed contamination to be present at sampling locations where analytic evidence indicates that:

—A hazardous substance attributable to the site is present at a concentration significantly above background levels for the site (see Table 2-3 in section 2.3 for the criteria for determining analytical significance), *and*

—This hazardous substance, if not present at the surface, is covered by 2 feet or less of cover material (for example, soil).

- Establish areas of observed contamination based on sampling locations at which there is observed contamination as follows:

—For all sources except contaminated soil, if observed contamination from the site is present at any sampling location within the source, consider

that entire source to be an area of observed contamination.

— For contaminated soil, consider both the sampling location(s) with observed contamination from the site and the area lying between such locations to be an area of observed contamination, unless available information indicates otherwise.

- If an area of observed contamination (or portion of such an area) is covered by a permanent, or otherwise maintained, essentially

impenetrable material (for example, asphalt) that is not more than 2 feet thick, exclude that area (or portion of the area) in evaluating the soil exposure component.

- For an area of observed contamination, consider only those hazardous substances that meet the criteria for observed contamination for that area to be associated with that area in evaluating the soil exposure component (see section 2.2.2).

If there is observed contamination, assign scores for the resident population threat and the nearby population threat, as specified in sections 5.1.1 and 5.1.2. If there is no observed contamination, assign the soil exposure component of the soil exposure and subsurface intrusion pathway a score of 0.

5.1.1 *Resident population threat.* Evaluate the resident population threat only if there is an area of observed contamination in one or more of the following locations:

- Within the property boundary of a residence, school, or day care center and within 200 feet of the respective residence, school, or day care center, or

- Within a workplace property boundary and within 200 feet of a workplace area, or
- Within the boundaries of a resource specified in section 5.1.1.3.4, or
- Within the boundaries of a terrestrial sensitive environment specified in section 5.1.1.3.5.

If not, assign the resident population threat a value of 0, enter this value in Table 5–1, and proceed to the nearby population threat (section 5.1.2).

5.1.1.1 *Likelihood of exposure.* Assign a value of 550 to the likelihood of exposure factor category for the resident population threat if there is an area of observed contamination in one or more locations listed in section 5.1.1. Enter this value in Table 5–1.

5.1.1.2 *Waste characteristics.* Evaluate waste characteristics based on two factors: Toxicity and hazardous waste quantity. Evaluate only those hazardous substances that meet the criteria for observed contamination at the site (see section 5.1.0).

5.1.1.2.1 *Toxicity.* Assign a toxicity factor value to each hazardous substance as specified in section 2.4.1.1.

Use the hazardous substance with the highest toxicity factor value to assign the value to the toxicity factor for the resident population threat. Enter this value in Table 5–1.

5.1.1.2.2 *Hazardous waste quantity.* Assign a hazardous waste quantity factor value as specified in section 2.4.2. In estimating the hazardous waste quantity, use Table 5–2 and:

- Consider only the first 2 feet of depth of an area of observed contamination, except as specified for the volume measure.
- Use the volume measure (see section 2.4.2.1.3) only for those types of areas of observed contamination listed in Tier C of Table 5–2. In evaluating the volume measure for these listed areas of observed contamination, use the full volume, not just the volume within the top 2 feet.
- Use the area measure (see section 2.4.2.1.4), not the volume measure, for all other types of areas of observed contamination, even if their volume is known.

Enter the value assigned in Table 5–1.

TABLE 5–2—HAZARDOUS WASTE QUANTITY EVALUATION EQUATIONS FOR SOIL EXPOSURE COMPONENT

Tier	Measure	Units	Equation for assigning value ^a
A	Hazardous Constituent Quantity (C)	lb	C
B ^b	Hazardous Wastestream Quantity (W)	lb	W/5,000
C ^b	Volume (V).		
	Surface Impoundment ^c	yd ³	V/2.5
	Drums ^d	gallon	V/500
	Tanks and Containers Other Than Drums	yd ³	V/2.5
D ^b	Area (A).		
	Landfill	ft ²	A/34,000
	Surface Impoundment	ft ²	A/13
	Surface Impoundment (Buried/backfilled)	ft ²	A/13
	Land treatment	ft ²	A/270
	Pile ^e	ft ²	A/34
	Contaminated Soil	ft ²	A/34,000

^aDo not round nearest integer.

^bConvert volume to mass when necessary: 1 ton = 2,000 pounds = 1 cubic yard = 4 drums = 200 gallons.

^cUse volume measure only for surface impoundments containing hazardous substances present as liquids. Use area measures in Tier D for dry surface impoundments and for buried/backfilled surface impoundments.

^dIf actual volume of drums is unavailable, assume 1 drum = 50 gallons.

^eUse land surface area under pile, not surface area of pile.

5.1.1.2.3 *Calculation of waste characteristics factor category value.* Multiply the toxicity and hazardous waste quantity factor values, subject to a maximum product of 1×10^8 . Based on this product, assign a value from Table 2–7 (section 2.4.3.1) to the waste characteristics factor category. Enter this value in Table 5–1.

5.1.1.3 *Targets.* Evaluate the targets factor category for the resident population threat based on five factors: Resident individual, resident

population, workers, resources, and terrestrial sensitive environments.

In evaluating the targets factor category for the resident population threat, count only the following as targets:

- Resident individual—a person living or attending school or day care on a property with an area of observed contamination and whose residence, school, or day care center, respectively, is on or within 200 feet of the area of observed contamination.

- Worker—a person working on a property with an area of observed contamination and whose workplace area is on or within 200 feet of the area of observed contamination.

- Resources located on an area of observed contamination, as specified in section 5.1.1.

- Terrestrial sensitive environments located on an area of observed contamination, as specified in section 5.1.1.

5.1.1.3.1 *Resident individual.* Evaluate this factor based on whether

there is a resident individual, as specified in section 5.1.1.3, who is subject to Level I or Level II concentrations.

First, determine those areas of observed contamination subject to Level I concentrations and those subject to Level II concentrations as specified in sections 2.5.1 and 2.5.2. Use the health-based benchmarks from Table 5-3 in determining the level of contamination. Then assign a value to the resident individual factor as follows:

- Assign a value of 50 if there is at least one resident individual for one or more areas subject to Level I concentrations.
 - Assign a value of 45 if there is no such resident individuals, but there is at least one resident individual for one or more areas subject to Level II concentrations.
 - Assign a value of 0 if there is no resident individual.
- Enter the value assigned in Table 5-1.

5.1.1.3.2 *Resident population.* Evaluate resident population based on two factors: Level I concentrations and Level II concentrations. Determine which factor applies as specified in sections 2.5.1 and 2.5.2, using the health-based benchmarks from Table 5-3. Evaluate populations subject to Level I concentrations as specified in section 5.1.1.3.2.1 and populations subject to Level II concentrations as specified in section 5.1.1.3.2.2.

TABLE 5-3—HEALTH-BASED BENCHMARKS FOR HAZARDOUS SUBSTANCES IN SOILS

Screening concentration for cancer corresponding to that concentration that corresponds to the 10^{-6} individual cancer risk for oral exposures. Screening concentration for noncancer toxicological responses corresponding to the Reference Dose (RfD) for oral exposures.

Count only those persons meeting the criteria for resident individual as specified in section 5.1.1.3. In estimating the number of people living on property with an area of observed contamination, when the estimate is based on the number of residences, multiply each residence by the average number of persons per residence for the county in which the residence is located.

5.1.1.3.2.1 *Level I concentrations.* Sum the number of resident individuals subject to Level I concentrations and multiply this sum by 10. Assign the resulting product as the value for this factor. Enter this value in Table 5-1.

5.1.1.3.2.2 *Level II concentrations.* Sum the number of resident individuals subject to Level II concentrations. Do not include those people already counted under the Level I concentrations factor. Assign this sum as the value for this factor. Enter this value in Table 5-1.

5.1.1.3.2.3 *Calculation of resident population factor value.* Sum the factor values for Level I concentrations and Level II concentrations. Assign this sum

as the resident population factor value. Enter this value in Table 5-1.

5.1.1.3.3 *Workers.* Evaluate this factor based on the number of workers that meet the section 5.1.1.3 criteria. Assign a value for these workers using Table 5-4. Enter this value in Table 5-1.

TABLE 5-4—FACTOR VALUES FOR WORKERS

Number of workers	Assigned value
0	0
1 to 100	5
101 to 1,000	10
Greater than 1,000	15

5.1.1.3.4 *Resources.* Evaluate the resources factor as follows:

- Assign a value of 5 to the resources factor if one or more of the following is present on an area of observed contamination at the site:
 - Commercial agriculture.
 - Commercial silviculture.
 - Commercial livestock production or commercial livestock grazing.

- Assign a value of 0 if none of the above are present.

Enter the value assigned in Table 5-1.

5.1.1.3.5 *Terrestrial sensitive environments.* Assign value(s) from Table 5-5 to each terrestrial sensitive environment that meets the eligibility criteria of section 5.1.1.3.

Calculate a value (ES) for terrestrial sensitive environments as follows:

$$ES = \sum_{i=1}^n S_i$$

where:
 S_i=Value(s) assigned from Table 5-5 to terrestrial sensitive environment i.
 n=Number of terrestrial sensitive environments meeting section 5.1.1.3 criteria.

Because the pathway score based solely on terrestrial sensitive environments is limited to a maximum of 60, determine the value for the terrestrial sensitive environments factor as follows:

TABLE 5-5—TERRESTRIAL SENSITIVE ENVIRONMENTS RATING VALUES

Terrestrial sensitive environments	Assigned value
Terrestrial critical habitat ^a for Federal designated endangered or threatened species	100
National Park	
Designated Federal Wilderness Area	
National Monument	
Terrestrial habitat known to be used by Federal designated or proposed threatened or endangered species	75
National Preserve (terrestrial)	
National or State Terrestrial Wildlife Refuge	
Federal land designated for protection of natural ecosystems	
Administratively proposed Federal Wilderness Area	
Terrestrial areas utilized for breeding by large or dense aggregations of animals ^b	
Terrestrial habitat known to be used by State designated endangered or threatened species	50
Terrestrial habitat known to be used by species under review as to its Federal designated endangered or threatened status	
State lands designated for wildlife or game management	25
State designated Natural Areas	
Particular areas, relatively small in size, important to maintenance of unique biotic communities	

^aCritical habitat as defined in 50 CFR 424.02.

^b Limit to vertebrate species.

• Multiply the values assigned to the resident population threat for likelihood of exposure (LE), waste characteristics (WC), and ES. Divide the product by 82,500.

—If the result is 60 or less, assign the value ES as the terrestrial sensitive environments factor value.

—If the result exceeds 60, calculate a value EC as follows:

$$EC = \frac{(60)(82,500)}{(LE)(WC)}$$

Assign the value EC as the terrestrial sensitive environments factor value. Do not round this value to the nearest integer.

Enter the value assigned for the terrestrial sensitive environments factor in Table 5–1.

5.1.1.3.6 *Calculation of resident population targets factor category value.*

Sum the values for the resident individual, resident population, workers, resources, and terrestrial sensitive environments factors. Do not

round to the nearest integer. Assign this sum as the targets factor category value for the resident population threat. Enter this value in Table 5–1.

5.1.1.4 *Calculation of resident population threat score.* Multiply the values for likelihood of exposure, waste characteristics, and targets for the resident population threat, and round the product to the nearest integer. Assign this product as the resident population threat score. Enter this score in Table 5–1.

5.1.2 *Nearby population threat.* Include in the nearby population only those individuals who live or attend school within a 1-mile travel distance of an area of observed contamination at the site and who do not meet the criteria for resident individual as specified in section 5.1.1.3.

Do not consider areas of observed contamination that have an attractiveness/accessibility factor value of 0 (see section 5.1.2.1.1) in evaluating the nearby population threat.

5.1.2.1 *Likelihood of exposure.* Evaluate two factors for the likelihood of exposure factor category for the nearby population threat:

Attractiveness/accessibility and area of contamination.

5.1.2.1.1 *Attractiveness/accessibility.* Assign a value for attractiveness/accessibility from Table 5–6 to each area of observed contamination, excluding any land used for residences. Select the highest value assigned to the areas evaluated and use it as the value for the attractiveness/accessibility factor. Enter this value in Table 5–1.

5.1.2.1.2 *Area of contamination.* Evaluate area of contamination based on the total area of the areas of observed contamination at the site. Count only the area(s) that meet the criteria in section 5.1.0 and that receive an attractiveness/accessibility value greater than 0. Assign a value to this factor from Table 5–7. Enter this value in Table 5–1.

TABLE 5–6—ATTRACTIVENESS/ACCESSIBILITY VALUES

Area of observed contamination	Assigned value
Designated recreational area	100
Regularly used for public recreation (for example, fishing, hiking, softball)	75
Accessible and unique recreational area (for example, vacant lots in urban area)	75
Moderately accessible (may have some access improvements, for example, gravel road), with some public recreation use	50
Slightly accessible (for example, extremely rural area with no road improvement), with some public recreation use	25
Accessible, with no public recreation use	10
Surrounded by maintained fence or combination of maintained fence and natural barriers	5
Physically inaccessible to public, with no evidence of public recreation use	0

TABLE 5–7—AREA OF CONTAMINATION FACTOR VALUES

Total area of the areas of observed contamination (square feet)	Assigned value
Less than or equal to 5,000	5
Greater than 5,000 to 125,000	20
Greater than 125,000 to 250,000	40
Greater than 250,000 to 375,000	60
Greater than 375,000 to 500,000	80
Greater than 500,000	100

5.1.2.1.3 *Likelihood of exposure factor category value.* Assign a value from Table 5–8 to the likelihood of

exposure factor category, based on the values assigned to the attractiveness/

accessibility and area of contamination factors. Enter this value in Table 5–1.

TABLE 5–8—NEARBY POPULATION LIKELIHOOD OF EXPOSURE FACTOR VALUES

Area of contamination factor value	Attractiveness/accessibility factor value						
	100	75	50	25	10	5	0
100	500	500	375	250	125	50	0
80	500	375	250	125	50	25	0
60	375	250	125	50	25	5	0
40	250	125	50	25	5	5	0

TABLE 5-8—NEARBY POPULATION LIKELIHOOD OF EXPOSURE FACTOR VALUES—Continued

Area of contamination factor value	Attractiveness/accessibility factor value						
	100	75	50	25	10	5	0
20	125	50	25	5	5	5	0
5	50	25	5	5	5	5	0

5.1.2.2 *Waste characteristics.* Evaluate waste characteristics based on two factors: Toxicity and hazardous waste quantity. Evaluate only those hazardous substances that meet the criteria for observed contamination (see section 5.1.0) at areas that can be assigned an attractiveness/accessibility factor value greater than 0.

5.1.2.2.1 *Toxicity.* Assign a toxicity factor value as specified in section 2.4.1.1 to each hazardous substance meeting the criteria in section 5.1.2.2. Use the hazardous substance with the highest toxicity factor value to assign the value to the toxicity factor for the nearby population threat. Enter this value in Table 5-1.

5.1.2.2.2 *Hazardous waste quantity.* Assign a value to the hazardous waste quantity factor as specified in section 5.1.1.2.2, except: Consider only those areas of observed contamination that can be assigned an attractiveness/accessibility factor value greater than 0. Enter the value assigned in Table 5-1.

5.1.2.2.3 *Calculation of waste characteristics factor category value.* Multiply the toxicity and hazardous waste quantity factor values, subject to a maximum product of 1×10^8 . Based on this product, assign a value from Table 2-7 (section 2.4.3.1) to the waste characteristics factor category. Enter this value in Table 5-1.

5.1.2.3 *Targets.* Evaluate the targets factory category for the nearby population threat based on two factors: Nearby individual and population within a 1-mile travel distance from the site.

5.1.2.3.1 *Nearby individual.* If one or more persons meet the section 5.1.1.3

criteria for a resident individual, assign this factor a value of 0. Enter this value in Table 5-1.

If no person meets the criteria for a resident individual, determine the shortest travel distance from the site to any residence or school. In determining the travel distance, measure the shortest overland distance an individual would travel from a residence or school to the nearest area of observed contamination for the site with an attractiveness/accessibility factor value greater than 0. If there are no natural barriers to travel, measure the travel distance as the shortest straight-line distance from the residence or school to the area of observed contamination. If natural barriers exist (for example, a river), measure the travel distance as the shortest straight-line distance from the residence or school to the nearest crossing point and from there as the shortest straight-line distance to the area of observed contamination. Based on the shortest travel distance, assign a value from Table 5-9 to the nearest individual factor. Enter this value in Table 5-1.

TABLE 5-9—NEARBY INDIVIDUAL FACTOR VALUES

Travel distance for nearby individual (miles)	Assigned value
Greater than 0 to ¼	^a 1
Greater than ¼ to 1	0

^a Assign a value of 0 if one or more persons meet the section 5.1.1.3 criteria for resident individual.

5.1.2.3.2 *Population within 1 mile.* Determine the population within each travel distance category of Table 5-10.

Count residents and students who attend school within this travel distance. Do not include those people already counted in the resident population threat. Determine travel distances as specified in section 5.1.2.3.1.

In estimating residential population, when the estimate is based on the number of residences, multiply each residence by the average number of persons per residence for the county in which the residence is located.

Based on the number of people included within a travel distance category, assign a distance-weighted population value for that travel distance from Table 5-10.

Calculate the value for the population within 1 mile factor (PN) as follows:

$$PN = \frac{1}{10} \sum_{i=1}^3 W_i$$

Where:

W_i = Distance-weighted population value from Table 5-10 for travel distance category i.

If PN is less than 1, do not round it to the nearest integer; if PN is 1 or more, round to the nearest integer. Enter this value in Table 5-1.

5.1.2.3.3 *Calculation of nearby population targets factor category value.* Sum the values for the nearby individual factor and the population within 1 mile factor. Do not round this sum to the nearest integer. Assign this sum as the targets factor category value for the nearby population threat. Enter this value in Table 5-1.

TABLE 5-10—DISTANCE WEIGHTED POPULATION VALUES FOR NEARBY POPULATION THREAT^a

Travel distance category (miles)	Number of people within the travel distance category											
	0	1 to 10	11 to 30	31 to 100	101 to 300	301 to 1,000	1,001 to 3,000	3,001 to 10,000	10,001 to 30,000	30,001 to 100,000	100,001 to 300,000	300,001 to 1,000,000
Greater than 0 to 1/4	0	0.1	0.4	1.0	4	13	41	130	408	1,303	4,081	13,034
Greater than 1/4 to 1/2	0	0.05	0.2	0.7	2	7	20	65	204	652	2,041	6,517
Greater than 1/2 to 1	0	0.02	0.1	0.3	1	3	10	33	102	326	1,020	3,258

^a Round the number of people present within a travel distance category to nearest integer. Do not round the assigned distance-weighted population value to nearest integer.

5.1.2.4 *Calculation of nearby population threat score.* Multiply the values for likelihood of exposure, waste characteristics, and targets for the nearby population threat, and round the product to the nearest integer. Assign this product as the nearby population threat score. Enter this score in Table 5-1.

5.1.3 *Calculation of soil exposure component score.* Sum the resident population threat score and the nearby population threat score, and divide the sum by 82,500. Assign the resulting

value, subject to a maximum of 100, as the soil exposure component score (S_{se}). Enter this score in Table 5-1.

5.2 *Subsurface intrusion component.* Evaluate the subsurface intrusion component based on three factor categories: Likelihood of exposure, waste characteristics, and targets. Figure 5-1 indicates the factors included within each factor category for the subsurface intrusion component.

Determine the component score (S_{ssi}) in terms of the factor category values as follows:

$$S_{ssi} = \frac{(LE)(WC)(T)}{SF}$$

Where:

LE = Likelihood of exposure factor category value.

WC = Waste characteristics factor category value.

T = Targets factor category value.

SF = Scaling factor.

Table 5-11 outlines the specific calculation procedure.

TABLE 5-11—SUBSURFACE INTRUSION COMPONENT SCORESHEET

Factor categories and factors	Maximum value	Value assigned
Subsurface Intrusion Component		
Likelihood of Exposure:		
1. Observed Exposure	550	
2. Potential for Exposure:		
2a. Structure Containment	10	
2b. Depth to contamination	10	
2c. Vertical Migration	15	
2d. Vapor Migration Potential	25	
3. Potential for Exposure (lines 2a * (2b + 2c + 2d), subject to a maximum of 500)	500	
4. Likelihood of Exposure (higher of lines 1 or 3)	550	
Waste Characteristics:		
5. Toxicity/Degradation	(a)	
6. Hazardous Waste Quantity	(a)	
7. Waste Characteristics (subject to a maximum of 100)	100	
Targets:		
8. Exposed Individual	50	
9. Population:		
9a. Level I Concentrations	(b)	
9b. Level II Concentrations	(b)	
9c. Population within an Area of Subsurface Contamination	(b)	
9d. Total Population (lines 9a + 9b + 9c)	(b)	
10. Resources	5	
11. Targets (lines 8 + 9d + 10)	(b)	
Subsurface Intrusion Component Score:		
12. Subsurface Intrusion Component (lines 4 × 7 × 11)/82,500 ^c (subject to a maximum of 100)	100	
Soil Exposure and Subsurface Intrusion Pathway Score:		
13. Soil Exposure Component + Subsurface Intrusion Component (subject to a maximum of 100)	100	

^a Maximum value applies to waste characteristics category.

^b Maximum value not applicable.

^c Do not round to the nearest integer.

5.2.0—*General considerations.* The subsurface intrusion component evaluates the threats from hazardous substances that have or could intrude into regularly occupied structures via surficial ground water or the unsaturated zone. Evaluate the subsurface intrusion component based on the actual or potential intrusion of hazardous substances into a regularly occupied structures that has structure containment value greater than zero; or actual or potential intrusion of hazardous substances exists in the unsaturated zone or the surficial ground water below the regularly occupied structures. These structures may or may not have subunits. Subunits are partitioned areas within a structure with

separate heating, ventilating, and air conditioning (HVAC) systems or distinctly different air exchange rates. Subunits include regularly occupied partitioned tenant spaces such as office suites, apartments, condos, common or shared areas, and portions of residential, commercial or industrial structures with separate heating, ventilating, and air conditioning (HVAC) systems.

In evaluating the subsurface intrusion component, consider the following:

- Area(s) of observed exposure: An area of observed exposure is delineated by regularly occupied structures with documented contamination meeting observed exposure criteria; an area of observed exposure includes regularly occupied structures with samples

meeting observed exposure criteria or inferred to be within an area of observed exposure based on samples meeting observed exposure criteria (see section 5.2.1.1.1 *Observed Exposure*). Establish areas of observed exposure as follows:

- For regularly occupied structures that have no subunits, consider both the regularly occupied structures containing sampling location(s) meeting observed exposure criteria for the site and the regularly occupied structure(s) in the area lying between such locations to be an area of observed exposure (*i.e.*, inferred to be in an area of observed exposure), unless available information indicates otherwise.

- In multi-story, multi-subunit, regularly occupied structures, consider all subunits on a level with sampling locations meeting observed exposure criteria from the site and all levels below, if any, to be within an area of observed exposure, unless available information indicates otherwise.
- In multi-tenant structures, that do not have a documented observed exposure, but are located in an area lying between locations where observed exposures have been documented, consider only those regularly occupied subunits, if any, on the lowest level of the structure, to be within an area of observed exposure (*i.e.*, inferred to be in an area of observed exposure, unless available information indicates otherwise).
 - Area(s) of subsurface contamination: An area of subsurface contamination is delineated by sampling locations meeting observed release criteria for subsurface intrusion, excluding areas of observed exposure (see Table 2–3 in section 2.3). The area within an area of subsurface contamination includes potentially exposed populations. If the significant increase in hazardous substance levels cannot be attributed at least in part to the site and cannot be attributed to other sites, attribution can be established based on the presence of hazardous substances in the area of subsurface contamination. Establish areas of subsurface contamination as follows:
 - Exclude those areas that contain structures meeting the criteria defined as an area of observed exposure.
 - Consider both the sampling location(s) with subsurface contamination meeting observed release criteria from the site and the area lying between such locations to be an area of subsurface contamination (*i.e.*, inferred to be in an area of subsurface contamination), unless available information indicates otherwise.
 - Evaluate an area of subsurface contamination based on hazardous substances that:
 - Meet the criteria for observed exposure, or
 - Meet the criteria for observed release in an area of subsurface contamination and have a vapor pressure greater than or equal to one torr or a Henry's constant greater than or equal to 10^{-5} atm-m³/mol, or
 - Meet the criteria for an observed release in a structure within, or in a sample from below, an area of observed exposure and has a vapor pressure greater than or equal to one

torr or a Henry's constant greater than or equal to 10^{-5} atm-m³/mol.

See Section 7.0 for establishing an area of subsurface contamination based on the presence of radioactive hazardous substances.

— Evaluate all structures with no subunits to be in an area of subsurface contamination if they are lying between locations of subsurface intrusion samples meeting observed release criteria.

— Evaluate multi-subunit structures as follows:

- If an observed exposure has been documented based on a gaseous indoor air sample, consider all regularly occupied subunit(s), if any, on the level immediately above the level where an observed exposure has been documented (or has been inferred to be within an area of observed exposure), to be within an area of subsurface contamination, unless available information indicates otherwise.
- If observed release criteria have been met based on a gaseous indoor air sample collected from a level not regularly occupied, consider all regularly occupied subunit(s), if any, on the level immediately above the level where the observed release criteria has been documented, to be within an area of subsurface contamination, unless available information indicates otherwise.
- If an observed exposure has been documented based on an intruded liquid or particulate sample, do not consider any regularly occupied subunit(s) above the level where an observed exposure has been documented to be within an area of subsurface contamination, unless available information indicates otherwise.
- If any regularly occupied multi-subunit structure is inferred to be in an area of subsurface contamination, consider only those regularly occupied subunit(s), if any, on the lowest level, to be within an area of subsurface contamination, unless available information indicates otherwise.

If there is no area of observed exposure and no area of subsurface contamination, assign a score of 0 for the subsurface intrusion component.

5.2.1 *Subsurface intrusion component.* Evaluate this component only if there is an area of observed exposure or area of subsurface contamination:

- Within or underlying a residence, school, day care center, workplace, or

- Within or underlying a resource specified in section 5.2.1.3.3.

5.2.1.1 *Likelihood of exposure.* Assign a value of 550 to the likelihood of exposure factor category for the subsurface intrusion component if there is an area of observed exposure in one or more locations listed in section 5.2.1. Enter this value in Table 5–11.

5.2.1.1.1 *Observed exposure.* Establish observed exposure in a regularly occupied structure by demonstrating that a hazardous substance has been released into a regularly occupied structure via the subsurface. Base this demonstration on either of the following criterion:

- Direct observation:
 - A solid, liquid or gaseous material that contains one or more hazardous substances attributable to the site has been observed entering a regularly occupied structure through migration via the subsurface or is known to have entered a regularly occupied structure via the subsurface, or
 - When evidence supports the inference of subsurface intrusion of a material that contains one or more hazardous substances associated with the site into a regularly occupied structure, demonstrated adverse effects associated with that release may be used to establish observed exposure.
- Chemical analysis:
 - Analysis of indoor samples indicates that the concentration of hazardous substance(s) has increased significantly above the background concentration for the site for that type of sample (see section 2.3).
 - Some portion of the significant increase must be attributable to the site to establish the observed exposure. Documentation of this attribution should account for possible concentrations of the hazardous substance(s) in outdoor air or from materials found in the regularly occupied structure, and should provide a rationale for the increase being from subsurface intrusion.

If observed exposure can be established in a regularly occupied structure, assign an observed exposure factor value of 550, enter this value in Table 5–11, and proceed to section 5.2.1.1.3. If no observed exposure can be established, assign an observed exposure factor value of 0, enter this value in Table 5–11, and proceed to section 5.2.1.1.2.

5.2.1.1.2 *Potential for exposure.* Evaluate potential for exposure only if an observed exposure cannot be

established, but an area of subsurface contamination has been delineated. Evaluate potential for exposure based only on the presence of hazardous substances with a vapor pressure greater than or equal to one torr or a Henry's constant greater than or equal to 10⁻⁵ atm-m³/mol. Evaluate potential for exposure for each area of subsurface contamination based on four factors: structure containment (see section 5.2.1.1.2.1), depth to contamination (see section 5.2.1.1.2.2), vertical migration (see section 5.2.1.1.2.3) and vapor migration potential (see section 5.2.1.1.2.4). For each area of subsurface

contamination, assign the highest value for each factor. If information is insufficient to calculate any single factor value used to calculate the potential for exposure factor values at an identified area of subsurface contamination, information collected for another area of subsurface contamination at the site may be used when evaluating potential for exposure. Calculate the potential for exposure value for the site as specified in section 5.2.1.1.2.5.

5.2.1.1.2.1 *Structure containment.* Calculate containment for eligible hazardous substances within this component as directed in Table 5–12 and enter this value into Table 5–11.

Assign each regularly occupied structure within an area of subsurface contamination the highest appropriate structure containment value from Table 5–12 and use the regularly occupied structure at the site with the highest structure containment value in performing the potential for exposure calculation. Assign a structure containment factor value of 10 to any regularly occupied structure located within an area of observed exposure that is established based on documented surficial ground water intrusion, unless available information indicates otherwise.

TABLE 5–12—STRUCTURE CONTAINMENT

No.	Evidence of structure containment	Assigned value
1	Regularly occupied structure with evidence of subsurface intrusion, including documented observed exposure or sampling of bio or inert gases, such as methane and radon.	10
2	Regularly occupied structure with open preferential pathways from the subsurface (e.g., sumps, foundation cracks, unsealed utility lines).	10
3	Regularly occupied structure with an engineered vapor migration barrier system that does not address all preferential pathways.	7
4	Regularly occupied structure with an engineered passive vapor mitigation system <i>without</i> documented institutional controls (e.g., deed restrictions) or evidence of regular maintenance and inspection.	6
5	Regularly occupied structure with no visible open preferential pathways from the subsurface (e.g., sumps, foundation cracks, unsealed utility lines).	4
6	Regularly occupied structure with an engineered passive vapor mitigation system (e.g., passive venting) <i>with</i> documented institutional controls (e.g., deed restrictions) or evidence of regular maintenance and inspection.	3
7	Regularly occupied structure with an engineered, active vapor mitigation system (e.g., active venting) <i>without</i> documented institutional controls (e.g., deed restrictions) and funding in place for on-going operation, inspection and maintenance.	2
8	Regularly occupied structure with unknown containment features	2
9	Regularly occupied structure with a permanent engineered, active vapor mitigation system (e.g., active venting) <i>with</i> documented institutional controls (e.g., deed restrictions) and funding in place for on-going operation, inspection and maintenance. This does not include mitigation systems installed as part of a removal or other temporary response by federal, state or tribal authorities.	0
10	Regularly occupied structure with a foundation raised greater than 6 feet (e.g., structure on stilts) or structure that has been built, and maintained, in a manner to prevent subsurface intrusion.	0

5.2.1.1.2.2 *Depth to contamination.* Assign each area of subsurface contamination a depth to contamination based on the least depth to either contaminated crawl space or subsurface media underlying a regularly occupied structure. Measure this depth to contamination based on the distance between the lowest point of a regularly occupied structure to the highest known point of hazardous substances eligible to be evaluated. Use any regularly occupied structure within an area of subsurface contamination with a structure containment factor greater than zero. Subtract from the depth to contamination the thickness of any subsurface layer composed of features that would allow channelized flow (e.g., karst, lava tubes, open fractures).

Based on this calculated depth, assign a factor value from Table 5–13. If the necessary information is available at multiple locations, calculate the depth

to contamination at each location. Use the location having the least depth to contamination to assign the factor value. Enter this value in Table 5–11.

TABLE 5–13—DEPTH TO CONTAMINATION

Depth range ^{1 2}	Depth to contamination assigned value
0 to 10 ft. (Including subslab and semi-enclosed or enclosed crawl space contamination)	10
>10 to 20 ft	8
>20 to 50 ft	6
>50 to 100 ft	4
>100 to 150 ft	2
>150 ft	0

¹ If any part of the subsurface profile has channelized flow features, assign that portion of the subsurface profile a depth of 0.

² Measure elevation below any regularly occupied structure within an area of subsurface contamination at a site. Select the regularly occupied structure with the least depth to contamination below a structure.

5.2.1.1.2.3 *Vertical migration.* Evaluate the vertical migration factor for each area of subsurface contamination based on the geologic materials in the interval between the lowest point of a regularly occupied structure and the highest known point of hazardous substances in the subsurface. Use any regularly occupied structure either within an area of subsurface contamination or overlying subsurface soil gas or ground water contamination. Assign a value to the vertical migration factor as follows:

- If the depth to contamination (see section 5.2.1.1.2.2) is 10 feet or less, assign a value of 15.

- Do not consider layers or portions of layers within the first 10 feet of the depth to contamination.
 - If, for the interval identified above, all layers that underlie a portion of a regularly occupied structure at the site are karst or otherwise allow channelized flow, assign a value of 15.
 - Otherwise:
- Select the lowest effective porosity/permeability layer(s) from within the above interval. Consider only layers at least 1 foot thick. (If site-specific data

is not available, use the layer with the highest value assigned in Table 5–14.)

—Assign a value for individual layers from Table 5–14.

—If more than one layer has the same assigned porosity/permeability value, include all such layers and sum their thicknesses. Assign a thickness of 0 feet to a layer with channelized flow features found within any area of subsurface contamination at the site.

—Assign a value from Table 5–15 to the vertical migration factor, based on the thickness and assigned porosity/

permeability value of the lowest effective porosity/permeability layer(s).

Determine vertical migration only at locations within an area of subsurface contamination at the site. If the necessary subsurface geologic information is available at multiple locations, evaluate the vertical migration factor at each location. Use the location having the highest vertical migration factor value to assign the factor value. Enter this value in Table 5–11.

TABLE 5–14—EFFECTIVE POROSITY/PERMEABILITY OF GEOLOGIC MATERIALS

Type of material	Assigned porosity/permeability value
Gravel; highly permeable fractured igneous and metamorphic rocks; permeable basalt; karst limestones and dolomites	1
Sand; sandy clays; sandy loams; loamy sands; sandy silts; sediments that are predominantly sand; highly permeable till (coarse-grained, unconsolidated or compact and highly fractured); peat; moderately permeable limestones and dolomites (no karst); moderately permeable sandstone; moderately permeable fractured igneous and metamorphic rocks	2
Silt; loams; silty loams; loesses; silty clays; sediments that are predominantly silts; moderately permeable till (fine-grained, unconsolidated till, or compact till with some fractures); low permeability limestones and dolomites (no karst); low permeability sandstone; low permeability fractured igneous and metamorphic rocks	3
Clay; low permeability till (compact unfractured till); shale; unfractured metamorphic and igneous rocks	4

TABLE 5–15 VERTICAL MIGRATION FACTOR VALUES ^a

Assigned porosity/permeability value	Thickness of lowest porosity layer(s) ^b (feet)					
	0 to 5	Greater than 5 to 10	Greater than 10 to 20	Greater than 20 to 50	Greater than 50 to 100	Greater than 100 to 150
1	15	15	14	11	8	6
2	15	14	12	9	6	4
3	15	13	10	7	5	2
4	15	12	9	6	3	1

^a If depth to contamination is 10 feet or less or if, for the interval being evaluated, all layers that underlie a portion of the structure at the site are karst or have other channelized flow features, assign a value of 15.

^b Consider only layers at least 1 foot thick.

5.2.1.1.2.4 *Vapor migration potential.* Evaluate this factor for each area of subsurface contamination as follows:

- If the depth to contamination (see section 5.2.1.1.2.2) is 10 feet or less, assign a value of 25.
 - Assign a value for vapor migration potential to each of the gaseous hazardous substances associated with the area of subsurface contamination (see section 2.2.2) as follows:
- Assign values from Table 5–16 for both vapor pressure and Henry’s constant to each hazardous substance. If Henry’s constant cannot be determined for a hazardous substance, assign that hazardous substance a value of 2 for the Henry’s constant component.
- Sum the two values assigned to each hazardous substance.

—Based on this sum, assign each hazardous substance a value from Table 5–17 for vapor migration potential.

- Assign a value for vapor migration potential to each area of subsurface contamination as follows:
- Select the hazardous substance associated with the area of subsurface contamination with the highest vapor migration potential value and assign this value as the vapor migration potential factor for the area of subsurface contamination. Enter this value in Table 5–11.

TABLE 5–16—VALUES FOR VAPOR PRESSURE AND HENRY’S CONSTANT

Vapor pressure (Torr)	Assigned value
Greater than 10	3

TABLE 5–16—VALUES FOR VAPOR PRESSURE AND HENRY’S CONSTANT—Continued

Vapor pressure (Torr)	Assigned value
1 to 10	2
Less than 1	0
Henry’s constant (atm-m ³ /mol)	Assigned value
Greater than 10 ⁻³	3
Greater than 10 ⁻⁴ to 10 ⁻³ ..	2
10 ⁻⁵ to 10 ⁻⁴	1
Less than 10 ⁻⁵	0

TABLE 5-17—VAPOR MIGRATION POTENTIAL FACTOR VALUES FOR A HAZARDOUS SUBSTANCE

Sum of values for vapor pressure and Henry's constant	Assigned value
0	0
1 or 2	5
3 or 4	15
5 or 6	25

5.2.1.1.2.5 *Calculation of potential for exposure factor value.* For each identified area of subsurface contamination, sum the factor values for depth to contamination, vertical migration and vapor migration potential, and multiply this sum by the factor value for structure containment. Select the highest product for any area of subsurface contamination and assign this value as the potential for exposure factor value for the component. Enter this value in Table 5-11.

5.2.1.1.3 *Calculation of likelihood of exposure factor category value.* If observed exposure is established for the site, assign the observed exposure factor value of 550 as the likelihood of exposure factor category value for the site. Otherwise, assign the potential for exposure factor value for the component as the likelihood of exposure value. Enter the value assigned in Table 5-11.

5.2.1.2 *Waste characteristics.* Evaluate waste characteristics based on two factors: Toxicity/degradation and hazardous waste quantity.

5.2.1.2.1 *Toxicity/degradation.* For each hazardous substance, assign a toxicity factor value, a degradation factor value and a combined toxicity/degradation factor value as specified in sections 2.2.3, 2.4.1.2 and 5.2.1.2.1.1 through 5.2.1.2.1.3.

5.2.1.2.1.1 *Toxicity.* Assign a toxicity factor value to each hazardous substance as specified in sections 2.2.2 and 2.4.1.1.

5.2.1.2.1.2 *Degradation.* Assign a degradation factor value to each hazardous substance as follows:

- For any hazardous substance that meets the criteria for an observed exposure, assign that substance a degradation factor value of 1.
- For all hazardous substances at the site that meet subsurface intrusion observed release criteria but not observed exposure criteria, assign a degradation factor value of 1 if the depth to contamination below an area of subsurface contamination or area of observed exposure is less than 10 feet or if available evidence suggests that there is less than 10 feet of biologically active soil in the subsurface anywhere

underneath a regularly occupied structure within an area of subsurface contamination or area of observed exposure.

For all other situations first calculate the half-life for each hazardous substance that meets subsurface intrusion observed release criteria as follows:

The half-life of a substance in the subsurface is defined for HRS purposes as the time required to reduce the initial concentration in the subsurface by one-half as a result of the combined decay processes of two components: biodegradation and hydrolysis.

Estimate the half-life ($t_{1/2}$) of a hazardous substance as follows:

$$t_{1/2} = \frac{1}{1/h + 1/b}$$

Where:

- h=Hydrolysis half-life.
- b=Biodegradation half-life.

If one of these component half-lives cannot be estimated for the hazardous substance from available data, delete that component half-life from the above equation.

If no half-life information is available for a hazardous substance and the substance is not already assigned a value of 1, unless information indicates otherwise, all straight-chain and simple-ring structure substances will be considered to have a half-life less than 30 days if not the hazardous substance will be assigned a half-life of greater than 100 days.

Based on the hazardous substance's assigned half-life the degradation factor is assigned as follows:

- For all hazardous substances at the site that meet subsurface intrusion observed release criteria but not observed exposure criteria, assign a degradation factor value of 0.1, if:
 - The depth to contamination at the site is greater than or equal to 10 feet, but not if available evidence suggests that at least 10 feet of biologically active soil is not present in the subsurface anywhere underneath a structure within an area of subsurface contamination or area of observed exposure, and
 - The hazardous substance has a half-life of 30 days or less.
- For all hazardous substances at the site that meet subsurface intrusion observed release criteria but not observed exposure criteria, assign a degradation factor value of 0.5, if:
 - The depth to contamination at the site is greater than 30 feet, but not if available evidence suggests that at least 30 feet of biologically active soil is not present in the subsurface

anywhere underneath a structure within an area of subsurface contamination or area of observed exposure, and

—The hazardous substance has a half-life equal to or less than 100 days.

- For all other situations assign a degradation factor of 1 for all hazardous substances at the site that meet subsurface intrusion observed release criteria.

In addition, for hazardous substances that meet observed release criteria, have a parent-daughter degradation relationship, and the daughter substance is found only in samples with a depth greater than 10 feet, assign the daughter substance degradation factor value as follows:

1. Identify the shallowest subsurface sample that contains the daughter substance.
2. Determine if the selected sample or another sample from the same relative position in the media of concern, or in a shallower sample, contains the parent substance.
3. If the parent substance is not present in the identified samples, assign the degradation factor value for the daughter substance based on the half-life for the daughter substance.
4. If the parent substance is present in a sample from the same relative position in the subsurface or in a shallower sample, compare the half-life-based degradation factor value for the daughter substance to the degradation factor value assigned to the parent substance. Assign the greater of the two values as the degradation factor value for the daughter substance.

5.2.1.2.1.3 *Calculation of toxicity/degradation factor value.* Assign each substance a toxicity/biodegradation value by multiplying the toxicity factor value by the degradation factor value. Use the hazardous substance with the highest combined toxicity/degradation value to assign the factor value to the toxicity/degradation factor for the subsurface intrusion threat. Enter this value in Table 5-11.

5.2.1.2.2 *Hazardous waste quantity.* Assign a hazardous waste quantity factor value as specified in section 2.4.2. Consider only those regularly occupied structures with a non-zero structure containment value. In estimating the hazardous waste quantity, use Tables 2-5 and 5-18 and:

- For Tier A, hazardous constituent quantity, use the mass of constituents found in the regularly occupied structure(s) where the observed exposure has been identified.
- For multi-subunit structures, when calculating Tier A, use the mass of

constituents found in the regularly occupied subunit space(s) where the observed exposure has been identified.

- For Tier B, hazardous wastestream quantity, use the flow-through volume of the regularly occupied structures where the observed exposure has been identified.

—For multi-subunit structures, when calculating Tier B, use the flow-through volume of the regularly occupied subunit spaces where the observed exposure has been identified.

- For Tier C, volume, use the volume divisor listed in Tier C of Table 5–18. Volume is calculated for those regularly occupied structures located within areas of observed exposure with observed or inferred intrusion and within areas of subsurface contamination.

—In evaluating the volume measure for these listed areas of observed exposure and areas of subsurface contamination based on a gaseous/vapor intrusion or the potential for

gaseous/vapor intrusion, consider the following:

- Calculate the volume of each regularly occupied structure based on actual data. If unknown, use a ceiling height of 8 feet.
- For multi-subunit structures, when calculating Tier C, calculate volume for those subunit spaces with observed or inferred exposure and all other regularly occupied subunit spaces on that level, unless available information indicates otherwise. If the structure has multiple stories, also include the volume of all regularly occupied subunit spaces below the floor with an observed exposure and one story above, unless evidence indicates otherwise.
- For multi-subunit structures within an area of subsurface contamination and no observed or inferred exposure, consider only the volume of the regularly occupied subunit spaces on the lowest story, unless available information indicates otherwise.

—In evaluating the volume measure for these listed areas of observed exposure and areas of subsurface contamination where intrusion of contaminated ground water has occurred, do not calculate the volume of each regularly occupied structure. Instead, consider only the volume of contaminated ground water known to have intruded into a regularly occupied structure.

- For Tier D, area, if volume is unknown, use the area divisor listed in Tier D of Table 5–18 for those regularly occupied structures within areas of observed exposure with observed or inferred intrusion and within areas of subsurface contamination. In evaluating the area measure for these listed areas of observed exposure and areas of subsurface contamination, calculate the area of each regularly occupied structure (including multi-subunit structures) based on actual footprint area data. If the actual footprint area of the structure(s) is unknown, use an area of 1,740 square feet for each structure (or subunit space).

TABLE 5–18—HAZARDOUS WASTE QUANTITY EVALUATION EQUATIONS FOR SUBSURFACE INTRUSION COMPONENT

Tier	Measure	Units	Equation for assigning value ^a
A	Hazardous Constituent Quantity (C)	lb	C.
B ^b	Hazardous Wastestream Quantity (W)	lb	W/5,000.
C ^{b c}	Volume (V).		
	Regularly occupied structure(s) in areas of observed exposure or subsurface contamination	yd ³	V/2.5.
D ^{b d}	Area (A).		
	Regularly occupied structure(s) in areas of observed exposure or subsurface contamination	ft ²	A/13.

^a Do not round to the nearest integer.

^b Convert volume to mass when necessary: 1 ton = 2,000 pounds = 1 cubic yard = 4 drums = 200 gallons.

^c Calculate volume of each regularly occupied structure or subunit space in areas of observed exposure and areas of subsurface contamination—Assume 8-foot ceiling height unless actual value is known.

^d Calculate area of the footprint of each regularly occupied structure in areas of observed exposure and areas of subsurface contamination. If the footprint area of a regularly occupied structure is unknown, use 1,740 square feet as the footprint area of the structure or subunit space.

For the subsurface intrusion component, if the hazardous constituent quantity is adequately determined for all areas of observed exposure, assign the value from Table 2–6 as the hazardous waste quantity factor value. If the hazardous constituent quantity is not adequately determined for one or more areas of observed exposure or if one or more areas of subsurface contamination are present, assign either the value from Table 2–6 or assign a factor value as follows:

- If any target for the subsurface intrusion component is subject to Level I or Level II concentrations (see section 2.5), assign either the value from Table 2–6 or a value of 100, whichever is

greater, as the hazardous waste quantity factor value for this component.

- If none of the targets for the subsurface intrusion component is subject to Level I or Level II concentrations and if there has been a removal action that does not permanently interrupt target exposure from subsurface intrusion, assign a factor value as follows:

—Determine the values from Table 2–6 with and without consideration of the removal action.

—If the value that would be assigned from Table 2–6 without consideration of the removal action would be 100 or greater, assign either the value from Table 2–6 with consideration of the

removal action or a value of 100, whichever is greater, as the hazardous waste quantity factor value for the component.

—If the value that would be assigned from Table 2–6 without consideration of the removal action would be less than 100, assign a value of 10 as the hazardous waste quantity factor value for the component.

- Otherwise, if none of the targets for the subsurface intrusion component is subject to Level I or Level II concentrations and there has not been a removal action, assign a minimum value of 10.

Enter the value assigned in Table 5–11.

5.2.1.2.3 *Calculation of waste characteristics factor category value.* Multiply the toxicity/degradation and hazardous waste quantity factor values, subject to a maximum product of 1×10^8 . Based on this product, assign a value from Table 2–7 (section 2.4.3.1) to the waste characteristics factor category. Enter this value in Table 5–11.

5.2.1.3 *Targets.* Evaluate the targets factor category for the subsurface intrusion threat based on three factors: Exposed individual, population, and resources in regularly occupied structures. Evaluate only those targets within areas of observed exposure and areas of subsurface contamination (see section 5.2.0).

In evaluating the targets factor category for the subsurface intrusion threat, count only the following as targets:

- Exposed individual—a person living, attending school or day care, or working in a regularly occupied structure with observed exposure or in a structure within an area of observed exposure or within an area of subsurface contamination.

- Population—exposed individuals in a regularly occupied structure within an area of observed exposure or within an area of subsurface contamination.

- Resources—located within an area of observed exposure or within an area of subsurface contamination as specified in section 5.2.1.3.3.

If a former structure that has been vacated due to subsurface intrusion attributable to the site, count the initial targets as if they were still residing in the structure. In addition, if a removal action has occurred that has not completely mitigated the release, count the initial targets as if the removal action has not permanently interrupted target exposure from subsurface intrusion.

For populations residing in or working in a multi-subunit structure

with multiple stories in an area of observed exposure or area of subsurface contamination, count these targets as follows:

- If there is no observed exposure within the structure, include in the evaluation only those targets, if any, in the lowest occupied level, unless available information indicates otherwise.

- If there is an observed exposure in any level, include in the evaluation those targets in that level, the level above and all levels below, unless available information indicates otherwise. (The weighting of these targets is specified in Section 5.2.1.3.2.)

5.2.1.3.1 *Exposed individual.*

Evaluate this factor based on whether there is an exposed individual, as specified in sections 2.5.1, 2.5.2 and 5.2.1.3, who is subject to Level I or Level II concentrations.

First, determine those regularly occupied structures or partitioned subunit(s) within structures in an area of observed exposure subject to Level I concentrations and those subject to Level II concentrations as specified as follows (see section 5.2.0):

- Level I Concentrations: For contamination resulting from subsurface intrusion, compare the hazardous substance concentrations in any sample meeting the observed exposure by chemical analysis criteria to the appropriate benchmark. Use the health-based benchmarks from Table 5–19 to determine the level of contamination.

—If the sample is from a structure with no subunits and the concentration equals or exceeds the appropriate benchmark, assign Level I concentrations to the entire structure.

—If the sample is from a subunit within a structure and the concentration from that subunit equals or exceeds the appropriate benchmark, assign Level I concentrations to that subunit.

- Level II Concentrations: Structures, or subunits within structures, with one or more samples that meet observed exposure by chemical analysis criteria but do not equal or exceed the appropriate benchmark; structures, or subunits, that have an observed exposure by direct observation; and structures inferred to be in an area of observed exposure based on samples meeting observed exposure, are assigned Level II concentrations.

- For all regularly occupied structures, or subunits in such structures, in an area of observed exposure that are not assigned Level I concentrations, assign Level II concentrations.

Then assign a value to the exposed individual factor as follows:

- Assign a value of 50 if there is at least one exposed individual in one or more regularly occupied structures subject to Level I concentrations.

- Assign a value of 45 if there are no Level I exposed individuals, but there is at least one exposed individual in one or more regularly occupied structures subject to Level II concentrations.

- Assign a value of 20 if there is no Level I or Level II exposed individual but there is at least one individual in a regularly occupied structure within an area of subsurface contamination.

Enter the value assigned in Table 5–11.

5.2.1.3.2 *Population.* Evaluate population based on three factors: Level I concentrations, Level II concentrations, and population within an area of subsurface contamination. Determine which factors apply as specified in section 5.2.1.3.1, using the health-based benchmarks from Table 5–19. Evaluate populations subject to Level I and Level II concentrations as specified in section 2.5.

TABLE 5–19—HEALTH-BASED BENCHMARKS FOR HAZARDOUS SUBSTANCES IN THE SUBSURFACE INTRUSION COMPONENT

Screening concentration for cancer corresponding to that concentration that corresponds to the 10^{-6} individual cancer risk using the inhalation unit risk. For oral exposures use the oral cancer slope factor.

Screening concentration for noncancer toxicological responses corresponding to the reference dose (RfD) for oral exposure and the reference concentration (RfC) for inhalation exposures.

Count only those persons meeting the criteria for population as specified in section 5.2.1.3. In estimating the number of individuals in structures in an area of observed exposure or area of subsurface contamination if the actual number of residents is not known, multiply each residence by the average number of persons per residence for the

county in which the residence is located.

5.2.1.3.2.1 *Level I concentrations.* Assign the population subject to Level I concentrations as follows:

1. Identify all exposed individuals regularly present in a structure, or if the structure has subunits, identify those regularly present in each subunit, located in an area of observed exposure

subject to Level I concentrations as described in sections 5.2.0 and 5.2.1.3.1. Identify only once per structure those exposed individuals that are using more than one eligible subunit of the same structure (e.g., using a common or shared area and other parts of the same structure).

2. For each structure or subunit count the number of individuals residing in or

attending school or day care in the structure or subunit.

3. Count the number of full-time and part-time workers in the structure or subunit(s) subject to Level I concentrations. If information is unavailable to classify a worker as full- or part-time, evaluate that worker as being full-time. Divide the number of full-time workers by 3 and the number of part-time workers by 6, and then sum these products with the number of other individuals for each structure or subunit.

4. Sum this combined value for all structures, or subunits, within areas of observed exposure and multiply this sum by 10.

Assign the resulting product as the combined population factor value subject to Level I concentrations for the site. Enter this value in line 9a of Table 5–11.

5.2.1.3.2.2 *Level II concentrations.* Assign the population subject to Level II concentrations as follows:

1. Identify all exposed individuals regularly present in an eligible structure, or if the structure has subunits, identify those regularly present in each subunit, located in an area of observed exposure subject to Level II concentrations as described in sections 5.2.0 and 5.2.1.3.1. Identify only once per structure those exposed individuals that are using more than one eligible subunit of the same structure (e.g., using a common or shared area and other parts of the same structure).

2. Do not include exposed individuals already counted under the Level I concentrations factor.

3. For each structure or subunit(s), count the number of individuals residing in or attending school or day care in the structure, or subunit, subject to Level II concentrations.

4. Count the number of full-time and part-time workers in the structure or subunit(s) subject to Level II concentrations. If information is unavailable to classify a worker as full- or part-time, evaluate that worker as being full-time. Divide the number of full-time workers by 3 and the number of part-time workers by 6, and then sum these products with the number of other individuals for each structure or subunit.

5. Sum the combined population value for all structures within the areas of observed exposure for the site.

Assign this sum as the combined population value subject to Level II contamination for this factor. Enter this value in line 9b of Table 5–11.

5.2.1.3.2.3 *Population within area(s) of subsurface contamination.* Assign the population in area(s) of subsurface contamination factor value as follows, unless available information indicates otherwise (see sections 5.2.0 and 5.2.1.3.1):

1. Identify the regularly occupied structures with a structure containment value greater than zero and the eligible population associated with the structures or portions of structures in each area of subsurface contamination:

- For each regularly occupied structure or portion of a structure in an

area of subsurface contamination, sum the number of all individuals residing in or attending school or day care, in the structure or portion of the structure in the area of subsurface contamination.

- Count the number of full-time and part-time workers regularly present in each structure or portion of a structure in an area of subsurface contamination. If information is unavailable to classify a worker as full- or part-time, evaluate that worker as being full-time. Divide the number of full-time workers by 3 and the number of part-time workers by 6. Sum these products with the number of individuals residing in or attending school or day care in the structure.
- Use this sum as the population for the structure.

2. Estimate the depth or distance to contamination at each regularly occupied structure within an area of subsurface contamination based on available sampling data, and categorize each eligible structure based on the depth or distance to contamination and sampling media as presented in Table 5–20. Weight the population in each structure using the appropriate weighting factors in Table 5–20. If samples from multiple media are available, use the sample that results in the highest weighting factor.

3. Sum the weighted population in all structures within the area(s) of subsurface contamination and assign this sum as the population subject to subsurface contamination factor value. Enter this value in line 9c of Table 5–11.

TABLE 5–20—WEIGHTING FACTOR VALUES FOR POPULATIONS WITHIN AN AREA OF SUBSURFACE CONTAMINATION

Eligible populations ^a in structures ^b within an area of subsurface contamination	Population weighting factor
Population in a structure with levels of contamination in a semi-enclosed or enclosed crawl space sample meeting observed release criteria	
<i>or</i>	
Population in a subunit of a multi-story structure within an area of subsurface contamination located directly above a level in an area of observed exposure or a gaseous indoor air sample meeting observed release criteria	0.9
Population in a structure where levels of contaminants meeting observed release criteria are found in any sampling media at or within five feet horizontally or vertically of the structure foundation	0.4
Population occupying a structure where levels of contaminants meeting observed release criteria are found or inferred based on any underlying non-ground water subsurface sample at a depth less than or equal to 30 feet	
<i>or</i>	
Population in a structure within an area of subsurface contamination where levels of contaminants meeting observed release criteria are inferred based on semi-enclosed or enclosed crawl space samples in surrounding structures	0.2
Population in a structure where levels of contaminants meeting observed release criteria are found or inferred based on underlying ground water samples greater than five feet from the structure foundation	
<i>or</i>	
Population in a structure where levels of contaminants meeting observed release criteria are found or inferred based on any underlying sample at depths greater than 30 feet	0.1

^a Eligible populations include residents (including individuals living in, or attending school or day care in the structure), and workers in regularly occupied structures (see HRS Section 5.2.1.3).

^b Eligible structures may include single- or multi-tenant structures where eligible populations reside, attend school or day care, or work. These structures may also be mixed use structures.

5.2.1.3.2.4 *Calculation of population factor value.* Sum the factor values for Level I concentrations, Level II concentrations, and population in the area(s) of subsurface contamination. Assign this sum as the population factor value. Enter this value in line 9d of Table 5–11.

5.2.1.3.3 *Resources.* Evaluate the resources factor as follows:

• Assign a value of 5 if a resource structure (e.g., library, church, tribal facility) is present and regularly occupied within either an area of observed exposure or area of subsurface contamination.

• Assign a value of 0 if there is no resource structure within an area of

observed exposure or area of subsurface contamination.

Enter the value assigned in Table 5–11.

5.2.1.3.4 *Calculation of targets factor category value.* Sum the values for the exposed individual, population, and resources factors. Do not round to the nearest integer. Assign this sum as the targets factor category value for the subsurface intrusion component. Enter this value in Table 5–11.

5.2.2 *Calculation of subsurface intrusion component score.* Multiply the factor category values for likelihood of exposure, waste characteristics and targets and round the product to the nearest integer. Divide the product by

82,500. Assign the resulting value, subject to a maximum of 100, as the subsurface intrusion component score and enter this score in Table 5–11.

5.3 *Calculation of the soil exposure and subsurface intrusion pathway score:* Sum the soil exposure component score and subsurface intrusion component. Assign the resulting value, subject to a maximum of 100, as the soil exposure and subsurface intrusion pathway score (S_{sessi}). Enter this score in Table 5–11.

6.0 Air Migration Pathway

* * * * *

TABLE 6–14—HEALTH-BASED BENCHMARKS FOR HAZARDOUS SUBSTANCES IN AIR

- Concentration corresponding to National Ambient Air Quality Standard (NAAQS).
- Concentration corresponding to National Emission Standards for Hazardous Air Pollutants (NESHAPs).
- Screening concentration for cancer corresponding to that concentration that corresponds to the 10⁻⁶ individual cancer risk for inhalation exposures.
- Screening concentration for noncancer toxicological responses corresponding to the Reference Concentration (RfC) for inhalation exposures.

* * * * *

7.0 Sites Containing Radioactive Substances

* * * * *

TABLE 7-1. HRS FACTORS EVALUATED DIFFERENTLY FOR RADIONUCLIDES

Ground Water Pathway	Status ^a	Surface Water Pathway	Status ^a	Soil Exposure Component of SESSI Pathway	Status ^a	Subsurface Intrusion Component of SESSI Pathway	Status ^a	Air Pathway	Status ^a
Likelihood of Release		Likelihood of Release		Likelihood of Exposure		Likelihood of Exposure		Likelihood of Release	
Observed Release	Yes	Observed Release	Yes	Observed Contamination	Yes	Observed Exposure	Yes	Observed Release	Yes
Potential to Release	No	Potential to Release	No	Attractiveness/ Accessibility to Nearby Residents	No	Potential for Exposure	Yes	Gas Potential to Release	No
Containment	No	Overland Flow Containment	No	Area of Contamination	No	Structure Containment	No	Gas Containment	No
Net Precipitation	No	Runoff	No			Depth to Contamination	Yes	Gas Source Type	No
Depth to Aquifer	No	Distance to Surface water	No			Vertical migration	No	Gas Migration Potential	No
Travel Time	No	Flood Frequency	No			Vapor Migration Potential	No	Particulate Potential to Release	No
		Flood Containment	No					Particulate Containment	No
								Particulate Source Type	No
								Particulate Migration Potential	No
Waste Characteristics		Waste Characteristics		Waste Characteristics		Waste Characteristics		Waste Characteristics	
Toxicity	Yes	Toxicity/ Ecotoxicity	Yes/Yes	Toxicity	Yes	Toxicity/ Degradation	Yes	Toxicity	Yes
Mobility	No	Persistence/ Mobility	Yes/No	Hazardous Waste Quantity	Yes	Hazardous Waste Quantity	Yes	Mobility	No
Hazardous Waste Quantity	Yes	Bioaccumulation Potential	No					Hazardous Waste Quantity	Yes
		Hazardous Waste Quantity	Yes						
Targets		Targets		Targets		Targets		Targets	
Nearest Well	Yes ^b	Nearest Intake	Yes ^b	Resident	Yes ^b	Exposed	Yes ^b	Nearest	Yes ^b

TABLE 7-1. HRS FACTORS EVALUATED DIFFERENTLY FOR RADIONUCLIDES

	Yes ^b	Drinking Water Population	Yes ^b	Individual Resident Population	Yes ^b	Individual Population	Yes ^b	Individual Population
Population	Yes ^b							
Resources	No	Resources	No	Workers	No	Resources	No	Resources
Wellhead Protection Area	No	Sensitive Environments	Yes ^b	Resources	No	Sensitive Environments	No	Sensitive Environments
		Human Food Chain Individual	Yes ^b	Terrestrial Sensitive Environments	No			
		Human Food Chain Population	Yes ^b	Nearby Individual	No			
				Population Within 1 Mile	No			

^a Factors evaluated differently are denoted by “yes”; factors not evaluated differently are denoted by “no”.
^b Difference is in the determination of Level I and Level II concentrations.

* * * These differences apply largely to the soil exposure and subsurface intrusion pathway and to sites containing mixed radioactive and other hazardous substances. * * *

7.1 Likelihood of release/likelihood of exposure. Evaluate likelihood of release for the three migration pathways and likelihood of exposure for the soil exposure and subsurface intrusion

pathway as specified in sections 2 through 6, except: Establish an observed release, observed contamination, and/or observed exposure as specified in section 7.1.1. When an observed release or exposure cannot be established for a migration pathway or the subsurface intrusion component of the soil exposure and subsurface intrusion pathway, evaluate potential to release as specified in section 7.1.2. When observed contamination cannot be established, do not evaluate the soil exposure component of the soil exposure and subsurface intrusion pathway.

7.1.1 Observed release/observed contamination/observed exposure. For radioactive substances, establish an observed release for each migration pathway by demonstrating that the site has released a radioactive substance to the pathway (or watershed or aquifer, as appropriate); establish observed contamination or observed exposure for the soil exposure and subsurface intrusion pathway as indicated below. Base these demonstrations on one or more of the following, as appropriate to the pathway being evaluated:

- Direct observation:
 - For each migration pathway, a material that contains one or more radionuclides has been seen entering the atmosphere, surface water, or ground water, as appropriate, or is known to have entered ground water or surface water through direct deposition, or
 - For the surface water migration pathway, a source area containing radioactive substances has been flooded at a time that radioactive substances were present and one or more radioactive substances were in contact with the flood waters.
 - For the subsurface intrusion component of the soil exposure and subsurface intrusion pathway, a material that contains one or more radionuclides has been observed entering a regularly occupied structure via the subsurface or is known to have entered a regularly occupied structure via the subsurface. Also, when evidence supports the inference of subsurface intrusion of a material that contains one or more radionuclides by the site into a regularly occupied structure, demonstrated adverse effects associated with that release may also be used to establish observed exposure by direct observation.

- Analysis of radionuclide concentrations in samples appropriate to the pathway (that is, ground water,

- soil, air, indoor air, surface water, benthic, or sediment samples):
 - For radionuclides that occur naturally and for radionuclides that are ubiquitous in the environment:
 - Measured concentration (in units of activity, for example, pCi per kilogram [pCi/kg], pCi per liter [pCi/L], pCi per cubic meter [pCi/m³]) of a given radionuclide in the sample are at a level that:
 - Equals or exceeds a value 2 standard deviations above the mean site-specific background concentration for that radionuclide in that type of sample, or
 - Exceeds the upper-limit value of the range of regional background concentration values for that specific radionuclide in that type of sample.
 - Some portion of the increase must be attributable to the site to establish the observed release (or observed contamination or observed exposure), and
 - For the soil exposure component of the soil exposure and subsurface intrusion pathway only, the radionuclide must also be present at the surface or covered by 2 feet or less of cover material (for example, soil) to establish observed contamination.
 - For man-made radionuclides without ubiquitous background concentrations in the environment:
 - Measured concentration (in units of activity) of a given radionuclide in a sample equals or exceeds the sample quantitation limit for that specific radionuclide in that type of media and is attributable to the site.
 - However, if the radionuclide concentration equals or exceeds its sample quantitation limit, but its release can also be attributed to one or more neighboring sites, then the measured concentration of that radionuclide must also equal or exceed a value either 2 standard deviations above the mean concentration of that radionuclide contributed by those neighboring sites or 3 times its background concentration, whichever is lower.
 - If the sample quantitation limit cannot be established:
 - If the sample analysis was performed under the EPA Contract Laboratory Program, use the EPA contract-required quantitation limit (CRQL) in place of the sample quantitation limit in establishing an observed release (or observed contamination or observed exposure).
 - If the sample analysis is not performed under the EPA Contract Laboratory Program, use the detection limit in place of the sample quantitation limit.

■ For the soil exposure component of the soil exposure and subsurface intrusion pathway only, the radionuclide must also be present at the surface or covered by 2 feet or less of cover material (for example, soil) to establish observed contamination.

• Gamma radiation measurements (applies only to observed contamination or observed exposure in the soil exposure and subsurface intrusion pathway):

—The gamma radiation exposure rate, as measured in microroentgens per hour ($\mu\text{R/hr}$) using a survey instrument held 1 meter above the ground surface or floor or walls of a structure (or 1 meter away from an aboveground source for the soil exposure component), equals or exceeds 2 times the site-specific background gamma radiation exposure rate.

—Some portion of the increase must be attributable to the site to establish observed contamination. The gamma-emitting radionuclides do not have to be within 2 feet of the surface of the source.

For the three migration pathways and for the subsurface intrusion component of the soil exposure and subsurface intrusion pathway, if an observed release or observed exposure can be established for the pathway (or threat, aquifer, or watershed, as appropriate), assign the pathway (or threat, aquifer, or watershed) an observed release or observed exposure factor value of 550 and proceed to section 7.2. If an observed release or observed exposure cannot be established, assign an observed release or observed exposure factor value of 0 and proceed to section 7.1.2.

For the soil exposure component of the soil exposure and subsurface intrusion pathway, if observed contamination can be established, assign the likelihood of exposure factor for resident population a value of 550 if there is an area of observed contamination in one or more locations listed in section 5.1.1; evaluate the likelihood of exposure factor for nearby population as specified in section 5.1.2.1; and proceed to section 7.2. If observed contamination cannot be established, do not evaluate the soil exposure component of the soil exposure and subsurface intrusion pathway.

At sites containing mixed radioactive and other hazardous substances, evaluate observed release (or observed contamination or observed exposure) separately for radionuclides as described in this section and for other

hazardous substances as described in sections 2 through 6.

For the three migration pathways and the subsurface intrusion component of the soil exposure and subsurface intrusion pathway, if an observed release or observed exposure can be established based on either radionuclides or other hazardous substances, or both, assign the pathway (or threat, aquifer, or watershed) an observed release or observed exposure factor value of 550 and proceed to section 7.2. If an observed release or observed exposure cannot be established based on either radionuclides or other hazardous substances, assign an observed release or observed exposure factor value of 0 and proceed to section 7.1.2.

For the soil exposure component of the soil exposure and subsurface intrusion pathway, if observed contamination can be established based on either radionuclides or other hazardous substances, or both, assign the likelihood of exposure factor for resident population a value of 550 if there is an area of observed contamination in one or more locations listed in section 5.1.1; evaluate the likelihood of exposure factor for nearby population as specified in section 5.1.2.1; and proceed to section 7.2. If observed contamination cannot be established based on either radionuclides or other hazardous substances, do not evaluate the soil exposure component of the soil exposure and subsurface intrusion pathway.

7.1.2 Potential to release/potential for exposure. For the three migration pathways and the subsurface intrusion component of the soil exposure and subsurface intrusion pathway, evaluate potential to release or potential for exposure for sites containing radionuclides in the same manner as specified for sites containing other hazardous substances. Base the evaluation on the physical and chemical properties of the radionuclides, not on their level of radioactivity. For the subsurface intrusion component of the soil exposure and subsurface intrusion pathway, if the potential for exposure is based on the presence of gamma emitting radioactive substances, assign a potential for exposure factor value of 500 only if the contamination is found within 2 feet beneath a regularly occupied structure, otherwise assign a potential for exposure factor value of 0.

For sites containing mixed radioactive and other hazardous substances, evaluate potential to release or potential for exposure considering radionuclides

and other hazardous substances together. Evaluate potential to release for each migration pathway and the potential for exposure for the subsurface intrusion component of the soil exposure and subsurface intrusion pathway as specified in sections 3 through 6, as appropriate.

* * * * *

7.2.3 Persistence/Degradation. In determining the surface water persistence factor for radionuclides, evaluate the surface water persistence this factor based solely on half-life; do not include sorption to sediments in the evaluation as is done for nonradioactive hazardous substances. Assign a persistence factor value from Table 4–10 (section 4.1.2.2.1.2) to each radionuclide based on half-life ($t_{1/2}$) calculated as follows:

$$t_{1/2} = \frac{1}{\frac{1}{r} + \frac{1}{v}}$$

Where:

r = Radioactive half-life.

v = Volatilization half-life.

If the volatilization half-life cannot be estimated for a radionuclide from available data, delete it from the equation. Select the portion of Table 4–10 to use in assigning the persistence factor value as specified in section 4.1.2.2.1.2.

At sites containing mixed radioactive and other hazardous substances, evaluate the persistence factor separately for each radionuclide and for each nonradioactive hazardous substance, even if the available data indicate that they are combined chemically. Assign a persistence factor value to each radionuclide as specified in this section and to each nonradioactive hazardous substance as specified in section 4.1.2.2.1.2. When combined chemically, assign a single persistence factor value based on the higher of the two values assigned (individually) to the radioactive and nonradioactive components.

In determining the subsurface intrusion degradation factor for radionuclides, when evaluating this factor based solely on half-life. Assign a degradation factor value from section 5.2.1.2.1.2 to each radionuclide based on half-life ($t_{1/2}$) calculated as follows:

$$t_{1/2} = \frac{1}{\frac{1}{r}}$$

Where:

r = Radioactive half-life.

At sites containing mixed radioactive and other hazardous substances,

evaluate the persistence or degradation factor separately for each radionuclide and for each nonradioactive hazardous substance, even if the available data indicate that they are combined chemically. Assign a persistence or degradation factor value to each radionuclide as specified in this section and to each nonradioactive hazardous substance as specified in sections 4.1.2.2.1.2 and 5.2.1.2.1.2. When combined chemically, assign a single persistence or degradation factor value based on the higher of the two values assigned (individually) to the radioactive and nonradioactive components.

7.2.4 Selection of substance potentially posing greatest hazard. For the subsurface intrusion component of the soil exposure and subsurface intrusion pathway and each migration pathway (or threat, aquifer, or watershed, as appropriate), select the radioactive substance or nonradioactive hazardous substance that potentially poses the greatest hazard based on its toxicity factor value, combined with the applicable mobility, persistence, degradation and/or bioaccumulation (or ecosystem bioaccumulation) potential factor values. Combine these factor values as specified in sections 2 through 6. For the soil exposure component of the soil exposure and subsurface intrusion pathway, base the selection on the toxicity factor alone (see sections 2 and 5).

* * * * *

7.2.5.1 Source hazardous waste quantity for radionuclides For each migration pathway, assign a source hazardous waste quantity value to each source having a containment factor value greater than 0 for the pathway being evaluated. For the soil exposure component of the soil exposure and subsurface intrusion pathway, assign a source hazardous waste quantity value to each area of observed contamination, as applicable to the threat being evaluated. For the subsurface intrusion component, assign a source hazardous waste quantity value to each regularly occupied structure located within areas of observed exposure or areas of subsurface contamination. Allocate hazardous substances and hazardous wastestreams to specific sources (or areas of observed contamination, area of observed exposure or area of subsurface contamination) as specified in sections 2.4.2 and 5.2.0.

7.2.5.1.1 Radionuclide constituent quantity (Tier A). Evaluate radionuclide constituent quantity for each source (or area of observed contamination or area of observed exposure) based on the

activity content of the radionuclides allocated to the source (or area of observed contamination or area of observed exposure) as follows:

- Estimate the net activity content (in curies) for the source (or area of observed contamination or area of observed exposure) based on:
 - Manifests, or
 - Either of the following equations, as applicable:

$$N = 9.1 \times 10^{-7} (V) \sum_{i=1}^n AC_i$$

Where:

N = Estimated net activity content (in curies) for the source (or area of observed contamination or area of observed exposure).

V = Total volume of material (in cubic yards) in a source (or area of observed contamination or area of observed exposure) containing radionuclides.

AC_i = Activity concentration above the respective background concentration (in pCi/g) for each radionuclide *i* allocated to the source (or area of observed contamination or area of observed exposure).

n = Number of radionuclides allocated to the source (or area of observed contamination or area of observed exposure) above the respective background concentrations.

or,

$$N = 3.8 \times 10^{-12} (V) \sum_{i=1}^n AC_i$$

Where:

N = Estimated net activity content (in curies) for the source (or area of observed contamination or area of observed exposure).

V = Total volume of material (in gallons) in a source (or area of observed contamination or area of observed exposure) containing radionuclides.

AC_i = Activity concentration above the respective background concentration (in pCi/l) for each radionuclide *i* allocated to the source (or area of observed contamination or area of observed exposure).

n = Number of radionuclides allocated to the source (or area of observed contamination or area of observed exposure) above the respective background concentrations.

- Estimate volume for the source (or volume for the area of observed contamination or area of observed exposure) based on records or measurements.
 - For the soil exposure component, in estimating the volume for areas of observed contamination, do not include more than the first 2 feet of depth,

except: For those types of areas of observed contamination listed in Tier C of Table 5–2 (section 5.1.1.2.2), include the entire depth, not just that within 2 feet of the surface.

- For the subsurface intrusion component, in estimating the volume for areas of observed exposure, only use the volume of air in the regularly occupied structures where observed exposure has been documented.

- Convert from curies of radionuclides to equivalent pounds of nonradioactive hazardous substances by multiplying the activity estimate for the source (or area of observed contamination or area of observed exposure) by 1,000.

- Assign this resulting product as the radionuclide constituent quantity value for the source (or area of observed contamination or area of observed exposure).

If the radionuclide constituent quantity for the source (or area of observed contamination or area of observed exposure) is adequately determined (that is, the total activity of all radionuclides in the source and releases from the source [or in the area of observed contamination or area of observed exposure] is known or is estimated with reasonable confidence), do not evaluate the radionuclide wastestream quantity measure in section 7.2.5.1.2. Instead, assign radionuclide wastestream quantity a value of 0 and proceed to section 7.2.5.1.3. If the radionuclide constituent quantity is not adequately determined, assign the source (or area of observed contamination or area of observed exposure) a value for radionuclide constituent quantity based on the available data and proceed to section 7.2.5.1.2.

7.2.5.1.2 Radionuclide wastestream quantity (Tier B). Evaluate radionuclide wastestream quantity for the source (or area of observed contamination, area of observed exposure, or area of subsurface contamination) based on the activity content of radionuclide wastestreams allocated to the source (or area of observed contamination, area of observed exposure, or area of subsurface contamination) as follows:

- Estimate the total volume (in cubic yards or in gallons) of wastestreams containing radionuclides allocated to the source (or area of observed contamination, area of observed exposure, or area of subsurface contamination).
 - Divide the volume in cubic yards by 0.55 (or the volume in gallons by 110) to convert to the activity content expressed in terms of equivalent pounds of nonradioactive hazardous substances.

- Assign the resulting value as the radionuclide wastestream quantity value for the source (or area of observed contamination, area of observed exposure, or area of subsurface contamination).

- For the subsurface intrusion component of the soil exposure and subsurface intrusion pathway, estimate the total wastestream volume for all regularly occupied structures located within areas of observed exposure with observed or inferred intrusion and within areas of subsurface contamination. Calculate the volume of each regularly occupied structure based on actual data. If unknown, use a ceiling height of 8 feet.

7.2.5.1.3 Calculation of source hazardous waste quantity value for radionuclides. Select the higher of the values assigned to the source (or area of observed contamination, area of observed exposure, and/or area of subsurface contamination) for radionuclide constituent quantity and radionuclide wastestream quantity. Assign this value as the source hazardous waste quantity value for the source (or area of observed contamination, area of observed exposure, or area of subsurface contamination). Do not round to the nearest integer.

7.2.5.2 Calculation of hazardous waste quantity factor value for radionuclides. Sum the source hazardous waste quantity values assigned to all sources (or areas of observed contamination, areas of observed exposure, or areas of subsurface contamination) for the pathway being evaluated and round this sum to the nearest integer, except: If the sum is greater than 0, but less than 1, round it to 1. Based on this value, select a hazardous waste quantity factor value for this pathway from Table 2–6 (section 2.4.2.2).

For a migration pathway, if the radionuclide constituent quantity is adequately determined (see section 7.2.5.1.1) for all sources (or all portions of sources and releases remaining after a removal action), assign the value from Table 2–6 as the hazardous waste quantity factor value for the pathway. If the radionuclide constituent quantity is not adequately determined for one or more sources (or one or more portions of sources or releases remaining after a removal action), assign a factor value as follows:

- If any target for that migration pathway is subject to Level I or Level II concentrations (see section 7.3), assign either the value from Table 2–6 or a value of 100, whichever is greater, as the

hazardous waste quantity factor value for that pathway.

- If none of the targets for that pathway is subject to Level I or Level II concentrations, assign a factor value as follows:

—If there has been no removal action, assign either the value from Table 2–6 or a value of 10, whichever is greater, as the hazardous waste quantity factor value for that pathway.

—If there has been a removal action:

- Determine values from Table 2–6 with and without consideration of the removal action.
- If the value that would be assigned from Table 2–6 without consideration of the removal action would be 100 or greater, assign either the value from Table 2–6 with consideration of the removal action or a value of 100, whichever is greater, as the hazardous waste quantity factor value for the pathway.
- If the value that would be assigned from Table 2–6 without consideration of the removal action would be less than 100, assign a value of 10 as the hazardous waste quantity factor value for the pathway.

For the soil exposure component of the soil exposure and subsurface intrusion pathway, if the radionuclide constituent quantity is adequately determined for all areas of observed contamination, assign the value from Table 2–6 as the hazardous waste quantity factor value. If the radionuclide constituent quantity is not adequately determined for one or more areas of observed contamination, assign either the value from Table 2–6 or a value of 10, whichever is greater, as the hazardous waste quantity factor value.

For the subsurface intrusion component of the soil exposure and subsurface intrusion pathway, if the radionuclide constituent quantity is adequately determined for all areas of observed exposure, assign the value from Table 2–6 as the hazardous waste quantity factor value. If the radionuclide constituent quantity is not adequately determined for one or more areas of observed exposure, assign either the value from Table 2–6 or a value of 10, whichever is greater, as the hazardous waste quantity factor value.

7.2.5.3 Calculation of hazardous waste quantity factor value for sites containing mixed radioactive and other hazardous substances. For each source (or area of observed contamination, area of observed exposure, or area of subsurface contamination) containing mixed radioactive and other hazardous

substances, calculate two source hazardous waste quantity values—one based on radionuclides as specified in sections 7.2.5.1 through 7.2.5.1.3 and the other based on the nonradioactive hazardous substances as specified in sections 2.4.2.1 through 2.4.2.1.5, and sections 5.1.1.2.2, 5.1.2.2.2 and 5.2.1.2.2 (that is, determine each value as if the other type of substance was not present). Sum the two values to determine a combined source hazardous waste quantity value for the source (or area of observed contamination, area of observed exposure, or area of subsurface contamination). Do not round this value to the nearest integer.

Use this combined source hazardous waste quantity value to calculate the hazardous waste quantity factor value for the pathway as specified in section 2.4.2.2, except: If either the hazardous constituent quantity or the radionuclide constituent quantity, or both, are not adequately determined for one or more sources (or one or more portions of sources or releases remaining after a removal action) or for one or more areas of observed contamination, areas of observed exposure, or areas of subsurface contamination, as applicable, assign the value from Table 2–6 or the default value applicable for the pathway, whichever is greater, as the hazardous waste quantity factor value for the pathway.

7.3 Targets. For radioactive substances, evaluate the targets factor category as specified in section 2.5 and sections 3 through 6, except: Establish Level I and Level II concentrations at sampling locations as specified in sections 7.3.1 and 7.3.2 and establish weighting factors for populations associated with an area of subsurface contamination in the subsurface intrusion component of the soil exposure and subsurface intrusion pathway as specified in section 7.3.3.

For all pathways (components and threats), use the same target distance limits for sites containing radioactive substances as is specified in sections 3 through 6 for sites containing nonradioactive hazardous substances. At sites containing mixed radioactive and other hazardous substances, include all sources (or areas of observed contamination, areas of observed exposure, or areas of subsurface contamination) at the site in identifying the applicable targets for the pathway.

7.3.1 Level of contamination at a sampling location. Determine whether Level I or Level II concentrations apply at a sampling location (and thus to the associated targets) as follows:

- Select the benchmarks from section 7.3.2 applicable to the pathway (or component or threat) being evaluated.

- Compare the concentrations of radionuclides in the sample (or comparable samples) to their benchmark concentrations for the pathway (or component or threat) as specified in section 7.3.2. Treat comparable samples as specified in section 2.5.1.

- Determine which level applies based on this comparison.

- If none of the radionuclides eligible to be evaluated for the sampling location have an applicable benchmark, assign Level II to the actual contamination at that sampling location for the pathway (or component or threat).

- In making the comparison, consider only those samples, and only those radionuclides in the sample, that meet the criteria for an observed release (or observed contamination or observed exposure) for the pathway, except: Tissue samples from aquatic human food chain organisms may also be used for the human food chain threat of the surface water pathway as specified in sections 4.1.3.3 and 4.2.3.3.

7.3.2 *Comparison to benchmarks.* Use the following media specific benchmarks (expressed in activity units, for example, pCi/l for water, pCi/kg for soil and for aquatic human food chain organisms, and pCi/m³ for air) for making the comparisons for the indicated pathway (or threat):

- Maximum Contaminant Levels (MCLs)—ground water migration pathway and drinking water threat in surface water migration pathway.

- Uranium Mill Tailings Radiation Control Act (UMTRCA) standards—soil exposure component of the soil exposure and subsurface intrusion pathway only.

- Screening concentration for cancer corresponding to that concentration that corresponds to the 10⁻⁶ individual cancer risk for inhalation exposures (air migration pathway and subsurface intrusion component of the soil exposure and subsurface intrusion pathway) or for oral exposures (ground water migration pathway; drinking water or human food chain threats in surface water migration pathway; and soil exposure and subsurface intrusion pathway).

—For the soil exposure and subsurface intrusion pathway, include two

screening concentrations for cancer—one for ingestion of surface materials and one for external radiation exposures from gamma-emitting radionuclides in surface materials.

Select the benchmark(s) applicable to the pathway (component or threat) being evaluated. Compare the concentration of each radionuclide from the sampling location to its benchmark concentration(s) for that pathway (component or threat). Use only those samples and only those radionuclides in the sample that meet the criteria for an observed release (or observed contamination or observed exposure) for the pathway, except: Tissue samples from aquatic human food chain organisms may be used as specified in sections 4.1.3.3 and 4.2.3.3. If the concentration of any applicable radionuclide from any sample equals or exceeds its benchmark concentration, consider the sampling location to be subject to Level I concentrations for that pathway (component or threat). If more than one benchmark applies to the radionuclide, assign Level I if the radionuclide concentration equals or exceeds the lowest applicable benchmark concentration. In addition, for the soil exposure and subsurface intrusion pathway, assign Level I concentrations at the sampling location if measured gamma radiation exposure rates equal or exceed 2 times the background level (see section 7.1.1).

If no radionuclide individually equals or exceeds its benchmark concentration, but more than one radionuclide either meets the criteria for an observed release (or observed contamination or observed exposure) for the sample or is eligible to be evaluated for a tissue sample (see sections 4.1.3.3 and 4.2.3.3), calculate a value for index I for these radionuclides as specified in section 2.5.2. If I equals or exceeds 1, assign Level I to the sampling location. If I is less than 1, assign Level II.

At sites containing mixed radioactive and other hazardous substances, establish the level of contamination for each sampling location considering radioactive substances and nonradioactive hazardous substances separately. Compare the concentration of each radionuclide and each nonradioactive hazardous substance from the sampling location to its respective benchmark concentration(s).

Use only those samples and only those substances in the sample that meet the criteria for an observed release (or observed contamination or observed exposure) for the pathway except: Tissue samples from aquatic human food chain organisms may be used as specified in sections 4.1.3.3 and 4.2.3.3. If the concentration of one or more applicable radionuclides or other hazardous substances from any sample equals or exceeds its benchmark concentration, consider the sampling location to be subject to Level I concentrations. If more than one benchmark applies to a radionuclide or other hazardous substance, assign Level I if the concentration of the radionuclide or other hazardous substance equals or exceeds its lowest applicable benchmark concentration.

If no radionuclide or other hazardous substance individually exceed a benchmark concentration, but more than one radionuclide or other hazardous substance either meets the criteria for an observed release (or observed contamination or observed exposure) for the sample or is eligible to be evaluated for a tissue sample, calculate an index I for both types of substances as specified in section 2.5.2. Sum the index I values for the two types of substances. If the value, individually or combined, equals or exceeds 1, assign Level I to the sample location. If it is less than 1, calculate an index J for the nonradioactive hazardous substances as specified in section 2.5.2. If J equals or exceeds 1, assign Level I to the sampling location. If J is less than 1, assign Level II.

7.3.3 *Weighting of targets within an area of subsurface contamination.* For the subsurface intrusion component of the soil exposure and subsurface intrusion pathway, assign a weighting factor as specified in section 5.2.1.3.2.3 except when an area of subsurface contamination is bound by gamma radiation exposure rates meeting observed release criteria with a depth to contamination of 2 feet or less. For those populations residing, working, or attending school or day care in a structure, assign a weighting factor of 0.9.

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