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Presidential Documents

Title 3—

The President

Proclamation 9454 of May 26, 2016

Prayer for Peace, Memorial Day, 2016

By the President of the United States of America

A Proclamation

With courage and a love of country that knows no limits, America's men and women in uniform exemplify patriotism at its core—stepping into harm's way to protect our people and to safeguard the ideals that have long sustained our democracy. Those who serve under the stars and stripes embody the highest form of citizenship, and on Memorial Day, we pay solemn tribute to those brave Americans who laid down their lives to defend our freedom.

Since America's earliest days, proud patriots have forged a safer, more secure Nation, and though battlefields have changed and technology has evolved, the selflessness of our service members has remained steadfast. They have stepped forward when our country was locked in revolution and civil war; fought threats of fascism and terrorism; and led the way in securing peace and stability around the globe. They have sacrificed more than most of us could ever imagine—not for glory or gratitude, but for causes greater than themselves. In the children who replicate their courage and strength, in the spouses and partners who forever seek to mend their broken hearts, and in the parents who mourn the absence of the sons and daughters they raised, we are reminded of our enduring commitment to do right by our fallen warriors and their families.

Those who gave their last full measure of devotion for the values that bind us as one people deserve our utmost respect and gratitude. In recognizing those who made the ultimate sacrifice, we pledge to never stop working to fulfill our obligations to all members of our Armed Forces so they know we stand beside them every step of the way—not just when we need them, but also when they need us.

Today, and every day, let us remember the servicemen and women we have lost, and let us honor them by rededicating ourselves to strengthening our Nation's promise. With love, grace, and reflection, let us honor our fallen fellow Americans, known and unknown, who sacrificed their freedom to ensure our own.

In honor of all of our fallen service members, the Congress, by a joint resolution approved May 11, 1950, as amended (36 U.S.C. 116), has requested the President issue a proclamation calling on the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the people of the United States might unite in prayer. The Congress, by Public Law 106–579, has also designated 3:00 p.m. local time on that day as a time for all Americans to observe, in their own way, the National Moment of Remembrance.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim Memorial Day, May 30, 2016, as a day of prayer for permanent peace, and I designate the hour beginning in each locality at 11:00 a.m. of that day as a time during which people may unite in prayer.

I also ask all Americans to observe the National Moment of Remembrance beginning at 3:00 p.m. local time on Memorial Day. I request the Governors of the United States and its Territories, and the appropriate officials of

all units of government, to direct that the flag be flown at half-staff until noon on this Memorial Day on all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control. I also request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of May, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and fortieth.

[FR Doc. 2016–13003
5–31–16; 8:45 am]
Billing code 3295–F6–P

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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FEDERAL ELECTION COMMISSION

11 CFR Parts 4, 100, 104, 106, 109, 110, 113, 114, 9004, and 9034

[Notice 2016–03]

Technical Amendments and Corrections

AGENCY: Federal Election Commission.

ACTION: Correcting amendments.

SUMMARY: The Commission is making technical corrections to various sections of its regulations.

DATES: Effective June 1, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene Lynch, Paralegal, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Background

The existing rules that are the subject of these corrections are part of the continuing series of regulations that the Commission has promulgated to implement the Presidential Election Campaign Fund Act, 26 U.S.C. 9001–13, and the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031–42 (collectively, the ''Funding Acts''), and the Federal Election Campaign Act, 52 U.S.C. 30101–46 (''FECA''). The Commission is promulgating these corrections without advance notice or an opportunity for comment because they fall under the ''good cause'' exemption of the Administrative Procedure Act. 5 U.S.C. 553(b)(B). The Commission finds that notice and comment are unnecessary here because these corrections are merely typographical and technical; they effect no substantive changes to any rule. For the same reason, these corrections fall within the ''good cause'' exception to the delayed effective date provisions of the Administrative Procedure Act and the Congressional Review Act. 5 U.S.C. 553(d)(3), 808(2).

Moreover, because these corrections are exempt from the notice and comment procedure of the Administrative Procedure Act under 5 U.S.C. 553(b), the Commission is not required to conduct a regulatory flexibility analysis under 5 U.S.C. 603 or 604. *See* 5 U.S.C. 601(2), 604(a). Nor is the Commission required to submit these revisions for congressional review under FECA or the Funding Acts. *See* 52 U.S.C. 30111(d)(1), (4) (providing for congressional review when Commission ''prescribe[s]'' a ''rule of law''); 26 U.S.C. 9009(c)(1), (4), 9039(c)(1), (4) (same). Accordingly, these corrections are effective upon publication in the **Federal Register.**

Corrections to FECA and Funding Act Rules in Chapter I of Title 11 of the Code of Federal Regulations

A. Correction to 11 CFR 4.8

The Commission is updating paragraph (a) of this section regarding when a person may appeal the Commission's failure to respond to a document inspection or production request filed under the Freedom of Information Act (''FOIA''), 5 U.S.C. 552. Paragraph (a) currently provides that a person may appeal the Commission's failure to respond if the person has received no response within ten working days after the Commission received the FOIA request. When originally promulgated, this ten-day time period accurately reflected the time the Commission had to respond to a FOIA request. *See* 5 U.S.C. 552(a)(6)(A)(i) (1979); Public Records and Freedom of Information Act, 44 FR 33368 (June 8, 1979) (promulgating section 4.7(c), giving Commission ten working days to respond to FOIA request, and section 4.8(a), allowing FOIA requestors who did not receive response within ten working days to file appeals). Subsequently, however, Congress amended FOIA to allow agencies 20 days in which to respond to FOIA requests, and the Commission revised its own response period in 11 CFR 4.7(c) accordingly. *See* Electronic Freedom of Information Act Amendments, 65 FR 9201 (Feb. 24, 2000). The Commission did not, however, make the necessary corresponding change to the regulation governing the time for filing an appeal. Accordingly, to conform the time period for appealing the Commission's failure to respond with the time that the Commission has to respond, the Commission is revising paragraph (a) by removing the word ''ten'' and replacing it with ''twenty.''

B. Correction to 11 CFR 100.54

The Commission is correcting two erroneous citations in the introductory paragraph of this section. This paragraph erroneously refers to 11 CFR 100.74 and 100.75 in discussing the exemption of certain legal and accounting services from the definition of ''contribution.'' That exemption is set forth in sections 100.85 and 100.86, not in sections 100.74 and 100.75 (which address volunteer services and the use of a volunteer's real or personal property). Accordingly, the Commission is removing the citations to 11 CFR 100.74 and 100.75 and replacing them with 11 CFR 100.85 and 100.86, respectively.

C. Corrections to 11 CFR 104.4

The Commission is amending paragraphs (b)(1) and (2) of this section to remove an ambiguity regarding the reporting requirements for political committees making independent expenditures in a calendar year. These paragraphs require political committees to report all independent expenditures aggregating less than $10,000 (paragraph (b)(1)) or $10,000 or more (paragraph (b)(2)) with respect to a given election made ''at any time during the calendar year up to and including the 20th day before an election.'' Some reporting entities have expressed uncertainty as to whether this language signifies that reporting is not required in a calendar year other than an election year. As the Commission noted in promulgating this section, the reporting requirement applies to independent expenditures made by a political committee ''at any time'' and ''at any point in the campaign,'' up to and including 20 days before an election. 52 U.S.C. 30104(g)(2); Bipartisan Campaign Reform Act of 2002 Reporting, 68 FR 404, 406 (Jan. 3, 2003). To clarify that a political committee must report independent expenditures aggregating less than $10,000, or $10,000 or more, with respect to a given election made in any calendar year, the Commission is amending portions of the text in paragraphs (b)(1) and (2).

D. Corrections to 11 CFR 104.18

The Commission is revising paragraphs (b) and (g) of this section to reflect the availability and use of internet-based forms to file reports electronically with the Commission. The Commission has made a number of these forms available for use by filers on its Web site, at *www.fec.gov.* Paragraph (b) provides that a political committee or other person not required to file reports electronically with the Commission may nonetheless choose to file reports in an electronic format that meets the requirements of this section, and a person who chooses to file reports electronically is generally required to continue to file electronically for the rest of that calendar year. The Commission is adding a reference to internet-based forms to paragraph (b), as an example of an electronic format that meets the requirements of this section.

Paragraph (g) requires the treasurer of a political committee and other persons responsible for filing reports with the Commission to verify the reports in specific ways. The Commission is revising paragraph (g) to clarify that a signed certification on a Commission internet form meets the verification requirement.

The Commission is also correcting a typographical error in paragraph (a)(3)(i)(A) of this section by replacing the phrase ''nets debts'' with the phrase ''net debts.''

E. Correction to 11 CFR 106.6

The Commission is correcting an erroneous citation in paragraph (d)(1) of this section. Paragraph (d)(1) requires a political committee that collects both federal and nonfederal funds through a joint activity to allocate its direct costs of fundraising ''as described in paragraph (a)(2) of this section'' in a certain manner. Paragraph (a)(2) of this section, however, does not exist. Instead, the direct costs of fundraising are described in paragraph (b)(1) of this section. Thus, the Commission is replacing the reference to paragraph (a)(2) in paragraph (d)(1) with a reference to paragraph (b)(1).

F. Correction to 11 CFR 106.7

The Commission is correcting an erroneous citation in paragraph (d)(1)(ii) of this section. Paragraph (d)(1)(ii) requires state, district, and local party committees to use only federal funds to pay the salaries, wages, and fringe benefits of employees who spend more than 25% of their compensated time on federal election activities or activities in connection with a federal election, and cites to 11 CFR 300.33(d)(1). Paragraph (d)(1) of § 300.33, however, concerns employees who spend 25% or *less* of their compensated time on federal election activities or activities in connection with a federal election. Paragraph (d)(2) of § 300.33, on the other hand, relates to the payment of employees spending *more* than 25% of their compensated time on such activities. Accordingly, the Commission is replacing the reference to 11 CFR 300.33(d)(1) in paragraph (d)(1)(ii) with 11 CFR 300.33(d)(2).

G. Correction to 11 CFR 109.10

The Commission is amending paragraph (c) of this section to remove an ambiguity regarding the reporting requirements for persons who are not political committees and make $10,000 or more in independent expenditures in a calendar year. For the reasons explained above regarding the amendments to section 104.4, the Commission is amending portions of the text in paragraph (c).

H. Correction to 11 CFR 110.1

The Commission is correcting a typographical error in paragraph (b)(6) of this section. This Commission is replacing the reference to 11 CFR 110.1(1)(4) with a reference to 11 CFR 110.1(l)(4) (lowercase letter L).

I. Correction to 11 CFR 110.2

The Commission is correcting a typographical error in paragraph (b)(6) of this section. The Commission is replacing the reference to 11 CFR 110.1(1)(4) with a reference to 11 CFR 110.1(l)(4) (lowercase letter L).

J. Correction to 11 CFR 113.1

The Commission is correcting an erroneous citation in paragraph (g)(1)(i)(I) of this section. The last sentence of paragraph (g)(1)(i)(I) prohibits ''[a] Federal officeholder, as defined in 11 CFR 100.5(f)(1),'' from receiving salary payments from campaign funds as a candidate. Paragraph (f)(1) of § 100.5, however, defines ''authorized committee,'' not ''Federal officeholder.'' Paragraph (c) of § 113.1, on the other hand, defines ''Federal officeholder.'' As such, in the last sentence of paragraph (g)(1)(i)(I), the Commission is replacing ''11 CFR 100.5(f)(1)'' with ''paragraph (c) of this section.''

K. Corrections to 11 CFR 114.2

The Commission is making a conforming change to the note to paragraph (b) of this section. In the note, the word ''non-connected'' appears twice. The Commission is replacing both references to ''non-connected'' with ''nonconnected'' to conform the word to how it appears in the rest of 11 CFR chapter 1.

L. Corrections to 11 CFR 114.10

For the reasons noted above regarding the correction to § 114.2, the Commission is replacing both references to ''non-connected'' in the note to § 114.10(a) with ''nonconnected.''

M. Correction to 11 CFR 9004.6

The Commission is correcting a typographical error in paragraph (c) of this section. The Commission is removing the misspelled word ''Deducation'' and replacing it with the word ''Deduction.''

N. Correction to 11 CFR 9034.2

The Commission is correcting an erroneous citation in paragraph (c)(1)(iii) of this section. This paragraph addresses the reattribution of contributions among joint tenants of a checking account, and requires the documentation ''described in 11 CFR 110.1(1), (3), (5), and (6)'' to accompany the reattributed contribution. The citation to 11 CFR 110.1(1), (3), (5), and (6) is incorrect, however, because those paragraphs do not exist. Instead, the documentation requirements for reattributed contributions appear in paragraph (l) (lowercase letter L) of section 110.1. Accordingly, the Commission is replacing the reference to 11 CFR 110.1(1), (3), (5), and (6) in § 9034.2 with 11 CFR 110.1(l)(3), (5), and (6).

List of Subjects

11 CFR Part 4

Freedom of information.

11 CFR Part 100

Elections.

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 106

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR 109

Coordinated and independent expenditures.

11 CFR 110

Campaign funds, Political committees and parties.

11 CFR Part 113

Campaign funds, Political candidates.

11 CFR Part 114

Business and industry, Elections, Labor.

11 CFR Part 9004

Campaign funds.

11 CFR Part 9034

Campaign funds, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Federal Election Commission amends 11 CFR chapter I, as follows:

PART 4—PUBLIC RECORDS AND THE FREEDOM OF INFORMATION ACT

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

Authority: 5 U.S.C. 552, as amended.

§ 4.8 [Amended]

■ 2. Amend paragraph (a) of § 4.8 by removing ''ten'' and adding in its place ''twenty''.

PART 100—SCOPE AND DEFINITIONS (52 U.S.C. 30101)

■ 3. The authority citation for part 100 continues to read as follows:

Authority: 52 U.S.C. 30101, 30104, 30111(a)(8), and 30114(c).

§ 100.54 [Amended]

■ 4. Amend the introductory text of § 100.54 by removing ''11 CFR 100.74 and 100.75'' and adding in its place ''11 CFR 100.85 and 100.86''.

PART 104—REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS (52 U.S.C. 30104)

■ 5. The authority citation for part 104 continues to read as follows:

Authority: 52 U.S.C. 30101(1), 30101(8), 30101(9), 30102(i), 30104, 30111(a)(8) and (b), 30114, 30116, 36 U.S.C. 510.

■ 6. In § 104.4, revise paragraph (b)(1) and remove the first sentence in paragraph (b)(2) and add two sentences in its place.

The revision and additions read as follows:

§ 104.4 Independent expenditures by political committees (52 U.S.C. 30104(b), (d), and (g)).

* * * * *

(b) * * *

(1) *Independent expenditures aggregating less than $10,000 in a calendar year.* For each election in which a political committee makes independent expenditures, the political committee shall aggregate its independent expenditures made in each calendar year to determine its reporting obligation. When a committee makes independent expenditures aggregating less than $10,000 for an election in any calendar year, up to and including the 20th day before an election, the committee must report those independent expenditures on Schedule E of FEC Form 3X, at the time of its regular reports in accordance with 11 CFR 104.3, 104.5, and 104.9.

(2) * * * For each election in which a political committee makes independent expenditures, the political committee shall aggregate its independent expenditures made in each calendar year to determine its reporting obligation. When a committee makes independent expenditures aggregating $10,000 or more for an election in any calendar year, up to and including the 20th day before an election, it must report those independent expenditures on Schedule E of FEC Form 3X. * * *

* * * * *

§ 104.18 [Amended]

■ 7. In § 104.18:

■ a. Amend paragraph (a)(3)(i)(A) by removing ''nets debts'' and adding in its place ''net debts''.

■ b. Amend paragraph (b), first sentence, by adding ''(internet forms included)'' after ''the requirements of this section''.

■ c. Amend paragraph (g), first sentence, by adding ''; or by submitting a signed certification on a Commission internet form'' after ''in the electronic submission''.

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

■ 8. The authority citation for part 106 continues to read as follows:

Authority: 52 U.S.C. 30111(a)(8), 30116(b), 30116(g).

§ 106.6 [Amended]

■ 9. Amend the first sentence of paragraph (d)(1) of § 106.6 by removing ''as described in paragraph (a)(2) of this section'' and adding in its place ''as described in paragraph (b)(1) of this section''.

§ 106.7 [Amended]

■ 10. Amend paragraph (d)(1)(ii) of § 106.7 by removing ''11 CFR 300.33(d)(1)'' and adding in its place ''11 CFR 300.33(d)(2)''.

PART 109—COORDINATED AND INDEPENDENT EXPENDITURES (52 U.S.C. 30101(17), 30116(A) AND (D), AND PUB. L. 107–155 SEC. 214(C))

■ 11. The authority citation for part 109 continues to read as follows:

Authority: 52 U.S.C. 30101(17), 30104(c), 30111(a)(8), 30116, 30120; Sec. 214(c), Pub. L. 107–155, 116 Stat. 81.

■ 12. Amend paragraph (c) of § 109.10 by removing the first sentence and adding two sentences in its place to read as follows:

§ 109.10 [Amended]

* * * * *

(c) * * * For each election in which a person who is not a political committee makes independent expenditures, the person shall aggregate its independent expenditures made in each calendar year to determine its reporting obligation. When such a person makes independent expenditures aggregating $10,000 or more for an election in any calendar year, up to and including the 20th day before an election, the person must report the independent expenditures on FEC Form 5, or by signed statement if the person is not otherwise required to file electronically under 11 CFR 104.18.

* * * * *

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

■ 13. The authority citation for part 110 continues to read as follows:

Authority: 52 U.S.C. 30101(8), 30101(9), 30102(c)(2), 30104(i)(3), 30111(a)(8), 30116, 30118, 30120, 30121, 30122, 30123, 30124, and 36 U.S.C. 510.

§ 110.1 [Amended]

■ 14. Amend paragraph (b)(6) by removing ''11 CFR 110.1(1)(4)'' and adding in its place ''11 CFR 110.1(l)(4)''.

§ 110.2 [Amended]

■ 15. Amend paragraph (b)(6) by removing ''11 CFR 110.1(1)(4)'' and adding in its place ''11 CFR 110.1(l)(4)''.

PART 113—PERMITTED AND PROHIBITED USES OF CAMPAIGN ACCOUNTS

■ 16. The authority citation for part 113 continues to read as follows:

Authority: 52 U.S.C. 30102(h), 30111(a)(8), 30114, and 30116.

§ 113.1 [Amended]

■ 17. Amend the last sentence of paragraph (g)(1)(i)(I) of § 104.4 by removing ''11 CFR 100.5(f)(1)'' and

adding in its place ''paragraph (c) of this section''.

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

■ 18. The authority citation for part 114 continues to read as follows:

Authority: 52 U.S.C. 30101(8), 30101(9), 30102, 30104, 30107(a)(8), 30111(a)(8), 30118.

§ 114.2 [Amended]

■ 19. Amend the note to paragraph (b) of § 114.2 by removing all references to ''non-connected'' and adding in their place ''nonconnected''.

§ 114.10 [Amended]

■ 20. Amend the note to paragraph (a) of § 114.10 by removing all references to ''non-connected'' and adding in their place ''nonconnected''.

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

■ 21. The authority citation for part 9004 continues to read as follows:

Authority: 26 U.S.C. 9004 and 9009(b).

§ 9004.6 [Amended]

■ 22. Amend the subject heading to paragraph (c) introductory text of § 9004.6 by removing ''Deducation'' and adding in its place ''Deduction''.

PART 9034—ENTITLEMENTS

■ 23. The authority citation for part 9034 continues to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

§ 9034.2 [Amended]

■ 24. Amend paragraph (c)(1)(iii) of § 9034.2 by removing ''11 CFR 110.1 (1), (3), (5), and (6)'' and adding in its place ''11 CFR 110.1(l)(3), (5), and (6)''.

On behalf of the Commission,

Dated: May 23, 2016.

Matthew S. Petersen,

Chairman, Federal Election Commission.

[FR Doc. 2016–12661 Filed 5–31–16; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0496; Directorate Identifier 2014–NM–101–AD; Amendment 39–18533; AD 2016–11–06]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2005–18–18 for certain The Boeing Company Model 757 airplanes. AD 2005–18–18 required inspections of certain wire bundles in the left and right engine-to-wing aft fairings for discrepancies; installation of back-to-back p-clamps between the wire and hydraulic supply tube at the aft end of the right-hand strut only; and associated re-routing of the wire bundles, if necessary. This new AD also requires an installation of spiral cable wrap on fuel shutoff valve (FSV) wires at the aft end of the strut, for both left and right engines, and related investigative and corrective actions. This AD was prompted by a determination that the service information referenced in AD 2005–18–18 did not adequately address FSV wires at the aft end of the struts. We are issuing this AD to prevent chafing between the wire bundle and the structure of the aft fairing, which could result in electrical arcing and subsequent ignition of flammable vapors and a possible uncontrollable fire.

DATES: This AD is effective July 6, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 6, 2016.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of October 14, 2005 (70 FR 53554, September 9, 2005).

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA 98057. 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–2015–0496.

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–2015–0496; 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: William Bond, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5253; fax: 562–627–5210; email: *william.bond@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2005–18–18, Amendment 39–14258 (70 FR 53554, September 9, 2005) (''AD 2005–18–18''). AD 2005–18–18 applied to certain The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes. The NPRM published in the **Federal Register** on March 27, 2015 (80 FR 16318) (''the NPRM''). The NPRM was prompted by a report that the service information referenced in AD 2005–18–18 did not adequately address FSV wires at the aft end of the strut, for both left and right engine struts. The NPRM proposed to continue to require inspections of certain wire bundles in the left and right engine-to-wing aft fairings for discrepancies; installation of back-to-back p-clamps between the wire and hydraulic supply tube at the aft end of the right-hand strut only; and associated re-routing of the wire bundles, if necessary. The NPRM also proposed to require installation of tetrafluoroethylene spiral cable wrap on the FSV wires at the aft end of the strut that would provide additional wiring protection. We are issuing this AD to prevent chafing between the wire bundle and the structure of the aft

fairing, which could result in electrical arcing and subsequent ignition of flammable vapors and a possible uncontrollable fire.

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 Clarify Certain Requirements

Boeing requested clarification of the actions required by paragraph (g) of the proposed AD. Boeing suggested that paragraph (g) of the proposed AD be revised to add a statement to clarify that no further work would be required if the requirements of AD 2005–18–18 have already been accomplished.

We agree to provide clarification. In paragraph (g) of this AD, we restated the requirements of paragraph (f) of AD 2005–18–18. Paragraph (f) of this AD states, ''Comply with this AD within the compliance times specified, unless already done.'' If operators have already done the actions required by paragraph (f) of AD 2005–18–18, they have already done the actions required by paragraph (g) of this AD. If operators have not already done the actions required by paragraph (g) of this AD before the effective date of the AD, then they must use the most recent revision of the service information. We have not changed this AD in this regard.

Request To Clarify Certain Compliance Time Requirements

Boeing requested clarification of the compliance times stated in paragraph (h) of the proposed AD. Boeing stated that there is confusion between ''Within 60 months after the effective date of this AD . . . ,'' as stated in the first sentence of the paragraph for the spiral cable wrap installation, and ''. . . before further flight,'' as stated in the second sentence for the related investigative and corrective actions. Boeing suggested that the second sentence be deleted from paragraph (h) of the proposed AD.

We do not agree to revise paragraph (h) of this AD. The installation of the spiral cable wrap includes related investigative and corrective actions, *i.e.,* doing inspections for damaged wire bundles, repairing damaged wires, and testing certain fuel shutoff wires. These related investigative and corrective actions must be done before further flight after damage is found. We have not changed the AD in this regard.

Request To Provide Credit for Required Service Information

FedEx requested that the proposed AD be revised to add a paragraph granting credit for accomplishing Boeing Service Bulletin 757–28A0073 or 757–28A0074, both Revision 2, both dated June 4, 2009, before the effective date of the AD. FedEx stated that they had already accomplished the requirements on airplanes in their fleet.

We agree to clarify. The intent of paragraph (f) of this AD is to provide relief for accomplishing the requirements of this AD before the effective date of this AD. Therefore, this AD already includes the credit requested by the commenter. We have not changed this AD in this regard.

Request To Allow Credit for Previous AMOC Approvals

United Airlines (UAL) requested that a paragraph be added to the proposed AD to allow credit for all previously approved AMOC letters that affect Boeing Service Bulletin 757–28A0073 or 757–28A0074.

We do not agree to add a new paragraph to this AD. Credit is already provided in paragraph (i)(4) of this AD, which specifies that AMOCs approved for AD 2005–18–18 are also acceptable as AMOCs for the corresponding provisions of paragraph (g) of this AD. (Paragraph (g) of this AD restates the requirements of paragraph (f) of AD 2005–18–18.) Paragraph (h) of this AD is a new requirement and AMOCs cannot be approved for that paragraph until this AD is published. We have not changed this AD in this regard.

Request To Provide Relief for Model 757–300 Airplanes Similar to Relief Provided to Model 757–200 Airplanes

UAL requested relief for Model 757–300 airplanes that is similar to that provided to the Model 757–200 airplanes in FAA AMOC letter 757–28A0073–AMOC–01.

We agree. The issue that the AMOC letter addresses (for Boeing Service Bulletin 757–28A0073, Revision 2, dated June 4, 2009) also exists in Boeing Service Bulletin 757–28A0074, Revision 2, dated June 4, 2009. We have revised paragraphs (g) and (h) of this AD to include a statement that where Boeing Service Bulletin 757–28A0074, Revision 2, dated June 4, 2009, states ''SWPM 20–10–11, Table IX,'' this AD instead requires ''SWPM 20–10–11, 'Minimum Clearance' Table.''

Request To Incorporate Proposed AD Requirements Into the Maintenance Planning Data (MPD) Document

UAL requested that the proposed AD be revised to require incorporation of a required repetitive inspection of the modification into the MPD requirements for Model 757 Heavy Check intervals, preferably at intervals of 3,000 flight cycles or 20 months. UAL suggested that this addition to the MPD could ensure the long-term integrity of the modification.

We do not agree to require a revision to the MPD. We infer that the term ''modification'' used by UAL is intended to refer to the corrective actions required by paragraph (g) of this AD, and the cable wrap installation and related investigative and corrective actions required by paragraph (h) of this AD. These actions required by paragraphs (g) and (h) of this AD are considered to provide long-term integrity of the ''modification'' and maintain an acceptable level of safety. However, we encourage operators to proactively revise their maintenance programs in accordance with FAA regulations to address problems or issues as they arise. We have not changed this AD in this regard.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing (APB) stated that the installation of winglets per Supplemental Type Certificate (STC) ST01518SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/312bc296830a925c86257c85006d1b1f/$FILE/ST01518SE.pdf*) does not affect accomplishment of the manufacturer's service instructions.

We agree with the commenter that STC ST01518SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/312bc296830a925c86257c85006d1b1f/$FILE/ST01518SE.pdf*) does not affect the accomplishment of the manufacturer's service instructions. Therefore, the installation of STC ST01518SE does not affect the ability to accomplish the actions required by this AD. We have not changed this AD in this regard.

Change Made to the Format of Paragraph (g) of This AD

We have revised the format of paragraph (g) of this AD by converting Table 1 to paragraph (g)(1) to text in paragraph (g). This change to the format does not affect the requirements of paragraphs (g), (g)(1), or (g)(2) of this AD.

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 Boeing Alert Service Bulletins 757–28A0073 and 757–28A0074, both Revision 2, both dated June 4, 2009. The service information describes procedures for inspecting certain wire bundles in the left and right engine-to-wing aft fairings for discrepancies; installing back-to-back p-clamps between the wire and hydraulic supply tube at the aft end of the right-hand strut only; associated re-routing of the wire bundles, if necessary; and installing spiral cable wrap on FSV wires on the aft ends of the left and right engine struts, and related investigative 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.

Costs of Compliance

We estimate that this AD affects 346 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 of certain wire bundles, and p-clamp installation [retained actions from AD 2005–18–18].	Between 16 and 44 work-hours × $85 per hour = Between $1,360 and $3,740.	$600	Between $1,960 and $4,340.	Between $678,160 and $1,501,640
Installation of spiral cable wrap [new action]	10 work-hours × $85 per hour = $850.	$10	$860	$297,560

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 have 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 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 removing Airworthiness Directive (AD) 2005–18–18, Amendment 39–14258 (70 FR 53554, September 9, 2005), and adding the following new AD:

2016–11–06 The Boeing Company: Amendment 39–18533; Docket No. FAA–2015–0496; Directorate Identifier 2014–NM–101–AD.

(a) Effective Date

This AD is effective July 6, 2016.

(b) Affected ADs

This AD replaces AD 2005–18–18, Amendment 39–14258 (70 FR 53554, September 9, 2005) (''AD 2005–18–18'').

(c) Applicability

This AD applies to The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes; certificated in any category; equipped with Rolls-Royce engines; as identified in Boeing Alert Service Bulletins 757–28A0073 and 757–28A0074, both Revision 2, both dated June 4, 2009.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that the service information referenced in AD 2005–18–18, did not adequately address fuel shutoff valve (FSV) wires at the aft end of the strut, for both left and right engine struts. We are issuing this AD to prevent chafing between the wire bundle and the structure of the aft fairing, which could result in electrical arcing and subsequent ignition of flammable vapors and a possible uncontrollable fire.

(f) Compliance

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

(g) Retained One-Time Inspections/Related Investigative and Corrective Actions, With New Service Information and an Exception to Certain Service Information

This paragraph restates the requirements of paragraph (f) of AD 2005–18–18, with new service information and an exception to certain service information. Within 60 months after October 14, 2005 (the effective date of AD 2005–18–18), do the actions required by paragraphs (g)(1) and (g)(2) of this AD. Where Boeing Alert Service Bulletin 757–28A0074, Revision 2, dated June 4, 2009, states ''SWPM 20–10–11, Table IX,'' the correct phrase is ''SWPM 20–10–11, 'Minimum Clearance' Table.''

(1) Accomplish the detailed inspections for discrepancies of the wire bundles in the left and right engine-to-wing aft fairings, and applicable and related investigative and corrective actions if necessary, as applicable, by doing all the actions specified in the Accomplishment Instructions of the applicable service bulletins listed in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD. As of the effective date of this AD, use only Boeing Alert Service Bulletin 757–28A0073 or 757–28A0074, both Revision 2, both dated June 4, 2009, as applicable. Accomplish any related investigative and corrective actions before further flight, in accordance with the applicable service bulletin. For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

(i) For Boeing Model 757–200, –200CB, and –200PF series airplanes, use the service information identified in paragraphs (g)(1)(i)(A), (g)(1)(i)(B), and (g)(1)(i)(C) of this AD.

(A) Boeing Alert Service Bulletin 757–28A0073, dated November 20, 2003;

(B) Boeing Alert Service Bulletin 757–28A0073, Revision 1, dated February 24, 2005.

(C) Boeing Alert Service Bulletin 757–28A0073, Revision 2, dated June 4, 2009.

(ii) For Boeing Model 757–300 series airplanes, use the service information identified in paragraphs (g)(1)(ii)(A), (g)(1)(ii)(B), and (g)(1)(ii)(C) of this AD.

(A) Boeing Alert Service Bulletin 757–28A0074, dated November 20, 2003.

(B) Boeing Alert Service Bulletin 757–28A0074, Revision 1, dated February 24, 2005.

(C) Boeing Alert Service Bulletin 757–28A0074, Revision 2, dated June 4, 2009.

(2) Install back-to-back p-clamps between the wire and hydraulic supply tube at the aft end of the right-hand strut only; and re-route the wire bundles, if necessary; by doing all the applicable actions specified in the Accomplishment Instructions of the applicable service information identified in paragraphs (g)(2)(i) through (g)(2)(iv) of this AD. As of the effective date of this AD, use only the service information identified in paragraphs (g)(2)(ii) and (g)(2)(iv) of this AD, as applicable.

(i) Boeing Alert Service Bulletin 757–28A0073, Revision 1, dated February 24, 2005.

(ii) Boeing Alert Service Bulletin 757–28A0073, Revision 2, dated June 4, 2009.

(iii) Boeing Alert Service Bulletin 757–28A0074, Revision 1, dated February 24, 2005.

(iv) Boeing Alert Service Bulletin 757–28A0074, Revision 2, dated June 4, 2009.

(h) New Spiral Cable Wrap Installation

Within 60 months after the effective date of this AD, install spiral cable wrap on FSV wires at the aft end of the strut, for both left and right engines, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–28A0073 (for Model 757–200, –200CB, and –200PF series airplanes) or 757–28A0074 (for Model 757–300 series airplanes), both Revision 2, both dated June 4, 2009. Where Boeing Alert Service Bulletin 757–28A0074, Revision 2, dated June 4, 2009, states ''SWPM 20–10–11, Table IX,'' the correct phrase is ''SWPM 20–10–11, 'Minimum Clearance' Table.'' Do all applicable related investigative and corrective actions before further flight.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, 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, Los Angeles ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2005–18–18 are approved as AMOCs for the corresponding provisions of paragraph (g) of this AD.

(j) Related Information

For more information about this AD, contact William Bond, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5253; fax: 562–627–5210; email: *william.bond@faa.gov.*

(k) 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.

(3) The following service information was approved for IBR on July 6, 2016.

(i) Boeing Alert Service Bulletin 757–28A0073, Revision 2, dated June 4, 2009.

(ii) Boeing Alert Service Bulletin 757–28A0074, Revision 2, dated June 4, 2009.

(4) The following service information was approved for IBR on October 14, 2005 (70 FR 53554, September 9, 2005).

(i) Boeing Alert Service Bulletin 757–28A0073, dated November 20, 2003.

(ii) Boeing Alert Service Bulletin 757–28A0073, Revision 1, dated February 24, 2005.

(iii) Boeing Alert Service Bulletin 757–28A0074, dated November 20, 2003.

(iv) Boeing Alert Service Bulletin 757–28A0074, Revision 1, dated February 24, 2005.

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

(6) 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.

(7) 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 May 17, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–12331 Filed 5–31–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1273; Directorate Identifier 2014–NM–194–AD; Amendment 39–18530; AD 2016–11–03]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 777 airplanes. This AD was prompted by reports of unreliable performance of the fuel scavenge system. This AD requires changing the main fuel tank water scavenge system, center fuel tank fuel scavenge system, and certain electrical panels; doing related investigative actions; doing corrective actions if necessary; and, for certain airplanes, changing the fuel scavenge system to give redundant control of the center override/jettison fuel pumps and main jettison fuel pumps. We are issuing this AD to prevent fuel exhaustion and subsequent power loss of all engines due to loss of capability to scavenge fuel in the center fuel tank.

DATES: This AD is effective July 6, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 6, 2016.

ADDRESSES: For Boeing 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.*

For GE Aviation service information identified in this final rule, contact GE Aviation Fleet Support, 1 Neumann Way, Cincinnati, OH 45215; telephone 513–552–3272; email: *aviation.fleetsupport@ge.com;* Internet *http://www.geaviation.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–2015–1273.

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–2015–1273; 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: Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@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 777 airplanes. The NPRM published in the **Federal Register** on May 14, 2015 (80 FR 27601) (''the NPRM''). The NPRM was prompted by reports of unreliable performance of the fuel scavenge system. The NPRM proposed to require changing the main fuel tank water scavenge system, center fuel tank fuel scavenge system, and certain electrical panels; related investigative actions; and doing corrective actions if necessary; and, for certain airplanes, changing the fuel scavenge system to give redundant control of the center override/jettison fuel pumps and main jettison fuel pumps. We are issuing this AD to prevent fuel exhaustion and subsequent power loss of all engines due to loss of capability to scavenge fuel in the center fuel tank.

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 Withdraw the NPRM

Lufthansa Cargo AG stated that the unsafe condition addressed in the NPRM is not a safety concern and that mandating Boeing Special Attention Service Bulletin 777–28–0078, dated September 4, 2014, is not justified. Lufthansa Cargo AG stated that the main fuel tanks must be fully loaded with fuel when a mission flight requires fuel in the center tank. Lufthansa Cargo AG explained that if the fuel scavenge system fails to scavenge the remaining fuel in the center tank, the fuel in the main tanks is still available, and therefore there is no safety concern.

We infer that the commenter requests we withdraw the NPRM. We do not agree with the commenter's request. The failure of fuel scavenging means that up to 2,700 pounds of fuel that is required by mission planning would not be available if needed. The actions required by this AD are necessary in order to prevent fuel exhaustion and subsequent power loss of all engines due to loss of capability to scavenge fuel in the center fuel tank. We have not changed this AD in this regard.

Requests To Remove Modification Requirement

Boeing, Aerologic GmbH, and British Airways (BAC) requested that we remove the modification required by paragraph (g) of the proposed AD, but instead mandate installation of airplane information management system (AIMS) 2 software V14 or later to address the unsafe condition. Aerologic GmbH and BAC stated that the unsafe condition can be mitigated by incorporation of AIMS 2 software Vl4 or later, which provides an engine indicating and crew alerting system (EICAS) advisory message to alert the flightcrew of the status of the scavenge system and the possibility of unusable trapped fuel. Boeing stated that the trapped fuel quantity is well below reserve fuel requirements and that the flightcrew can take appropriate actions to avoid a fuel exhaustion condition.

We do not agree with the commenters' request. We worked with Boeing extensively on this issue in order to define a reliable automated solution, appropriate to address the severity of this safety issue. While Boeing may disagree, we have determined that relying solely on AIMS 2 software V14 or later is not sufficient to address the identified unsafe condition under all flight conditions. The approach in Boeing Special Attention Service Bulletin 777–28–0078, Revision 1, dated April 27, 2015, yields a higher confidence of fully mitigating the safety issue since a robust automated software solution (*i.e.,* installing electrical load management system 2 (ELMS 2) software) removes the potential for human error to undermine the safety mitigation. We have not changed this AD in this regard.

Request To Delay AD Issuance

Boeing requested that we delay issuance of the final rule until the modified scavenge system is certified on Model 777 airplanes equipped with an auxiliary fuel tank. Boeing stated that this will allow this final rule to require the accomplishment of Boeing Service Bulletin 777–28–0078 on all applicable airplanes and avoid the need for multiple ADs on the same subject.

We infer the commenter is requesting that we delay issuance of the final rule until a revision of Boeing Service Bulletin 777–28–0078 is available for

reference in the final rule. We do not agree with the commenter's request. We do not have a definitive date when the modified scavenge system will be certified on Model 777 airplanes equipped with an auxiliary fuel tank and the related service bulletin revision will be available. To delay this action would be inappropriate, since we have determined that an unsafe condition exists. We have also determined that it is not warranted to delay this final rule in order to avoid issuance of multiple ADs on the same subject. We have not changed this AD in this regard.

Requests To Incorporate New Service Information and Provide Credit

Boeing, All Nippon Airways (ANA), Delta Airlines (DAL), Emirates Airline, FedEx Express, and United Airlines (UAL) requested that we revise the NPRM to incorporate Boeing Special Attention Service Bulletin 777–28–0078, Revision 1, dated April 27, 2015. Boeing requested that we provide credit for prior actions done using Boeing Special Attention Service Bulletin 777–28–0078, dated September 4, 2014.

We agree with the commenters' requests. Boeing Special Attention Service Bulletin 777–28–0078, Revision 1, dated April 27, 2015, provides revised instructions and top-kits to accomplish the modification. No new work is required by this revision. We have revised paragraphs (c), (g), (h)(1), (h)(2), and (i) of this AD to refer to Boeing Special Attention Service Bulletin 777–28–0078, Revision 1, dated April 27, 2015. We have added new paragraph (j)(2) of this AD to provide credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this final rule using Boeing Special Attention Service Bulletin 777–28–0078, dated September 4, 2014. We have redesignated paragraph (j) of the proposed AD as paragraph (j)(1) in this AD.

Request To Revise Compliance Time

Boeing requested that we remove the wording ''prior to'' in paragraph (h)(2) of the proposed AD, which would require actions to be done concurrently with the actions specified in paragraph (g) of the proposed AD.

We agree with the commenter's request. Boeing Special Attention Service Bulletin 777–28–0078, Revision 1, dated April 27, 2015, specifies concurrent, not prior, accomplishment of the service information specified in paragraph (h) of this AD. We have revised paragraph (h) of this AD accordingly, which does not expand the requirements of this AD.

Requests To Incorporate Boeing Information Notice (IN) for New Service Bulletin, for Part Substitution, and for Error Resolution

ANA, DAL, Emirates Airline, FedEx, and UAL requested that we include in the NPRM the information specified in Boeing IN 777–28–0078 IN 02. FedEx also requested that we include in the NPRM the information specified in Boeing IN 777–28–0078 IN 03. ANA and Emirates Airline requested that a new Boeing Service Bulletin (Revision 2 of Boeing Service Bulletin 777–28–0078) be mandated if possible.

The commenters stated that Boeing IN 777–28–0078 IN 02 clarifies the instructions in Boeing Special Attention Service Bulletin 777–28–0078, and also indicates that Boeing Special Attention Service Bulletin 777–28–0078 will be revised to incorporate those clarifications.

ANA requested that a cable assembly with a different lock wire length (part number BACC13AT3K()) be allowed for use in place of part number BACCI3AT3Kl2 for the actions specified in paragraph (g) of the proposed AD. ANA also identified an error in Boeing Special Attention Service Bulletin 777–28–0078, dated September 4, 2014, regarding the position of the connector D11007P.

We do not agree with the commenters' requests. We have determined that Boeing Special Attention Service Bulletin 777–28–0078, Revision 1, dated April 27, 2015, is adequate to correct the identified unsafe condition, and the errors will not affect compliance with this AD. The information notices (IN) are issued to provide clarity and are not required to accomplish the required actions. We are working with Boeing to include the IN information and part number substitution and other corrections in Revision 2 of Boeing Service Bulletin 777–28–0078. Under the provisions of paragraph (k) of this AD, once Revision 2 of Boeing Service Bulletin 777–28–0078 is issued, we will consider requests to approve it as an alternative method of compliance (AMOC) with this AD. In addition, AMOCs for part number substitutions can also be requested through the provisions of paragraph (k) of this AD. We have not changed this AD in this regard.

Request To Address an Integer Overflow Error

An anonymous commenter stated that Model 777 airplanes have an integer overflow error when being operated over a certain number of days. The commenter stated that we should require the computer to be reset before any of the overflow errors happen during flight.

We do not agree with the commenter's request. This issue does not appear related to the identified unsafe condition that is the subject of this final rule. However, we will investigate this situation to make sure that the issue stated by the commenter does not exist or is addressed in a proper manner. We have not changed this final rule in this regard.

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

Boeing has issued the following service information.

- Boeing Service Bulletin 777–28A0047, Revision 5, dated September 20, 2010. This service information describes procedures for installing new P301 and P302 panels, changing the wiring, and performing bonding resistance measurements.
- Boeing Service Bulletin 777–28A0047, Revision 6, dated July 11, 2013. This service information describes procedures for installing new P301 and P302 panels, changing the wiring, and performing bonding resistance measurements.
- Boeing Special Attention Service Bulletin 777–28–0078, Revision 1, dated April 27, 2015. This service information describes procedures for doing mechanical changes to the main fuel tank water scavenge system and center fuel tank fuel scavenge system; doing wiring changes between the P105, P110 and P301 panels, and between the P200, P205, P210 and P302 panels; doing wiring changes in the P105 panel; installing new electrical load management system 2 (ELMS2) software; and doing functional testing.

GE Aviation has issued the following service information.

- GE Aviation Service Bulletin 5000ELM–28–075, Revision 1, dated

August 5, 2014. This service information describes procedures for doing wiring changes in the P110 panel.

• GE Aviation Service Bulletin 6000ELM–28–076, Revision 1, dated August 5, 2014. This service information describes procedures for doing wiring changes in the P210 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 55 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
Fuel system modification	200 work-hours × $85 per hour = $17,000	$68,535	$85,535	$4,704,425
P110 and P210 panel modification	2 work-hours × $85 per hour =$170	0	170	9,350

We have received no definitive data that will enable us to provide cost estimates for the on-condition actions specified in this AD.

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):

2016–11–03 The Boeing Company: Amendment 39–18530; Docket No. FAA–2015–1273; Directorate Identifier 2014–NM–194–AD.

(a) Effective Date

This AD is effective July 6, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–200, –200LR, –300, –300ER, and –777F series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 777–28–0078, Revision 1, dated April 27, 2015.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of unreliable performance of the fuel scavenge system. We are issuing this AD to prevent fuel exhaustion and subsequent power loss of all engines due to loss of capability to scavenge fuel in the center fuel tank.

(f) Compliance

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

(g) Fuel Scavenge System Changes, Wiring Changes, and Software Changes

For airplanes identified in Boeing Special Attention Service Bulletin 777–28–0078, Revision 1, dated April 27, 2015, except for Group 10 airplanes on which the actions specified in Boeing Service Bulletin 777–28–0060; or Work Package 2 of the Accomplishment Instructions of Boeing Service Bulletin 777–28–0062, have not been accomplished: Within 60 months after the effective date of this AD, do the applicable actions specified in paragraphs (g)(1) through (g)(6) of this AD; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–28–0078, Revision 1, dated April 27, 2015. Do all applicable related investigative and corrective actions before further flight.

(1) Do applicable mechanical changes to the main fuel tank water scavenge system and center fuel tank fuel scavenge system.

(2) Install relays and related equipment on the P301 and P302 panels in the main equipment center.

(3) Do applicable wiring changes between the P105, P110, and P301 panels, and between the P200, P205, P210, and P302 panels.

(4) Do wiring changes in the P105 panel.

(5) Install new electrical load management system 2 (ELMS2) software.

(6) Do a functional test consisting of operational tests, a leak test, system tests, and a fuel scavenge system functional test. If any of the tests fail, before further flight accomplish corrective actions and repeat the test and applicable corrective actions until the test is passed.

(h) Concurrent Actions

(1) For Groups 13 through 16 airplanes, as identified in Boeing Special Attention

Service Bulletin 777–28–0078, Revision 1, dated April 27, 2015, concurrently with accomplishing the actions required by paragraph (g) of this AD, install a new P301 panel on the left side of the airplane, install a new P302 panel on the right side of the airplane, and change the wiring; or perform bonding resistance measurements and rework the airplane installations; as applicable; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–28A0047, Revision 5, dated September 20, 2010; or Boeing Service Bulletin 777–28A0047, Revision 6, dated July 11, 2013.

(2) For airplanes identified in Boeing Special Attention Service Bulletin 777–28–0078, Revision 1, dated April 27, 2015, except for Group 10 airplanes on which the actions described in Boeing Service Bulletin 777–28–0060; or Work Package 2 of the Accomplishment Instructions of Boeing Service Bulletin 777–28–0062, have not been accomplished: Concurrently with accomplishing the requirements of paragraph (g) of this AD, do wiring changes in the P110 and P210 panels, in accordance with the applicable Accomplishment Instructions of GE Aviation Service bulletin 5000ELM–28–075, Revision 1, dated August 5, 2014; and GE Aviation Service Bulletin 6000ELM–28–076, Revision 1, dated August 5, 2014.

(i) Parts Installation Prohibition

For Group 10 airplanes, as identified in Boeing Special Attention Service Bulletin 777–28–0078, Revision 1, dated April 27, 2015, after completion of the actions required by paragraph (g) of this AD, no person may install an auxiliary fuel tank on any Group 10 airplane.

(j) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (h)(1) of this AD, if those actions were performed before May 26, 2011 (the effective date of AD 2011–09–05, Amendment 39–16667 (77 FR 22305, April 21, 2011)), using a service bulletin identified in paragraph (j)(1)(i) or (j)(1)(ii) of this AD, which are not incorporated by reference in this AD.

(i) Boeing Service Bulletin 777–28A0047, Revision 3, dated June 11, 2009.

(ii) Boeing Service Bulletin 777–28A0047, Revision 4, dated May 20, 2010.

(2) This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 777–28–0078, dated September 4, 2014, which is not incorporated by reference in this AD.

(k) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane and the approval must specifically refer to this AD.

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

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

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

(l) Related Information

(1) For more information about this AD, contact Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@faa.gov.*

(2) Boeing service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (m)(3) and (m)(5) of this AD.

(m) Material Incorporated by Reference

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

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

(i) Boeing Service Bulletin 777–28A0047, Revision 5, dated September 20, 2010.

(ii) Boeing Service Bulletin 777–28A0047, Revision 6, dated July 11, 2013.

(iii) Boeing Special Attention Service Bulletin 777–28–0078, Revision 1, dated April 27, 2015.

(iv) GE Aviation Service Bulletin 5000ELM–28–075, Revision 1, dated August 5, 2014.

(v) GE Aviation Service Bulletin 6000ELM–28–076, Revision 1, dated August 5, 2014.

(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) For GE Aviation service information identified in this AD, contact GE Aviation Fleet Support, 1 Neumann Way, Cincinnati, OH 45215; telephone 513–552–3272; email: *aviation.fleetsupport@ge.com;* Internet *http://www.geaviation.com.*

(5) 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.

(6) 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 May 18, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–12443 Filed 5–31–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–5812; Directorate Identifier 2015–NM–077–AD; Amendment 39–18531; AD 2016–11–04]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2011–23–05 for all The Boeing Company Model 737–300, –400, and –500 series airplanes. AD 2011–23–05 required repetitive inspections for cracking of the 1.04-inch nominal diameter wire penetration hole, and applicable related investigative and corrective actions. This new AD adds new inspection areas, a modification that terminates certain inspections, post-modification inspections, and repair if necessary. This AD was prompted by an evaluation by the design approval holder (DAH) that indicates the fuselage frames and frame reinforcements are subject to widespread fatigue damage (WFD). We are issuing this AD to detect and correct fatigue cracking of the fuselage frames and frame reinforcements that could

result in reduced structural integrity of the airplane.

DATES: This AD is effective July 6, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 6, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of November 16, 2011 (76 FR 67343, November 1, 2011).

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–5812.

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–2015–5812; 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: Galib Abumeri, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5324; fax: 562–627–5210; email: *galib.abumeri@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2011–23–05, Amendment 39–16856 (76 FR 67343, November 1, 2011) (''AD 2011–23–05''). AD 2011–23–05 applied to certain Model 737–300, –400, and –500 series airplanes. The NPRM published in the **Federal Register** on November 27, 2015 (80 FR 74047) (''the NPRM''). The NPRM was prompted by an evaluation by the DAH that indicates the fuselage frames and frame reinforcements are subject to WFD. The NPRM proposed to continue to require repetitive inspections for cracking of the 1.04-inch nominal diameter wire penetration hole, and applicable related investigative and corrective actions. The NPRM also proposed to add new inspection areas, a modification that terminates certain inspections, post-modification inspections, and repair if necessary. We are issuing this AD to detect and correct fatigue cracking of the fuselage frames and frame reinforcements that could result in reduced structural integrity of the airplane.

Comments

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

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that accomplishing the supplemental type certificate (STC) ST01219SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/ebd1cec7b301293e86257cb30045557a/$FILE/ST01219SE.pdf*) does not affect the actions specified in the NPRM.

We agree with the commenter. We have redesignated paragraph (c) of the proposed AD as paragraph (c)(1) and added a new paragraph (c)(2) to this AD to state that installation of STC ST01219SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/ebd1cec7b301293e86257cb30045557a/$FILE/ST01219SE.pdf*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

Request To Revise Applicability

Boeing requested that we change the applicability to ''all'' airplanes instead of airplanes referenced in Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015. Boeing stated that Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015, specifies the effectivity as ''all'' airplanes.

We agree with the commenter's request. In the NPRM we referred to Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015, which specifies an effectivity of all Model 737–300, –400, and –500 series airplanes. For clarity, we have revised the **SUMMARY** section and paragraph (c)(1) of this AD to specify ''all'' airplanes.

Request To Revise Compliance Time

Southwest Airlines (SWA) requested that we revise paragraph (t) of the proposed AD to clearly state all inspections required by paragraph (n) of the proposed AD will be due at the later of 30,000 total flight cycles or 4,500 flight cycles from the effective date of the AD. SWA stated that, for airplanes which have previously accomplished the inspections specified in Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011, paragraph (n) of the proposed AD and table 1 of paragraph 1.E., ''Compliance,'' in Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015, currently requires inspections 4,500 flight cycles from the last inspection and do not specifically take into account those airplanes already doing the repetitive inspections.

We do not agree with the commenter's request. AD 2011–23–05 required inspections on airplanes with less than 40,000 total flight cycles to begin prior to 30,000 total flight cycles or within 90 days from November 16, 2011 (the effective date of AD 2011–23–05), whichever occurs later. The repetitive inspection intervals of 4,500 flight cycles are not changed. The new WFD requirement lowers the initial airplane applicability total flight cycles from 40,000 to 30,000. Paragraph (n) of this AD addresses airplanes with more than 30,000 total flight cycles as of the effective date of the AD, and all airplanes that have already accomplished the initial inspection or a repetitive inspection. These airplanes are to continue the repetitive inspections at intervals not to exceed 4,500 flight cycles from the last inspection. The commenter's requested change would reset the time to the next inspection from the effective date of this AD instead of from the last inspection. This would result in a one-time increase in the repetitive interval, which would not meet the WFD requirements. We have not changed this AD in this regard.

Request To Clarify Inspections in Paragraphs (m) and (n) of the Proposed AD

Boeing requested that we clarify the inspections required in paragraph (m)

and (n) of the proposed AD. Boeing stated that the words ''an inspection'' is not specific enough to ensure the required inspections will be accomplished.

We agree with the commenter's request. The wording ''an inspection'' could be interpreted incorrectly, and the Part 2 or Part 4 inspections specified in Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015, may not be accomplished prior to installation of the preventive modification.

We have revised paragraph (m) of this AD to state in part, ''before further flight after accomplishing the Part 2 or Part 4 inspections specified in this paragraph, and no cracking was found, do ''Part 5—Preventative Modification'' as specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015.''

We have revised paragraph (n) of this AD to state in part, ''before further flight after accomplishing the Part 4 inspection specified in this paragraph, and no cracking was found, do ''Part 5—Preventative Modification'' as specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015.''

Request To Remove a Certain Low Frequency Eddy Current (LFEC) Inspection

Boeing requested that we remove the LFEC inspection in paragraph (s) of the proposed AD. Boeing stated that paragraph (s) of the proposed AD is applicable to Groups 4 through 6 as identified in Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015, and that LFEC inspections are not required for Groups 4 through 6.

We agree with the commenter's request. We have revised paragraph (s) of this AD by removing the LFEC inspection requirement.

Request To Clarify Service Information Description

Boeing requested that we include ''0.50 inch diameter holes'' in the first bullet under the Related Service Information Under 1 CFR part 51 section. Boeing stated that the 0.50 inch hole was one of the main updates of Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015.

We agree with commenter's request and have revised this final rule accordingly.

Request To Revise Responsible FAA ACO

Boeing requested that we revise paragraph (u)(3) of the proposed AD to reference the Los Angeles ACO instead of the Seattle ACO.

We agree with the commenter's request. In July 2014, the Los Angeles ACO assumed responsibility for the out-of-production Model 737 airplanes. We have revised paragraph (u)(3) of this AD and the engineer contact information accordingly.

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 Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015. The service information describes procedures for the following actions.

- Inspections of wire penetration holes, 0.50 inch diameter holes, standoff/tooling holes, and the production fastener holes for cracking in the forward cargo compartment frames and frame reinforcements, between stringer (S) S–19 and S–22, on both left and right sides of the airplane.
- A preventive modification of frames between S–19 and S–22.
- Post-modification inspections.
- Repairs.

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 605 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
Inspections [retained actions from AD 2011–23–05].	16 work-hours × $85 per hour = $1,360 per inspection cycle.	$0	$1,360 per inspection cycle.	$822,800 per inspection cycle.
Inspections [new action]	32 work-hours × $85 per hour = $2,720 per inspection cycle.	0	$2,720 per inspection cycle.	$1,645,600 per inspection cycle.
Modification [new action]	32 work-hours × $85 per hour = $2,720	0	$2,720	$1,645,600

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
Repair	18 work-hours × $85 per hour = $1,530	$0	$1,530

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 have 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 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 removing Airworthiness Directive (AD) 2011–23–05, Amendment 39–16856 (76 FR 67343, November 1, 2011), and adding the following new AD:

2016–11–04 The Boeing Company: Amendment 39–18531; Docket No. FAA–2015–5812; Directorate Identifier 2015–NM–077–AD.

(a) Effective Date

This AD is effective July 6, 2016.

(b) Affected ADs

This AD replaces AD 2011–23–05, Amendment 39–16856 (76 FR 67343, November 1, 2011) (''AD 2011–23–05'').

(c) Applicability

(1) This AD applies to all The Boeing Company Model 737–300, –400, and –500 series airplanes; certificated in any category.

(2) Installation of Supplemental Type Certificate (STC) ST01219SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/ebd1cec7b301293e86257cb30045557a/$FILE/ST01219SE.pdf*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder (DAH) that indicates the fuselage frames and frame reinforcements are subject to widespread fatigue damage (WFD). We are issuing this AD to detect and correct fatigue cracking of the fuselage frames and frame reinforcements, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Inspection, With References to Terminating Actions

This paragraph restates the requirements of paragraph (g) of AD 2011–23–05, with references to terminating actions. At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011, except as required by paragraphs (k)(1), (k)(2), and (k)(4) of this AD: Do a high frequency eddy current (HFEC) surface or HFEC hole/edge inspection for any cracking of the 1.04-inch nominal diameter wire penetration hole in the frame and frame reinforcement between stringer (S) S–20 and S–21, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011. Accomplishment of the applicable inspections required by paragraphs (m) and (n) of this AD terminates the inspections required by this paragraph. Accomplishment of the modification required by paragraph (p) of this AD terminates the inspections required by this paragraph for the modified area only.

(h) Retained Repetitive Inspections, With References to Terminating Actions

This paragraph restates the requirements of paragraph (h) of AD 2011–23–05, with references to terminating actions. Within 4,500 flight cycles after accomplishment of the most recent inspection specified in Part 2 or Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011, or within 90 days after November 16, 2011 (the effective date of AD 2011–23–05), whichever occurs later: Do an HFEC hole/edge inspection for cracking of the 1.04-inch nominal diameter wire penetration hole in the frame and frame reinforcement between S–20 and S–21, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011. Repeat the inspection thereafter at intervals not to exceed 4,500 flight cycles. Accomplishment of the applicable inspections required by paragraphs (m) and (n) of this AD, terminates the inspections required by this paragraph. Accomplishment of the modification specified in paragraph (j) or (p) of this AD terminates the repetitive inspections required by this paragraph for the modified area only. Accomplishment of the repair specified in paragraph (i) of this AD terminates the repetitive inspections required by this paragraph for the repaired area only.

(i) Retained Repair, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2011–23–05, with no changes. If any cracking is found during any inspection required by paragraph (g) or (h) of this AD: Before further flight, repair the crack including doing all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011, except as required by paragraph (k)(3) of this AD. All applicable related investigative and corrective actions must be done before further flight. Accomplishment of the requirements of this paragraph terminates the repetitive inspection requirements of paragraph (h) of this AD for the repaired location of that frame.

(j) Retained Optional Terminating Action, With New Limitation

This paragraph restates the optional action provided in paragraph (j) of AD 2011–23–05, with a new limitation. Accomplishment of the preventive modification before the effective date of this AD, including doing all related investigative and applicable corrective actions, specified in Part 5 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011, except as required by paragraph (k)(3) of this AD, terminates the repetitive inspection requirements of paragraph (h) of this AD for the modified

location of that frame, provided the modification is done before further flight after an inspection required by paragraph (g) or (h) of this AD has been done, and no cracking was found on that frame location during that inspection.

(k) Retained Exceptions to Service Information Specifications, With No Changes

This paragraph restates the requirements of paragraph (k) of AD 2011–23–05, with no changes. The following exceptions apply as specified in paragraphs (g), (i), and (j) of this AD.

(1) Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011, refers to a compliance time ''from date on Revision 1 of this service bulletin,'' this AD requires compliance within the specified compliance time after November 16, 2011 (the effective date of AD 2011–23–05).

(2) For airplanes meeting all of the criteria specified in paragraphs (k)(2)(i), (k)(2)(ii), and (k)(2)(iii) of this AD: The compliance time for the initial inspection specified in Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011, and required by paragraph (g) of this AD, may be extended to 90 days after November 16, 2011 (the effective date of AD 2011–23–05).

(i) Model 737–300 series airplanes in Group 1, line numbers 1001 through 2565 inclusive;

(ii) Airplanes that have accumulated 40,000 or more total flight cycles as of November 16, 2011 (the effective date of AD 2011–23–05); and

(iii) Airplanes on which the modification specified in Boeing Service Bulletin 737–53–1273, dated September 20, 2006; Revision 1, dated December 21, 2006; Revision 2, dated June 4, 2007; Revision 3, dated December 7, 2009; or Revision 4, dated July 23, 2010; has been done, including any configuration or deviation that has been approved as an AMOC during accomplishment of these service bulletins, by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle Aircraft Certification Office (ACO) or Los Angeles ACO to make those findings.

(3) Where Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011, specifies to contact Boeing for appropriate repair instructions: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (u) of this AD.

(4) The ''Condition'' column of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011, refers to total flight cycles ''at the date of/on this service bulletin.'' However, this AD applies to the airplanes with the specified total flight cycles as of November 16, 2011 (the effective date of AD 2011–23–05).

(l) Retained Credit for Previous Actions, With No Changes

This paragraph restates the requirements of paragraph (l) of AD 2011–23–05, with no changes. Actions done in accordance with Boeing Alert Service Bulletin 737–53A1279, dated December 18, 2007, before November 16, 2011 (the effective date of AD 2011–23–05), are acceptable for compliance with the corresponding actions required by paragraphs (g), (h), (i), and (j) of this AD.

(m) New Requirement of This AD: Inspections of Frames and Frame Reinforcements Between S–19 and S–22 for Certain Airplanes on Which Certain Inspections Have Not Been Accomplished

For airplanes identified as Groups 1 through 6, Configuration 3, in Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015, with 30,000 total flight cycles or fewer as of the effective date of this AD, on which any inspections specified in Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011, have not been accomplished: Except as required by paragraphs (t)(1) and (t)(2) of this AD, at the applicable time specified in table 1 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015, or within 4,500 flight cycles after the effective date of this AD, whichever occurs later, do inspections for cracking at certain locations in the frames and frame reinforcements in accordance with ''Part 2—Initial Detail and HFEC Inspection'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015. Repeat the inspections for cracking at certain locations in the frames and frame reinforcements as specified in ''Part 4—Repeat Detail and HFEC Inspections'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015, thereafter at the applicable interval specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015; or, before further flight after accomplishing the Part 2 or Part 4 inspections specified in this paragraph, and no cracking was found, do ''Part 5—Preventative Modification'' as specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015. Accomplishment of the preventive modification specified in this paragraph terminates the repetitive inspections required by this paragraph for the modified area only. Do all actions specified in this paragraph in accordance with Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015.

(n) New Requirement of This AD: Inspections of Frames and Frame Reinforcements Between S–19 and S–22 for Groups 1–6, Configuration 3, Airplanes

For airplanes identified as Groups 1 through 6, Configuration 3, in Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015, with more than 30,000 total flight cycles as of the effective date of this AD, or that have been inspected as specified in Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011: Except as required by paragraphs (t)(1) and (t)(2) of this AD, at the applicable time specified in table 1 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015, do inspections for cracking at certain locations of the frames and frame reinforcements in accordance with ''Part 4—Repeat Detail and HFEC Inspections'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015. Repeat the inspections thereafter at the applicable interval specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015; or, before further flight after accomplishing the Part 4 inspection specified in this paragraph, and no cracking was found, do ''Part 5—Preventative Modification'' as specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015. Accomplishment of the preventive modification specified in this paragraph terminates the repetitive inspections required by this paragraph for the modified area only.

(o) New Requirement of This AD: Repairs

If any crack is found during any inspection required by paragraph (m) or (n) of this AD: Before further flight, repair, in accordance with ''Part 3—Repair'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015, except where Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015, specifies to contact Boeing for damage removal and repair instructions, repair before further flight using a method approved in accordance with the procedures specified in paragraph (u) of this AD. Accomplishing a repair terminates the inspections required by paragraphs (m) and (n) of this AD in the repaired area only. Accomplishment of a repair terminates the modification required by paragraph (p) of this AD at the repaired location only.

(p) New Requirement of This AD: Preventative Modification of the Frames Between S–19 and S–22

For airplanes identified as Groups 1 through 6, Configuration 3, in Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015: Except as required by paragraphs (t)(1) and (t)(2) of this AD, at the applicable time specified in table 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015, do the preventive modification of the frames between S–19 and S–22, in accordance with ''Part 5—Preventative Modification'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015. Accomplishment of the modification required by this paragraph terminates the requirements of paragraphs (g), (h), (m), and (n) of this AD for the modified location only.

(q) New Requirement of This AD: Inspections of Preventive Modification for Groups 1–3, Configuration 1, Airplanes

For airplanes identified as Groups 1 through 3, Configuration 1, in Boeing Alert

Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015: Except as required by paragraph (t)(1) of this AD, at the applicable time specified in table 3 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015, do HFEC, LFEC, and detailed inspections for cracking in accordance with ''Part 7—INSPECTION OF PREVENTATIVE MODIFICATION'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015. Repeat the inspections thereafter at the applicable interval specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015. If any cracking is found during any inspection required by this paragraph, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (u) of this AD.

(r) New Requirement of This AD: Inspections of Preventive Modification for Groups 1–6, Configuration 2, Airplanes

For airplanes identified as Groups 1 through 6, Configuration 2, in Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015: Except as required by paragraph (t)(1) of this AD, at the applicable time specified in table 4 or table 6 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015, do HFEC, LFEC, and detailed inspections for cracking in accordance with ''Part 8—INSPECTION OF PREVENTATIVE MODIFICATION'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015. Repeat the inspections thereafter at the applicable interval specified in table 4 or table 6 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015. If any cracking is found during any inspection required by this paragraph, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (u) of this AD.

(s) New Requirement of This AD: Inspections of Preventive Modification for Groups 4–6, Configuration 1, Airplanes

For airplanes identified as Groups 4 through 6, Configuration 1, in Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015: At the applicable time specified in table 5 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015, except as required by paragraph (t)(1) of this AD: Do HFEC and detailed inspections for cracking in accordance with ''Part 7—INSPECTION OF PREVENTATIVE MODIFICATION'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015. Repeat the inspections thereafter at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015. If any cracking is found during any inspection required by this paragraph, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (u) of this AD.

(t) New Requirement of This AD: Exceptions to Service Bulletin Specifications

(1) Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015, refers to a compliance time ''after the Revision 2 date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) The ''Condition'' column in table 1 and table 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015, refers to total flight cycles ''at the Revision 2 date of this service bulletin.'' However, this AD applies to the airplanes with the specified total flight cycles as of the effective date of this AD.

(u) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles 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 (v)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes ODA that has been authorized by the Manager, Los Angeles ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane and the approval must specifically refer to this AD.

(4) AMOCs approved for the ADs in paragraphs (u)(4)(i) through (u)(4)(iii) of this AD are approved as AMOCs for the corresponding provisions of this AD.

(i) AD 2009–02–06, Amendment 39–15796 (74 FR 10469, March 11, 2009).

(ii) AD 2009–02–06 R1, Amendment 39–16015 (74 FR 45979, September 8, 2009).

(iii) AD 2011–23–05.

(v) Related Information

(1) For more information about this AD, contact Galib Abumeri, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5324; fax: 562–627–5210; email: *galib.abumeri@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (w)(5) and (w)(6) of this AD.

(w) 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.

(3) The following service information was approved for IBR on July 6, 2016.

(i) Boeing Alert Service Bulletin 737–53A1279, Revision 2, dated April 21, 2015.

(ii) Reserved.

(4) The following service information was approved for IBR on November 16, 2011 (76 FR 67343, November 1, 2011).

(i) Boeing Alert Service Bulletin 737–53A1279, Revision 1, dated September 2, 2011.

(ii) Reserved.

(5) 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.*

(6) 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.

(7) 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 May 18, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–12329 Filed 5–31–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8465; Directorate Identifier 2014–NM–239–AD; Amendment 39–18535; AD 2016–11–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Defense and Space S.A. (Formerly Known as Construcciones Aeronauticas, S.A.)

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2001–12–

18 for certain CASA Model CN–235 series airplanes. AD 2001–12–18 required modification of the rigging of the engine control cable assembly and replacement of either the entire engine control cable assembly or a segment of the control cables. This new AD would retain the requirements of AD 2001–12–18. This new AD also requires repetitive replacements of each power lever and condition lever Teleflex cable with a new or serviceable part, and removes airplanes from the applicability. This AD was prompted by reports of new occurrences of cable disruption on a certain part number; the disruption is caused by microcracks along the cable surface. We are issuing this AD to prevent fatigue of the engine control cables, leading to breakage of the cables, which could result in reduced controllability of the airplane.

DATES: This AD is effective July 6, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 6, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of July 25, 2001 (66 FR 33014, June 20, 2001).

ADDRESSES: For service information identified in this final rule, contact EADS–CASA, Military Transport Aircraft Division (MTAD), Integrated Customer Services (ICS), Technical Services, Avenida de Aragón 404, 28022 Madrid, Spain; telephone +34 91 585 55 84; fax +34 91 585 55 05; email *MTA.TechnicalService@casa.eads.net;* Internet *http://www.eads.net.* 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–2015–8465.

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–2015–8465; 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 (telephone 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: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1112; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2001–12–18, Amendment 39–12274 (66 FR 33014, June 20, 2001) (''AD 2001–12–18''). AD 2001–12–18 applied to certain CASA Model CN–235 series airplanes. The NPRM published in the **Federal Register** on January 19, 2016 (81 FR 2783) (''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 2014–0262, dated December 5, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Defense and Space S.A. Model CN–235–100 and -200 airplanes. The MCAI states:

> Three occurrences of cable disruption were reported in 1999. The failed parts, having a part number (P/N) 7–44728–20, were part of the engine control system assembly P/N 7–44728–12. Two cables were connected to the Power Lever and one cable to the Condition Lever control. Service records of the affected parts showed that each cable accumulated more than 14,000 flight cycles (FC).
>
> The subsequent investigation determined that the disruption was attributed to fatigue related crack.
>
> This condition, if not corrected, could lead to failure of the engine control system resulting in a loss of the affected engine control.
>
> Prompted by this unsafe condition, DGAC [Dirección General de Aviación Civil] Spain issued AD 03/00 [which corresponds to FAA AD 2001–12–18] to require rigging of the throttle stops, and one-time replacement of the affected engine control cable assembly (P/N 7–44728–12), or the affected cable (P/N 7–44728–20) before exceeding 12,000 FC.
>
> After that [DGAC Spain] AD was issued, a new occurrence of cable (P/N 72830–20) disruption was reported. In that case, the affected cable was part of the Condition Lever control and had accumulated 8,497 flight hours (FH) and 8,858 FC. Fractographic analysis of the affected cable identified that the fatigue nucleation seemed to have been induced by microcracks along the cable surface. Additionally, another case of control cable (P/N 72830–20) failure was reported, where the affected part accumulated 9,936 FH and 10,552 FC and was part of the Power Lever control. Investigation of the latter case identified again a fatigue nucleation to be the cause of the cable failure.
>
> To address this potentially unsafe condition, Airbus Military issued Alert Operators Transmission (AOT) AOT–CN235–76–0001 to provide a repetitive replacement interval and instructions.
>
> For the reasons described above, this [EASA] AD retains the requirements of DGAC Spain AD No. 03/00, which is superseded, but requires repetitive replacement [at reduced thresholds] of the affected Teleflex cables.

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–2015–8465.

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.

Clarification of Applicability

We have clarified the Applicability in paragraph (c) of this AD. For Model CN–235 airplanes, the affected serial numbers (S/N) are C–001 through C–015 inclusive. We have removed S/N C–074 for Model CN–235 airplanes because there are no Model CN–235 airplanes with that serial number.

For Model CN–235–100 and –200 airplanes, the affected serial numbers are C–016 through C–073 inclusive. We have removed S/Ns C–001 through C–015 inclusive and C–074 for CN–235–100 and –200 airplanes because there are no Model CN–235–100 and –200 with those serial numbers.

Conclusion

We reviewed the available data 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

Airbus Defense and Space S.A. has issued Airbus Military Alert Operators

Transmission AOT–CN235–76–0001, dated May 27, 2014. This service information describes repetitive replacements of each power lever and condition lever Teleflex cable having a certain part number with a new or serviceable part. This service information also provides a new life limit of 5,000 flight cycles. 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 3 airplanes of U.S. registry.

The rigging required by AD 2001–12–18, and retained in this AD takes about 8 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the rigging that was required by AD 2001–12–18 is $680 per product.

The replacement required by AD 2001–12–18, and retained in this AD takes about 47 work-hours per product, at an average labor rate of $85 per work-hour. Required parts cost about $1,444 per product. Based on these figures, the estimated cost of the replacement that was required by AD 2001–12–18 is $5,439 per product.

We also estimate that it would take about 47 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $6,480 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $31,425, or $10,475 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 removing Airworthiness Directive (AD) 2001–12–18, Amendment 39–12274 (66 FR 33014, June 20, 2001), and adding the following new AD:

2016–11–08 Airbus Defense and Space S.A. (formerly known as Construcciones Aeronauticas, S.A.): Amendment 39–18535; Docket No. FAA–2015–8465; Directorate Identifier 2014–NM–239–AD.

(a) Effective Date

This AD is effective July 6, 2016.

(b) Affected ADs

This AD replaces AD 2001–12–18, Amendment 39–12274 (66 FR 33014, June 20, 2001) (''AD 2001–12–18'').

(c) Applicability

This AD applies to Airbus Defense and Space S.A. (formerly known as Construcciones Aeronauticas, S.A.) Model CN–235 airplanes, serial numbers C–001 through C–015 inclusive; and Model CN–235–100 and –200 airplanes, serial numbers C–016 through C–073 inclusive; certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 76, Engine Controls.

(e) Reason

This AD was prompted by reports of new occurrences of cable disruption on a certain part number; the disruption is caused by microcracks along the cable surface. We are issuing this AD to prevent fatigue of the engine control cables, leading to breakage of the cables, which could result in reduced controllability of the airplane.

(f) Compliance

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

(g) Retained Action for the Power Lever and Condition Lever Control Stops, With No Changes

This paragraph restates the requirements of paragraph (a) of AD 2001–12–18. Within 15 days after July 25, 2001 (the effective date of AD 2001–12–18): Rig the power lever and condition lever control stops, in accordance with CASA COM 235–140, Revision 01, dated March 21, 2000.

(h) New Requirement of This AD: Replacement

At the applicable compliance times specified in table 1 to paragraph (h) of this AD: Replace each power lever and condition lever Teleflex cable having part number (P/N) 72830–20 with a new or serviceable part, in accordance with Airbus Military Alert Operators Transmission AOT–CN235–76–0001, dated May 27, 2014. Repeat the replacement thereafter at intervals not to exceed an accumulation of 5,000 total flight cycles on each Teleflex cable having P/N 72830–20.

TABLE 1 TO PARAGRAPH (h) OF THIS AD—REPLACEMENT COMPLIANCE TIME

Total flight cycles accumulated on the Teleflex cable having P/N 72830–20 (since first installation on an airplane) as of the effective date of this AD	Compliance time
Fewer than 4,700 total flight cycles	Before accumulating 5,000 total flight cycles.
Equal to or more than 4,700 total flight cycles, but fewer than 6,000 total flight cycles.	Within 300 flight cycles or 12 months after the effective date of this AD, whichever occurs first.

TABLE 1 TO PARAGRAPH (h) OF THIS AD—REPLACEMENT COMPLIANCE TIME—Continued

Total flight cycles accumulated on the Teleflex cable having P/N 72830–20 (since first installation on an airplane) as of the effective date of this AD	Compliance time
Equal to or more than 6,000 total flight cycles, but fewer than 7,000 total flight cycles.	Within 200 flight cycles or 6 months after the effective date of this AD, whichever occurs first.
Equal to or more than 7,000 total flight cycles	Within 100 flight cycles or 3 months after the effective date of this AD, whichever occurs first.

(i) Parts Installation Limitations

As of the effective date of this AD, no person may install, on any airplane, a Teleflex cable having P/N 72830–20, unless the cable has accumulated fewer than 5,000 total flight cycles since its first installation on an airplane.

(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: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1112; 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: As of the effective date of this AD, 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 EADS CASA'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 2014–0262, dated December 5, 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–2015–8465.

(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.

(3) The following service information was approved for IBR on July 6, 2016.

(i) Airbus Military Alert Operators Transmission AOT–CN235–76–0001, dated May 27, 2014.

(ii) Reserved.

(4) The following service information was approved for IBR on July 25, 2001 (66 FR 33014, June 20, 2001).

(i) CASA COM 235–140, Revision 01, dated March 21, 2000.

(ii) Reserved.

(5) For service information identified in this AD, contact EADS–CASA, Military Transport Aircraft Division (MTAD), Integrated Customer Services (ICS), Technical Services, Avenida de Aragón 404, 28022 Madrid, Spain; telephone +34 91 585 55 84; fax +34 91 585 55 05; email *MTA.TechnicalService@casa.eads.net;* Internet *http://www.eads.net.*

(6) 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.

(7) 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 May 20, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–12594 Filed 5–31–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–0526; Airspace Docket No. 16–ASW–3]

Amendment of Class E Airspace; Taos, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace extending upward from 700 feet above the surface at Taos Regional Airport, Taos, NM. Decommissioning of non-directional radio beacon (NDB) and cancellation of the NDB approaches due to advances in Global Positioning System (GPS) capabilities have made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at Taos Regional Airport.

DATES: Effective 0901 UTC, January 5, 2017. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at Taos Regional Airport, Taos, NM.

History

On March 7, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify Class E airspace extending upward from 700 feet above the surface at Taos Regional Airport, Taos, NM (81 FR 11695). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received from Mr. Robert Pigott, Aeronautical Information Services, requesting clarification of the overlapping 1,200 foot airspace to the west of Taos Regional Airport. This airspace existed prior to the proposed amendment and was not changed by the amendment. The 1,200 foot airspace exists to protect the departures and climb out requirements to the west due to high terrain east of the airport and allows departing aircraft to reach controlled airspace, and was developed in accordance with FAA Joint Order 7400.2K, Procedures for Handling Airspace Matters. The FAA found no reason to change the 1,200 foot airspace at this time.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies Class E airspace extending upward from 700 feet above the surface at Taos Regional Airport, Taos, NM. After review, the FAA found that with the decommissioning of NDBs, removal of NDB approaches, and implementation of area navigation (RNAV) instrument approaches the extension to the northwest from the 6.5-mile radius to 9.4 miles of the Class E airspace extending upward from 700 feet above the surface was no longer requires in accordance with airspace requirements specified in FAA Joint Order 7400.2K.

Regulatory Notices and Analyses

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASW NM E5 Taos, NM [Amended]

Taos Regional Airport, NM
(Lat. 36°27′29″ N., long. 105°40′21″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Taos Regional Airport; and that airspace extending upward from 1,200 feet above the surface beginning at lat. 36°07′00″ N., long. 105°47′42″ W., thence via the 21.3-mile arc of Taos Regional Airport clockwise to lat. 36°48′00″ N., long. 105°47′35″ W., thence to lat. 36°30′00″ N., long. 105°30′02″ W., thence to the point of beginning.

Issued in Fort Worth, Texas, on May 18, 2016.

Walter Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–0525; Airspace Docket No. 16–AGL–1]

Amendment of Class E Airspace for the Following South Dakota Towns; Belle Fourche, SD; Madison, SD; Mobrigde, SD; and Vermillion, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace extending upward from 700 feet above the surface at Belle Fourche Municipal Airport, Belle Fourche, SD; Madison Municipal Airport, Madison, SD; Mobridge Municipal Airport, Mobridge, SD; and Harold Davidson Field, Vermillion, SD. The

decommissioning of non-directional radio beacons (NDB) and/or cancellation of NDB approaches due to advances in Global Positioning System (GPS) capabilities have made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the above airports.

DATES: Effective 0901 UTC, September 15, 2016. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX, 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at Belle Fourche Municipal Airport, Belle Fourche, SD; Madison Municipal Airport, Madison, SD; Mobridge Municipal Airport, Mobridge, SD; and Harold Davidson Field, Vermillion, SD.

History

On February 17, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify Class E airspace extending upward from 700 feet above the surface at Belle Fourche Municipal Airport, Belle Fourche, SD; Madison Municipal Airport, Madison, SD; Mobridge Municipal Airport, Mobridge, SD; and Harold Davidson Field, Vermillion, SD (81 FR 8029). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies Class E airspace extending upward from 700 feet above the surface at Belle Fourche Municipal Airport, Belle Fourche, SD; Madison Municipal Airport, Madison, SD; Mobridge Municipal Airport, Mobridge, SD; and Harold Davidson Field, Vermillion, SD. Airspace reconfiguration is necessary due to the decommissioning of NDBs and/or the cancellation of the NDB approach at each airport. As a result of advances in GPS capabilities, controlled airspace is redesigned for the safety and management of the standard instrument approach procedures for IFR operations at the airports.

Regulatory Notices and Analyses

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment:

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 Feet or More Abovethe Surface of the Earth

* * * * *

AGL SD E5 Belle Fourche, SD [Amended]

Belle Fourche Municipal Airport, SD
(Lat. 44°44′04″ N., long. 103°51′43″ W.)

That airspace extending upward from 700 feet above the surface within an 6.4-mile

radius of Belle Fourche Municipal Airport, and within 1 mile each side of the 142° bearing from Belle Fourche Municipal Airport extending from the 6.4 mile radius to 7 miles southeast of the airport.

* * * * *

AGL SD E5 Madison, SD [Amended]

Madison Municipal Airport, SD
(Lat. 44°00′59″ N., long. 97°05′08″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Madison Municipal Airport, and within 2 miles each side of the 334° bearing from the airport extending from the 6.5-mile radius to 10.5 miles northwest of the airport.

* * * * *

AGL SD E5 Mobridge, SD [Amended]

Mobridge Municipal Airport, SD
(Lat. 45°32′47″ N., long. 100°24′23″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Mobridge Municipal Airport.

* * * * *

AGL SD E5 Vermillion, SD [Amended]

Harold Davidson Field, SD
(Lat. 42°45′55″ N., long. 96°56′03″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Harold Davidson Field.

Issued in Fort Worth, Texas, on May 18, 2016.

Walter Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

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DEPARTMENT OF COMMERCE

National Technical Information Service

15 CFR Part 1110

[Docket Number: 160511004–4999–04]

RIN 0692–AA21

Certification Program for Access to the Death Master File

AGENCY: National Technical Information Service, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: The National Technical Information Service (NTIS) issues this final rule establishing a program through which persons may become eligible to obtain access to Death Master File (DMF) information about an individual within three years of that individual's death. This final rule supersedes and replaces the interim final rule that NTIS promulgated following passage of Section 203 of the Bipartisan Budget Act of 2013 to provide immediate and ongoing access to persons who qualified for temporary certification. The program established under this final rule contains some changes from the proposed rule published by NTIS.

DATES: This final rule is effective November 28, 2016.

FOR FURTHER INFORMATION CONTACT: Brian Lieberman, Senior Counsel for NTIS, at *blieberman@ntis.gov,* or by telephone at 703–605–6404. Information about the DMF made available to the public by NTIS may be found at *https://dmf.ntis.gov.*

SUPPLEMENTARY INFORMATION:

Background

This final rule is promulgated under Section 203 of the Bipartisan Budget Act of 2013, Public Law 113–67 (Act), passed into law on December 26, 2013. The Act prohibits the Secretary of Commerce (Secretary) from disclosing DMF information during the three-calendar-year period following an individual's death (referred to as the ''Limited Access DMF,'' or ''LADMF''), unless the person requesting the information has been certified to access that information pursuant to certain criteria in a program that the Secretary establishes. The Act further requires the Secretary to establish a fee-based program to certify Persons for access to LADMF. In addition, it provides for penalties for Persons who receive or distribute LADMF without being certified or otherwise satisfying the requirements of the Act. The Secretary has delegated the authority to carry out Section 203 to the Director of NTIS.

The Act mandated that no person could receive LADMF without certification after March 26, 2014 (*i.e.,* 90 days from enactment of the Act). NTIS acted promptly to ensure that a suitable certification program was in place by that date, and to avoid interruption of access by legitimate users of the data. On March 3, 2014, NTIS published a Request for Information (RFI) and Advance Notice of Public Meeting on the Certification Program for Access to the Death Master File (79 FR 11735). NTIS held the public meeting, with webcast, on March 4, 2014. Written comments received in response to the RFI, and a transcription of oral comments submitted at the public meeting, may be viewed at *https://dmf.nist.gov.*

On March 26, 2014, NTIS published an interim final rule, ''Temporary Certification Program for Access to the Death Master File'' (interim final rule) (79 FR 16668). That rule codified an interim approach to implementing the Act's provisions pertaining to the certification program and the penalties for violating the Act, and set out an interim fee schedule for the program. NTIS published the interim final rule in order to provide a mechanism for Persons to access LADMF immediately on the effective date prescribed in the Act. Written comments received in response to the Interim Final Rule may be viewed at *http://www.regulations.gov.*

The preambles for both the RFI and the interim final rule set out the specific provisions of the Act, and also noted that several Members of Congress described their understanding of the purpose and meaning of Section 203 during Congressional debate on the Joint Resolution which became the Act. Citations to those Member statements were provided in the RFI, which also provided background on the component of the DMF, which originates from the Social Security Administration, covered by Section 203. The interim final rule was established to provide immediate access to the LADMF to those users who demonstrated a legitimate fraud prevention interest, or a legitimate business purpose for the information, and to otherwise delay the release of the LADMF to all other users, thereby reducing opportunities for identity theft and restricting information sources used to file fraudulent tax returns.

In addition, in December, 2014, NTIS issued an initial public draft of ''Limited Access Death Master File (Limited Access DMF) Certification Program Publication 100,'' (Publication 100), available at *https://dmf.ntis.gov.* Publication 100 is the NTIS security guideline document for persons certified under this final rule. Publication 100 sets forth suggested security controls, standards and protocols for the protection of LADMF in the possession of Certified Persons.

On December 30, 2014, NTIS published the proposed rule (79 FR 78314). The proposed rule introduced changes, clarifications and additions to the interim final rule, based in part upon comments received. For example, the proposed rule introduced a ''safe harbor'' provision, § 1110.103, which would exempt a Certified Person from penalty for disclosure of LADMF to another Certified Person. The proposed rule set forth a provision for review, assessment, audit and attestation of a Person's information and information security controls by independent, third party conformity assessment bodies. Section 1110.201 of the proposed rule would permit Certified Persons to provide the attestation of an ''Accredited Certification Body'' (as defined in § 1110.2) concerning the

adequacy of the Certified Person's ''systems, facilities and procedures in place to safeguard DMF information.''

NTIS requested that all written comments on the proposed rule be submitted to *Regulations.gov* by January 31, 2015. The agency, however, received requests to extend the public comment period. In response, on January 28, 2015, NTIS published a notice extending the comment period until March 30, 2015 (80 FR 4519). Written comments received in response to the proposed rule may be viewed at *http://www.regulations.gov.*

Comments in Response to the Proposed Rule

In response to the proposed rule, NTIS received 62 written comments. The commenters included one foreign government, twenty industry and trade associations, five service providers, three financial services companies, two insurance companies, four health care and medical research organizations and five service providers. The remainder of the commenters were primarily individuals, including a number identifying themselves as genealogists.

In preparing this final rule, NTIS has carefully considered all comments received in response to the proposed rule. Many commenters requested that NTIS provide unrestricted access to LADMF. However, NTIS cannot revise the rule to accommodate such comments, since access to and use of LADMF is governed by the statutory provisions set forth in Section 203 of the Act. A number of commenters requested changes to the composition of the DMF itself; however, the composition of the DMF is explicitly defined in Section 203(d) of the Act as consisting of ''the name, social security account number, date of birth and date of death of deceased individuals maintained by the Commissioner of Social Security.'' NTIS, therefore, has no discretion to alter the composition of the DMF. Some commenters suggested that NTIS should enhance search capabilities available to DMF subscribers. NTIS has no present plans to alter database search capabilities, but may consider doing so in the future. However, NTIS's database search capabilities are not an element of this final rule. NTIS also received multiple comments to the effect that the proposed subscription cost of the LADMF should be reduced; however, Section 203(b)(3) mandates the charge of fees sufficient to cover costs associated with the certification program. The certification fee that NTIS charges covers the costs of receiving and processing applications, including authenticating the statements made in the application, and ensuring access to the Limited Access DMF.

A number of comments were received asserting that some Certified Persons need to provide LADMF date of death information in the ordinary course of their business, for example, to retirement plans and others who have a legal obligation to provide death benefits payments to beneficiaries or for other legitimate purposes, and some suggested that the rule should specifically provide for the disclosure of date of death information alone as an exception to requirement for certification. However, as noted above, ''date of death'' is one of the four elements (the others being name, social security number, and date of birth) expressly set forth in the statutory definition of the term ''Death Master File'' under the Act, and NTIS is without discretion to categorically exclude it through rulemaking. NTIS notes that it received no comments suggesting that retirement plans and others having a legal obligation to provide death benefits would be unable to demonstrate one or more of a legitimate fraud prevention interest, business purpose, or fiduciary duty, to qualify for certification or, if not certified, that they would be unable to demonstrate, first, that they meet the requirements for LADMF access (*i.e.,* the legitimate fraud prevention or business purpose and security requirements of § 1110.102(a)(1), (2), and (3)), and, second, that they would not misuse or further disclose LADMF to a person who would either wrongfully use LADMF or could not comply with the security requirements set forth in § 1110.200(a)(1)(ii) or (iii) respectively. NTIS points out that ''fact of death,'' *i.e.,* the fact that a person is no longer living, confirmation of which was identified by some commenters as important for legitimate business purposes, is not an element of the statutory definition of the term ''Death Master File,'' and will not be considered by NTIS to be equivalent to ''date of death'' under the final rule.

NTIS also notes that the proposed rule would revise the definition of ''Limited Access DMF'' to provide that an individual element of information (name, social security number, date of birth, or date of death) in the possession of a Person, whether or not certified, but obtained by such Person through a source independent of the Limited Access DMF, would not be considered ''DMF information.'' That revision is retained in the final rule, and has been further clarified in response to comments. Specifically, NTIS has replaced the term ''Certified Person'' in the last sentence of the LADMF definition with ''Person'' to make clear that any Person, whether or not certified, who obtains an individual element of information independently is not considered to possess ''Limited Access DMF.''

Comments were received suggesting that, for clarity and simplicity, the final rule should refer to the defined term ''Limited Access DMF'' to the extent possible. NTIS has incorporated these comments into the final rule, including §§ 1110.102(a)(4) and 1110.200(a)(1).

NTIS received comments supporting the provision of the proposed rule that would amend § 1110.102(a)(2) and (3) to clarify that, to be certified to obtain access to the Limited Access DMF, a Person must certify both that the Person has systems, facilities, and procedures in place to safeguard the accessed information, and experience in maintaining the confidentiality, security, and appropriate use of accessed information, pursuant to requirements similar to the requirements of section 6103(p)(4) of the Internal Revenue Code of 1986, and that the Person ''agrees to satisfy such similar requirements.''

This standard differs from the requirement of Section 203 of the Act, because that Section contains contradictory statements about the types of systems to safeguard information that a Certified Person must have in place. In Section 203(b)(2)(B), the Act states that in order to receive Limited Access DMF, a Person must agree to comply with requirements ''similar to'' Section 6103(p)(4) of the Internal Revenue Code (IRC). Section 6103(p)(4) of the IRC is directed to Federal government agencies, and as such the ''similar to'' statement makes sense for non-government actors which are the subject of the Act. However, Section 203(b)(2)(C) requires a Certified Person to also ''satisfy the requirements of such section 6103(p)(4) as if such section applied to such person.'' It is unclear how or why a Certified Person could or should satisfy safeguarding requirements ''similar to'' section 6103(p)(4) of the IRC, while also satisfying section 6103(p)(4) of the IRC. In addition, commenters pointed out that some of the provisions of section 6103(p)(4) could not reasonably be imposed on non-government actors, because, for example, in contrast to Federal Tax Information, Limited Access DMF under Section 203 is not subject to restriction when beyond the three-calendar-year period following the date of death.

To resolve this ambiguity and address these comments, NTIS interprets

Section 203(b) of the Act as requiring Persons to certify that they have systems, facilities, and procedures in place that are ''reasonably similar to'' those required by section 6103(p)(4) of the IRC in order to become Certified Persons. This interpretation allows NTIS to meet the interest of protecting personal data generally and deterring fraud, while also allowing NTIS to set the data integrity standards appropriate to safeguard Limited Access DMF specifically. The final rule amends § 1110.102(a)(2) and (3) accordingly.

A number of commenters suggested that the final rule should expressly classify certain categories of activities or enterprises, such as health care research and insurance investigation, as ''a legitimate fraud prevention interest'' or ''a legitimate business purpose.'' Other commenters suggested that the final rule should specifically provide that when an applicant or Certified Person is subject to other laws governing the use of personal information, the applicant or Certified Person should for that reason be deemed to have a ''legitimate fraud prevention interest'' or ''legitimate business purpose.'' It was urged that codification of such categories would further the purpose of the Act and benefit businesses and other entities reliant upon the LADMF by eliminating the threat of interrupted access. NTIS has carefully considered these suggestions, and observes that each Person applying for certification must certify to NTIS that such Person satisfies each of three requirements specified under Section 203(b)(2) of the Act, and that NTIS will evaluate each application individually to ensure that an individual applicant is properly certified. NTIS does acknowledge that it received numerous comments to the effect that awardees of federal research grants and others conducting extramural and intramural research under federal programs should be eligible for certification, provided that they otherwise satisfy the requirements of the final rule. NTIS notes that, while it appreciates the commenters' position, such Persons must, like any applicants, demonstrate that they satisfy the requirements for LADMF access.

A commenter observed that use of the term ''Accredited Certification Body'' in the proposed rule could create confusion, particularly since the concept of ''certification'' appears and is used separately in the rule. Accordingly, the final rule uses the term ''Accredited Conformity Assessment Body'' rather than ''Accredited Certification Body,'' and NTIS uses the former term in the preamble as well.

A number of commenters urged that particular activities and enterprises, such as direct marketing and life insurance companies, should not be subject to DMF-related audits or required to obtain a written third party attestation, where such activities and enterprises are independently subject to regulatory scrutiny and must comply with the privacy security requirements of other laws, such as the Gramm-Leach-Bliley Act (GLBA), the Fair Credit Reporting Act (FCRA), and the Health Insurance Portability and Accountability Act of 1996 (HIPAA). While NTIS will decline to exclude Persons from the requirement for attestation as part of the certification process under the final rule, and will decline to exclude Certified Persons from being subject to audit, NTIS emphasizes that it is NTIS's intent under this final rule that applicants and Certified Persons should not incur the burden or expense of a DMF-specific audit when they have already had, or will have, an appropriate independent assessment or audit performed for other purposes, including but not limited to those noted above. To this end, § 1110.503(c) of the final rule explicitly contemplates reliance upon a review or assessment or audit by an Accredited Conformity Assessment Body that was not conducted specifically or solely for the purpose of submission to NTIS. NTIS intends that when a review, assessment or audit has been or can be performed in the course of satisfying other Federal, state, tribal, or local government laws or regulations, such as those mentioned by commenters, or other regulatory or fiduciary requirements flowing from such laws or regulations, a Person or Certified Person will be able to rely upon that review, assessment or audit, to the extent that the requirements of the final rule are satisfied. In these circumstances, NTIS intends that it will accept an Accredited Conformity Assessment Body's attestation regarding a non-DMF audit, which attestation includes an explanation of the nature of that non-DMF audit and represents that, based on its review, the Accredited Conformity Assessment Body is satisfied that the LADMF security and safeguard requirements are met.

NTIS will not at this time accept the suggestion of some commenters to permit ''self-assessments'' or ''a self-certified written attestation'' in lieu of a written attestation from an independent Accredited Conformity Assessment Body. With respect to state and local government departments and agencies, which are included within the definition of Persons in the final rule, NTIS notes some commenters' concerns that the proposed rule could burden such departments and agencies given state-established information security and safeguarding procedures, and agrees with the recommendation of a commenter that it should accept written attestation from an independent state or local government Inspector General or Auditor General office.

Accordingly, provided that a state or local government Inspector General or Auditor General satisfies the requirements of the final rule for Accredited Conformity Assessment Bodies, new § 1110.501(a)(2) of the final rule provides that a state or local government office of Inspector General or Auditor General and a Person or Certified Person that is a department or agency of the same state or local government, respectively, are not considered to be owned by a common ''parent'' entity under § 1110.501(a)(1)(ii) for the purpose of determining independence, and attestation by the Inspector General or Auditor General will be possible.

With respect to comments urging that provision should be made for self-assessments and attestations by organizations having the capacity to perform assessments and audits, NTIS recognizes that some organizations have such capacity, and are able in exercising it to address safeguarding and security requirements under other laws and regulations. Accordingly, new § 1110.502 of the final rule provides that, in addition to ''independent'' Accredited Conformity Assessment Bodies, a Person or Certified Person may engage a ''firewalled'' Accredited Conformity Assessment Body, as defined in the final rule and with the approval of NTIS, under conditions, as defined in the rule, which ensure that concerns about independence and actual or apparent conflicts of interest or undue influence are satisfactorily addressed.

Under new § 1110.502(a), a third party conformity assessment body must apply to NTIS for firewalled status if it is owned, managed, or controlled by a Person or Certified Person that is the subject of attestation or audit by the Accredited Conformity Assessment Body, applying the characteristics set forth under § 1110.501(a)(1) for independence. Under new § 1110.502(b), NTIS will accept an application for firewalled status when it finds that: (1) Acceptance of the third party conformity assessment body for firewalled status would provide equal or greater assurance that the Person or Certified Person has information

security systems, facilities, and procedures in place to protect the security of the Limited Access DMF than would the Person's or Certified Person's use of an independent third party third party conformity assessment body; and (2) the third party conformity assessment body has established procedures to ensure that: (1) Its attestations and audits are protected from undue influence by the Person or Certified Person that is the subject of attestation or audit by the Accredited Conformity Assessment Body, or by any other interested party; (2) NTIS is notified promptly of any attempt by the Person or Certified Person that is the subject of attestation or audit by the third party conformity assessment body, or by any other interested party, to hide or exert undue influence over an attestation, assessment or audit; and (3) allegations of undue influence may be reported confidentially to NTIS. To the extent permitted by Federal law, NTIS will undertake to protect the confidentiality of witnesses reporting allegations of undue influence. Under new § 1110.502(c), NTIS will review each application and may contact the third party conformity assessment body with questions or to request submission of missing information, and will communicate its decision on each application in writing to the applicant.

Some commenters expressed concern that in attesting to its credentials under § 1110.503(a), an Accredited Conformity Assessment Body must indicate that it is accredited to a nationally or internationally recognized standard such as the ISO/IEC Standard 27006–2011 or any other similar recognized standard for bodies providing audit and certification for information security management systems, pointing to other potentially applicable standards, such as the American Institute of Public Accountants (AICPA) Service Organization Control Report (SOC) Type 2 Audit Report. NTIS wishes to emphasize that it is not NTIS's intent, in reciting ISO/IEC 27006–2011, to exclude from consideration AICPA SOC2 or other appropriate accreditation standards. The regulation identifies the ISO/IEC standard as one example of an acceptable national or international accreditation standard. NTIS selected the ISO/IEC standard, as noted in the original discussion of the proposed rule, to serve ''as a baseline for accreditation,'' because it was prepared by the International Organization for Standardization (ISO) Committee on conformity assessment (79 FR at 78316). Moreover, NTIS emphasized that it is ''is aware that standards other than ISO/IEC 27006–2001 exist that may be equally appropriate for the purposes of accreditation under the Act, and that additional standards may be developed in the future . . . an [Accredited Conformity Assessment Body] may attest, subject to the conditions of verification in [final rule] Section 1110.503, that it is accredited to a nationally or internationally recognized standard for management systems other than ISO/IEC Standard 27006–2011.'' NTIS further observes that the burden rests with the Person or Certified Person to identify and submit an attestation by an Accredited Conformity Assessment Body certified or credentialed by an appropriate accrediting body. Accordingly, NTIS concludes that § 1110.503(a) provides appropriate guidance as to the accreditation standard for Accredited Conformity Assessment Bodies.

A few commenters suggested that NTIS should directly accredit Accredited Conformity Assessment Bodies to conduct assessments and audits or provide a list of acceptable accreditations for Accredited Conformity Assessment Bodies. NTIS does not intend to do so. Recognized professional accreditation organizations with well-established, rigorous accreditation processes already exist in the private sector. Such organizations have either adopted or established nationally and internationally accepted standards for entities which may serve as Accredited Conformity Assessment Bodies under the final rule. In considering how to establish a permanent certification program as required under Section 203, NTIS carefully considered developing, within the agency, the capacity to evaluate the information systems, facilities and procedures of Persons to safeguard Limited Access DMF, as well as to conduct audits of Certified Persons and to itself accredit conformity assessment bodies. NTIS has consulted with the National Institute of Standards and Technology (NIST), which has expertise in testing, standard setting, certification and conformity assessment. Based on NIST recommendations, NTIS believes it appropriate for private sector, third party, Accredited Conformity Assessment Bodies to attest to a Person's information security safeguards under § 1110.102(a)(2) of the rule, for NTIS to rely upon such attestation in certifying a Person under the final rule, and for NTIS to rely as well upon third party, private sector accreditation of Accredited Conformity Assessment Bodies, while reserving to itself the ability to perform assessments and audits itself, in its discretion.

A number of commenters expressed concerns regarding the identification, in § 1110.502(b) of the proposed rule, of the ''Limited Access Death Master File Publication 100'' (Publication 100) as a source of guidance to which an Accredited Conformity Assessment Body could refer in its attestation as to the adequacy of an applicant's or Certified Person's safeguards for Limited Access DMF. These commenters stated that, even though Publication 100 is intended to set forth recommended guidelines, procedures and best practices, reference to that publication in the proposed rule implied a limitation to those safeguarding approaches set forth in Publication 100. These commenters offered other sources of security requirements for personal information they thought were pertinent and should be expressly included in the rule, such as the security standards for the GLBA.

NTIS notes, however, that the language of the rule makes clear that Publication 100 merely offers an example of security controls and protocols that an applicant or Certified Person may use, and is not intended to be prescriptive (79 FR at 78316). Moreover, NTIS recognizes that ''a number of different approaches exist to safeguarding information.'' Id. In the December 2014 Draft Version of Publication 100, NTIS stated:

> ''These information security guidelines are derived from NIST SP800–53 Revision 4, Security and Privacy Controls for Federal Information Systems and Organizations. Only NIST SP 800–53 controls believed to be essential to the protection of Limited Access DMF information are included in this publication as a baseline. Applicability was determined by selecting controls relevant to protecting the confidentiality of Limited Access DMF information. The NIST controls [discussed here] are intended by NTIS to be illustrative, not exclusive. Other controls that can be assessed and used as guidelines include the NIST Framework for Improving Critical Infrastructure Cybersecurity v1.0. The Framework Core provides a common set of activities for managing risks, and associated controls. The references provided in the Framework Core represent a diverse set of information security guidelines including: International Organization for Standardization ISO 27001; International Society for Automation ISA/IEC 62443; Control Objectives for Information and Related Technology COBIT; Council on Cybersecurity Critical Security Controls CCS CSC2; and NIST 800–53 rev. 4. Again, these references are illustrative.''

Nevertheless, in response to commenters' concerns, NTIS has removed reference to Publication 100 from § 1110.503(b) of the final rule.

Given the continuously evolving nature of information technology security and safeguard guidelines, procedures and best practices, NTIS intends that Publication 100 will be a living document. NTIS has invited comments on Publication 100 from the public on an ongoing basis, and contemplates interactive public dialog regarding its contents.

The proposed rule introduced a ''safe harbor'' provision in § 1110.200(c) that would exempt from penalty a first Certified Person who discloses LADMF to a second Certified Person, where the first Certified Person's liability rests solely on the fact that the second Certified Person has been determined to be subject to penalty. The provision was specifically drafted to apply to each disclosure and to limit the presumption of compliance to the first Certified Person, while the second Certified Person (*i.e.,* the recipient of the LADMF) remained subject to penalty for violations of the Act (79 FR at 78317.) NTIS invited comments as to whether the ''safe harbor'' provision should be extended to circumstances where the recipient is believed to be certified but, in fact, is not. NTIS did not receive comment on this point. A Certified Person desiring to rely upon the ''safe harbor'' provision as set forth in this final rule will bear responsibility for ensuring that a recipient of LADMF is, in fact, a Certified Person at the time of disclosure. NTIS notes that it maintains and publishes a list of Certified Persons, available at *https://dmf.ntis.gov.*

NTIS received many comments suggesting that it should promulgate a broader ''safe harbor'' for a Certified Person who discloses LADMF to Persons whom the Certified Person knows are not certified (''uncertified Persons''). Many commenters urged that, unless the final rule made further allowance for Certified Persons to share LADMF with uncertified Persons, the commenters' businesses would suffer and their clients or other users would be deprived of data they need for critical purposes including fraud prevention, record-keeping and meeting legal and regulatory obligations. Many of these commenters also urged the extension of the ''safe harbor'' to Certified and uncertified Persons under certain circumstances, such as where an uncertified Person attests in writing that it meets the requirements for certification and to disclose the LADMF only to other uncertified Persons who could also meet the requirements, or where private contractual obligations were incurred. Some commenters contended that it would be unreasonable and unrealistic for NTIS to require their clients or other users to become certified and thus be subject to the rule's security and auditing requirements.

NTIS will not extend the ''safe harbor'' provision of § 1110.102(c) in this manner. However, NTIS emphasizes that Certified Person status has not been and is not required in order for a Certified Person to disclose LADMF to another Person. A Certified Person may, without penalty under § 1110.200 (but without ''safe harbor'' protection), disclose LADMF to another Person who, although not certified, meets the requirements of § 1110.102(a)(1) through (3), and who does not misuse or further disclose the LADMF in violation of § 1110.200(a)(1)(ii) or (iii). Indeed, many of the comments described above reflect the types of procedures that Certified Persons have successfully adopted under the Temporary Certification Program, and might be expected to adopt successfully in disclosing LADMF to uncertified Persons under the final rule. However, under such circumstances not involving a certified recipient, NTIS will not apply a ''safe harbor'' such as is applied under the final rule to a Certified Person who discloses Limited Access DMF to another who is also a Certified Person.

A few commenters were critical of the appeals process set forth in § 1110.300. One commenter opined that entities facing potential liability through ''unscheduled audits'' and ''substantial financial penalties'' needed ''well-developed procedural rights'' such as the right of appeal to an administrative law judge and federal court. NTIS has carefully considered these comments, but concludes that the process and procedures set forth in § 1110.300 are legally sufficient. NTIS has provided an appropriate administrative and appeal process in § 1110.300. Pursuant to the Administrative Procedure Act (Pub. L. 79–404, 60 Stat. 237), any Person or Certified Person can seek review of any adverse action or decision by the Director of NTIS in federal district court.

A comment was received suggesting that the exclusion of Executive departments or agencies of the United States Government from the definition of ''Persons,'' noted initially under the interim final rule and continued in the proposed rule, should be extended as well to the governments of foreign countries. NTIS has carefully considered this comment, but will not adopt such a categorical exclusion. NTIS will continue to consider applications by foreign governments on a case-by-case basis, in accordance with general principles of comity and consistent with the purposes of Section 203 and the requirements of the final rule.

The Final Rule

This final rule amends subparts A, B, C, D, and adds a new subpart E to the DMF Certification Program in part 1110 of title 15 of the Code of Federal Regulations. The following describes specific provisions being amended.

Under § 1110.2, ''Definitions,'' NTIS is revising the definition of ''Person'' to recite ''state and local government departments and agencies,'' so that ''Person'' will be defined as including corporations, companies, associations, firms, partnerships, societies, joint stock companies, and other private organizations, and state and local government departments and agencies, as well as individuals. However, Executive departments or agencies of the United States Government will not be considered ''Persons'' for the purposes of this rule. Accordingly, Executive departments or agencies will not have to complete the Certification Form as set forth in the rule, and will be able to access Limited Access DMF under a subscription or license agreement with NTIS, describing the purpose(s) for which Limited Access DMF is collected, used, maintained and shared. Those working on behalf of and authorized by Executive departments or agencies may access the Limited Access DMF from their sponsoring Executive department or agency, which will be responsible for ensuring that such access is solely for the authorized purposes described by the agency. Unauthorized secondary use of Limited Access DMF by Executive departments or agencies or those working for them or on their behalf is prohibited. If an Executive department or agency wishes those working on its behalf to access the Limited Access DMF directly from NTIS, then those working on behalf of that Executive department or agency will be required to complete and submit the Certification Form as set forth in the rule and enter into a subscription agreement with NTIS in order to directly access the Limited Access DMF. Under this final rule, a Certified Person will be eligible to access the Limited Access DMF made available by NTIS through subscription or license.

The final rule adds a requirement that, in order to become certified, a Person must submit a written attestation from an Accredited Conformity Assessment Body, as defined in the final rule, that such Person has information security systems, facilities, and procedures in place to protect the

security of the Limited Access DMF, as required under § 1110.102(a)(2) of the rule. NTIS has consulted with NIST, which has expertise in testing, standard-setting, and certification of various systems. Based on NIST recommendations, the final rule provides for private sector, third party, Accredited Conformity Assessment Bodies to attest to a Person's information security safeguards under § 1110.102(a)(2) of the rule, and NTIS will rely upon such attestation in certifying a Person under the final rule. The final rule also provides for Accredited Conformity Assessment Bodies to conduct periodic scheduled and unscheduled audits of Certified Persons on behalf of NTIS.

Under the final rule, an ''Accredited Conformity Assessment Body'' is defined as an independent third party conformity assessment body that is not owned, managed, or controlled by a Person or Certified Person which is the subject of attestation or audit, and that is accredited by an accreditation body under nationally or internationally recognized criteria such as, but not limited to, ISO and the International Electrotechnical Commission (IEC) publication ISO/IEC 27006–2011, ''Information technology—Security techniques—Requirements for bodies providing audit and certification of information security management systems,'' to attest that a Person or Certified Person has information technology systems, facilities and procedures in place to safeguard Limited Access DMF. Based on NIST recommendations, NTIS believes it is appropriate to reference the ISO/IEC 27006–2001 as an exemplary baseline for accreditation under the final certification program. The ISO Committee on conformity assessment (CASCO) prepared ISO/IEC 27006–2001, and reference to the ISO/IEC standard will help ensure that attestations and audits under the final certification program operate in a manner consistent with national and international practices. Accreditation is a third-party attestation that a conformity assessment body operates in accordance with national and international standards. Accreditation is used nationally and internationally in many sectors where there is a need, through certification, for safety, health or security requirements to be met by products or services. Accreditation ensures that a conformity assessment body is technically competent in the subject matter (in this case, the information safeguarding and security requirements as set forth in the rule) and has a management system in place to ensure competency and acceptable certification program operations on a continuing basis. Accreditation requires that Accredited Conformity Assessment Bodies be re-accredited on a periodic basis.

However, NTIS also acknowledges that standards other than ISO/IEC 27006–2001 exist that are equally appropriate for the purposes of accreditation under the Act, and that additional appropriate standards may be developed in the future. The final rule provides that an Accredited Conformity Assessment Body may attest, subject to the conditions of verification in § 1110.503 of the final rule, that it is accredited to a nationally or internationally recognized standard for bodies providing audit and certification of information security management systems other than ISO/IEC Standard 27006–2011. In addition, the rule provides that an Accredited Conformity Assessment Body must also attest that the scope of its accreditation encompasses the information safeguarding and security requirements as set forth in the rule.

NTIS is aware that security and safeguarding of information and information systems is of great concern in many fields of endeavor other than with respect to Limited Access DMF. NTIS has consulted with subject matter experts from NIST, which in 2014 published the ''Framework for Improving Critical Infrastructure Cybersecurity'' [1] (Framework), in response to President Obama's Executive Order 13636, ''Improving Critical Infrastructure Cybersecurity,'' which established that ''[i]t is the Policy of the United States to enhance the security and resilience of the Nation's critical infrastructure and to maintain a cyber environment that encourages efficiency, innovation, and economic prosperity while promoting safety, security, business confidentiality, privacy, and civil liberties.'' In articulating this policy, the Executive Order calls for the development of a voluntary risk-based Cybersecurity Framework—a set of industry standards and best practices to help organizations manage cybersecurity risks. The resulting Framework, created by NIST through collaboration between government and the private sector, uses a common language to address and manage cybersecurity risks in a cost-effective way based on business needs without placing additional regulatory requirements on businesses. The Framework enables organizations—regardless of size, degree of cybersecurity risk, or cybersecurity sophistication—to apply the principles and best practices of risk management to improving the security and resilience of critical infrastructure. The Framework provides organization and structure to today's multiple approaches to cybersecurity by assembling standards, guidelines, and practices that are working effectively in industry today. Accordingly, in addressing the requirements of Section 203 for ''systems, facilities, and procedures'' to safeguard Limited Access DMF, NTIS contemplates that Persons, as well as Accredited Conformity Assessment Bodies, may look to the Framework and to the Framework's Informative References. The Framework is referenced by NTIS in Publication 100. As set forth in Publication 100, as well as in the Framework's Informative References, a number of different approaches exist to safeguarding information. These include ISO/IEC, Control Objectives for Information and Related Technology (COBIT), International Society of Automation (ISA), and NIST's 800 series publications. Others include the Service Organization Controls (SOC) of the American Institute of CPAs (AICPA).

NTIS is aware that security and safeguarding assessments such as those contemplated under this final rule are routinely carried out in the private sector, including by entities which may satisfy the requirements for Accredited Conformity Assessment Bodies under the rule. Provided that such a routine assessment or audit of a Person would permit an Accredited Conformity Assessment Body to attest that such Person has systems, facilities, and procedures in place to safeguard Limited Access DMF as required under § 1110.102(a)(2) of the final rule, albeit carried out for a purpose other than certification under the rule, NTIS will accept an attestation in support of a Person's certification with respect to the requirements under § 1110.102(a)(2) of the rule, as well as in support of the renewal of a Certified Person's certification. The final rule provides that any attestation, whether for a Person seeking certification or for a Certified Person seeking renewal, must be based on the Accredited Conformity Assessment Body's review or assessment conducted no more than three years prior to the date of submission of the Person's completed certification statement or of the Certified Person's completed renewal certification statement. As noted, an

[1] This document can be found at: *http://www.nist.gov/cyberframework/upload/cybersecurity-framework-021214.pdf.*

Accredited Conformity Assessment Body's review or assessment need not have been conducted specifically or solely for the purpose of submission of an attestation under the final rule. From NTIS's consultations with NIST subject matter experts, NTIS believes that the limitation of three years is appropriate as to frequency for assessments for the security and safeguarding of information and information systems, and that permitting Persons and Certified Persons to rely on attestations based on such assessments conducted for purposes other than solely for the rule is reasonable and cost-effective.

Persons previously certified under the interim final rule will need to become certified in accordance with the requirements of this final rule, when it becomes effective. Certification under this final rule will include an updated certification form (NTIS FM161), discussed under the heading, ''Paperwork Reduction Act,'' collecting additional information that will improve NTIS's ability to determine whether a Person meets, to the satisfaction of NTIS, the requirements of Section 203 of the Act.

Under § 1110.103 of the final rule, a Certified Person may disclose Limited Access DMF to another Certified Person, and will be deemed to satisfy the disclosing Certified Person's obligation to ensure compliance with final § 1110.102(a)(4)(i)–(iii) for the purposes of certification. Similarly, under § 1110.200(c), NTIS will not impose a penalty, under § 1110.200(a)(1)(i)–(iii) of the final rule, on a first Certified Person who discloses Limited Access DMF to a second Certified Person, where the first Certified Person's liability rests solely on the fact that the second Certified Person has been determined to be subject to penalty. While the final rule does not restrict disclosure of Limited Access DMF to Certified Persons, these provisions create an appropriately limited ''safe harbor'' for Certified Persons to disclose Limited Access DMF to other Certified Persons. However, note that any Person, including any Certified Person, who receives Limited Access DMF from a Certified Person, is still subject to penalty under § 1110.200(a)(2), for violations of the Act. The safe harbor provision applies to each disclosure individually, and only the Certified Person disclosing the information, not the Certified Person recipient, receives the benefit of the presumed compliance with § 1110.102(a)(4)(i)–(iii).

Under § 1110.201 of the final rule, NTIS may conduct, or may request that an Accredited Conformity Assessment Body conduct, at the Certified Person's expense, periodic scheduled and unscheduled audits of the systems, facilities, and procedures of any Certified Person relating to such Certified Person's access to, and use and distribution of, the Limited Access DMF. NTIS contemplates that many, if not most, audits of Certified Persons will be scheduled, but NTIS may also conduct, or request an Accredited Conformity Assessment Body conduct, unscheduled audits—for example, where a prior scheduled audit may have identified the need for adjustment to a Certified Person's systems, facilities, or procedures. Audits conducted by NTIS or by an Accredited Conformity Assessment Body may take place at a Certified Person's place of business (*i.e.,* field audits), or may be conducted remotely (*i.e.,* desk audits). The final rule provides that all Certified Persons be audited with respect to the requirements of § 1110.102(a)(2) no less frequently than every three years under the program, and this requirement may be satisfied by a Certified Person based on an audit or assessment conducted for a purpose other than solely for the purpose of this program. The final rule does not require that Certified Persons undergo routine scheduled audits on the attestation regarding § 1110.102(a)(1), but does provide that unscheduled audits of this and other aspects of the requirements for certification may be conducted at NTIS's discretion. Under the final rule, NTIS' costs for conducting audits will be recoverable from the audited Person. Failure to submit to an audit, to cooperate fully with NTIS in its conduct of an audit or an Accredited Conformity Assessment Body conducting an audit on NTIS's request, or to pay an audit fee owed to NTIS, are grounds for revocation of certification under the final rule. NTIS intends that a Person or Certified Person will be directly responsible to an Accredited Conformity Assessment Body for any charges by that Accredited Conformity Assessment Body related to requirements under this final rule, as it would be responsible for NTIS' auditing costs under the Act.

Section 1110.200(a)(2) and (b) of the final rule set out the penalties for unauthorized disclosures or uses of the Limited Access DMF. Each individual unauthorized disclosure is punishable by a fine of $1,000, payable to the United States Treasury. However, the total amount of the penalty imposed under this part on any Person for any calendar year shall not exceed $250,000, unless such Person's disclosure or use is determined to be willful or intentional. A disclosure or use is considered willful when it is a ''voluntary, intentional violation of a known legal duty.'' *See U.S.* v. *Pomponio,* 429 US 10 (1976) (holding that for purposes of interpreting the criminal tax provisions of the Internal Revenue Code, the term ''willful'' means a voluntary, intentional violation of a known legal duty).

The final rule's § 1110.300 establishes the procedures to appeal a denial or revocation of certification, or the imposition of penalties for violating the Act. An administrative appeal must be filed, in writing, within 30 days (or such longer period as the Director of NTIS may, for good cause shown in writing, establish in any case) after receiving a notice of denial, revocation or imposition of penalties. Appeals are to be directed to the Director of NTIS. Any such appeal must set forth the following: The name, street address, email address and telephone number of the Person seeking review; a copy of the notice of denial or revocation of certification, or the imposition of penalty, from which appeal is taken; a statement of arguments, together with any supporting facts or information, concerning the basis upon which the denial or revocation of certification, or the imposition of penalty, should be reversed; and a request for hearing of oral argument before a representative of the Director, if desired.

Section 1110.300(a)–(d) sets forth the procedures for an administrative appeal. Under § 1110.300(c), a Person may, but need not, retain an attorney to represent such Person in an appeal. A Person must designate an attorney by submitting to the Director of NTIS a written power of attorney. If a hearing is requested, the Person (or the Person's designated attorney) and a representative of NTIS familiar with the notice from which appeal has been taken will present oral arguments which, unless otherwise ordered before the hearing begins, will be limited to thirty minutes for each side. A Person need not retain an attorney or request an oral hearing to secure full consideration of the facts and the Person's arguments. Where no hearing is requested, the Director shall review the case and issue a decision, as set out below.

Under § 1110.300(e), the Director of NTIS shall issue a decision on the matter within 120 days after a hearing, or, if no hearing was requested, within 90 days of receiving the letter of appeal. In making decisions on appeal, the Director shall consider the arguments and statements of fact and information in the Person's appeal, and made at the oral argument hearing, if such was requested, but the Director at his or her discretion and with due respect for the

rights and convenience of the Person and the agency, may call for further statements on specific questions of fact, or may request additional evidence in the form of affidavits on specific facts in dispute. An appellant may seek reconsideration of the decision, but must do so in writing, and the request for reconsideration must be received within 30 days of the Director's decision or within such an extension of time thereof as may be set by the Director of NTIS before the original period expires. A decision shall become final either after the 30-day period for requesting reconsideration expires and no request has been submitted, or on the date of final disposition of a decision on a petition for reconsideration.

Under § 1110.500 of the final rule, an Accredited Conformity Assessment Body must be independent of the Person or Certified Person seeking certification, unless it is a third party conformity assessment body which a Certified Person has qualified for ''firewalled'' status pursuant to § 1110.502, and must itself be accredited by a recognized accreditation body. The requirement for independence from the Person seeking certification, or from the Certified Person seeking renewal or subject to audit, is important to ensure integrity of any assessment and attestation or audit. The final rule provides that an Accredited Conformity Assessment Body must be an independent third party conformity assessment body that is not owned, managed, or controlled by a Person or Certified Person that is the subject of attestation or audit by the Accredited Conformity Assessment Body, except where the third party conformity assessment body qualifies for ''firewalled'' status under § 1110.502.

Accordingly, under the final rule, a Person or Certified Person is considered to own, manage, or control a third party conformity assessment body if the Person or Certified Person holds a 10 percent or greater ownership interest, whether direct or indirect, in the third party conformity assessment body; if the third party conformity assessment body and the Person or Certified Person are owned by a common ''parent'' entity; if the Person or Certified Person has the ability to appoint a majority of the third party conformity assessment body's senior internal governing body, the ability to appoint the presiding official of the third party conformity assessment body's senior internal governing body, and/or the ability to hire, dismiss, or set the compensation level for third party conformity assessment body personnel; or if the third party conformity assessment body is under a contract to the Person or Certified Person that explicitly limits the services the third party conformity assessment body may perform for other customers and/or explicitly limits which or how many other entities may also be customers of the third party conformity assessment body.

In order for NTIS to accept an attestation as to, or audit of, a Person or Certified Person submitted to NTIS under the final rule, the Accredited Conformity Assessment Body must attest that it is independent of that Person or Certified Person. The Accredited Conformity Assessment Body also must attest that it has read, understood, and agrees to the regulations as set forth in the final rule. The Accredited Conformity Assessment Body must also attest that it is accredited to ISO/IEC Standard 27006–2011 ''Information technology—Security techniques—Requirements for bodies providing audit and certification of information security management systems,'' or to another nationally or internationally recognized standard for bodies providing audit and certification of information security management systems. The Accredited Conformity Assessment Body must also attest that the scope of its accreditation encompasses the safeguarding and security requirements as set forth in the final rule.

Where review or assessment or audit by an Accredited Conformity Assessment Body was not conducted specifically or solely for the purpose of submission under this part, the final rule requires that the written attestation or assessment report (if an audit) describe the nature of that review or assessment or audit, and that the Accredited Conformity Assessment Body attest that on the basis of such review or assessment or audit, the Person or Certified Person has systems, facilities, and procedures in place to safeguard Limited Access DMF as required under § 1110.102(a)(2).

While NTIS will normally accept written attestations and assessment reports from an Accredited Conformity Assessment Body that attests, to the satisfaction of NTIS, as provided in § 1110.503 of the final rule, the final rule also provides that NTIS may decline to accept written attestations or assessment reports from an Accredited Conformity Assessment Body, whether or not it has attested as provided in § 1110.503, for any of the following reasons: when NTIS determines that doing so is in the public interest under Section 203 of the Bipartisan Budget Act of 2013, and notwithstanding any other provision of these regulations; submission of false or misleading information concerning a material fact(s) in an Accredited Conformity Assessment Body's attestation under § 1110.503; knowing submission of false or misleading information concerning a material fact(s) in an attestation or assessment report by an Accredited Conformity Assessment Body of a Person or Certified Person; failure of an Accredited Conformity Assessment Body to cooperate (as defined in this section) in response to a request from NTIS to verify the accuracy, veracity, and/or completeness of information received in connection with an attestation under § 1110.503 or an attestation or assessment report by that Body of a Person or Certified Person; or where NTIS is unable for any reason to verify the accuracy of the Accredited Conformity Assessment Body's attestation.

In addition, with respect to audits under the final rule, NTIS may in its discretion decline to accept an attestation or assessment report conducted for other purposes, and may conduct or require that an Accredited Conformity Assessment Body conduct a review solely for the purpose of the final rule.

Executive Order 12866

This final rule has been determined to be significant as that term is defined in Executive Order 12866.

Executive Order 13132

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on States or localities. NTIS has analyzed this rule under that Order and has determined that it does not have implications for federalism.

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, as amended, (RFA), requires agencies to analyze impacts of regulatory actions on small entities (businesses, non-profit organizations, and governments), and to consider alternatives that minimize such impacts while achieving regulatory objectives. Agencies must first conduct a threshold analysis to determine whether regulatory actions are expected to have significant economic impact on a substantial number of small entities. If the threshold analysis indicates a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis must be produced and made available

for public review and comment along with the proposed regulatory action. A final regulatory flexibility analysis that considers public comments must then be produced and made publicly available with the final regulatory action.

An Initial Regulatory Flexibility Act Analysis (''IRFA'') was incorporated into the NTIS proposed rule. NTIS sought written public comment on the proposed rule, including comment on the IRFA. This Final Regulatory Flexibility Act Analysis (''FRFA'') conforms to the RFA, and incorporates the IRFA pursuant to Section 603 and comments received, to analyze the impact that this final rule will have on small entities.

Description of the Reasons Why Action Is Being Considered

The policy reasons for issuing this rule are discussed in the preamble of this document, and not repeated here.

Statement of the Objectives of, and Legal Basis for, the Rule; Identification of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Rule

The legal basis for this rule is Section 203 of the Bipartisan Budget Act of 2013, Pub. L. 113–67, codified at 42 U.S.C. 1306c (the Act). The rule, which replaces NTIS' interim final rule, implements the Act, which requires the Secretary of Commerce to create a program to certify that persons given access to the Limited Access DMF satisfy the statutory requirements for accessing that information. Accordingly, this rule creates a permanent program for certifying persons eligible to access Limited Access DMF. It requires that Certified Persons annually re-certify as eligible to access the Limited Access DMF, and that they agree to be subject to scheduled and unscheduled audits. The rule also sets out the penalties for violating the Act's disclosure provisions, establishes a process to appeal penalties or revocations of certification, and adopts a fee program for the certification program, audits, and appeals.

When this final rule becomes effective, it will replace the interim final rule promulgated by NTIS to establish a Temporary Certification Program, in order to avoid the complete loss of access to the Limited Access DMF when the Act became effective. No other rules duplicate, overlap, or conflict with this rule.

Number and Description of Small Entities Regulated by the Action

The final rule applies to all persons seeking to become certified to obtain the Limited Access DMF from NTIS. The entities affected by this rule could include banks and other financial institutions, pension plans, health research institutes or companies, state and local governments, information companies, and similar research services, and others not identified. Many of the impacted entities likely are considered ''large'' entities under the applicable United States Small Business Administration (SBA) size standards. The SBA defines a ''small business'' (or ''small entity'') as one with annual revenue that meets or is below an established size standard. The SBA ''small business'' size standard is $550 million in annual revenue for Commercial Banking, Savings Institutions, Credit Unions, and Credit Card Issuing (North American Industry Code (NAICS) 522110, 522120, 522130, and 522210). The size standard is $38.5 million for Consumer Lending and Trust, Fiduciary and Custody Activities, and Direct Health and Medical Insurance Carriers (NAICS 52291, 523991, and 524114), $7.5 million for Mortgage and Nonmortgage Loan Brokers, and Insurance Agencies and Brokerages (NAICS 522310, and 524210), and $32.5 million for Third Party Administration of Insurance and Pension Funds (NAICS 524292). NTIS anticipates that this rule will have an impact on various small entities.

Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rule

Under this final rule, a ''Limited Access Death Master File (LADMF) Systems Safeguards Attestation Form'' would require Accredited Conformity Assessment Bodies to attest that a Person seeking to be certified to access Limited Access DMF has systems, facilities, and procedures in place as required under § 1110.102(a)(ii) of the rule. NTIS estimates that the type of professional skills necessary for the preparation of an attestation will be those of a senior auditor at an Accredited Conformity Assessment Body, to conduct an assessment under the rule.

Steps NTIS Has Taken To Minimize the Significant Economic Impact on Small Entities

NTIS carefully considered a number of alternatives to ensure compliance with the safeguarding requirements of Section 203 of the Act. These alternatives included requiring all Persons desiring to become certified to comply with the same requirements as those set forth in Section 6103(p)(4) of the Internal Revenue Code; Section 203(b)(2)(C) of the Act recites that a Certified Person ''satisfy the requirements of such section 6103(p)(4) as if such section applied to such person.'' Such a requirement would have had a very significant impact on small entities. As pointed out in some comments on the proposed rule, some of the provisions of section 6103(p)(4) would have been extremely burdensome, because, for example, in contrast to Federal Tax Information, Limited Access DMF under Section 203 is not subject to restriction when beyond the three-calendar-year period following the date of death.

Accordingly, NTIS rejected this burdensome alternative, and the final rule instead requires Persons to certify that they have systems, facilities, and procedures in place that are ''reasonably similar to'' those required by section 6103(p)(4) of the IRC in order to become Certified Persons. This interpretation allows NTIS to meet the interest of protecting personal data generally and deterring fraud, while also allowing NTIS to set the data integrity standards appropriate to safeguard Limited Access DMF specifically, and lessens the burden on small entities which, as noted by a number of commenters, tend not to have in place some more advanced information system controls.

NTIS carefully considered, but rejected, the alternative of requiring Certified Persons to undergo audits annually for the purpose of re-certification. This alternative would have necessitated that a Certified Person bear the expense of assessment for the purpose of attestation by a third party Accredited Conformity Assessment Body each year as part of the annual re-certification process under the rule. Based on consultations with NIST subject matter experts, NTIS concluded instead that a limitation of three years is appropriate as to frequency for assessments for the security and safeguarding of information and information systems, thus lessening the economic impact on small entities under the rule.

NTIS carefully considered, but rejected, the suggestion by a commenter that NTIS itself should accredit third party Accredited Conformity Assessment Bodies. This would have required that NTIS independently develop government-specific accreditation expertise and capacity. Because the Act requires NTIS to obtain full cost recovery, the cost of such an

effort would have to be borne by Certified Persons, including small entities. This would have been inefficient as well as burdensome. Instead, the final rule provides that an Accredited Conformity Assessment Body attest that it is accredited to a nationally or internationally recognized standard for bodies providing audit and certification of information security management systems, and that the scope of its accreditation encompasses the information safeguarding and security requirements as set forth in the rule.

NTIS carefully considered, and rejected, a proposed requirement that Persons desiring to become certified under the rule be limited to program-specific assessments and audits carried out by third party Accredited Conformity Assessment Bodies. This requirement would have necessitated that any Person, including a Person otherwise subject to periodic audit and assessment in the normal course of such Person's business, bear the burden of an additional program-specific audit or assessment for the purposes of the rule. NTIS, however, in consultation with NIST subject matter experts, considered and adopted a less burdensome approach: Provided that a routine assessment or audit of a Person would permit an Accredited Conformity Assessment Body to attest that such Person has systems, facilities, and procedures in place to safeguard Limited Access DMF as required under § 1110.102(a)(2) of the final rule, albeit carried out for a purpose other than certification under the rule, NTIS will accept an attestation in support of a Person's certification with respect to the requirements under § 1110.102(a)(ii) of the rule, as well as in support of the renewal of a Certified Person's certification. Thus, under the final rule, an Accredited Conformity Assessment Body's review or assessment need not have been conducted specifically or solely for the purpose of submission of an attestation under the rule, reducing the economic impact that the rejected alternative would have been imposed on small entities.

NTIS carefully considered, but rejected, the alternative of requiring that a first Certified Person who discloses Limited Access DMF to a second Certified Person be subject to penalty under the rule where, through no fault of the first Certified Person, the second Certified Person is determined to be subject to penalty under the rule. This alternative would have exposed to penalty under the rule a first Certified Person, who disclosed Limited Access DMF to another Person certified by NTIS, even absent any violation by the first Certified Person. Instead, the Final Rule provides for a ''safe harbor'' that exempts from penalty a first Certified Person who discloses LADMF to a second Certified Person, where the first Certified Person's liability rests solely on the fact that the second Certified Person has been determined to be subject to penalty. The less burdensome approach chosen by NTIS will reduce the potential economic impact on Certified Persons, including those that are small entities, under such circumstances.

Based on its analysis, NTIS estimates that the rule reflects alternatives placing the least economic impact on small entities, and that the rule will not disproportionately impact small entities as opposed to large ones.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to comply with, and neither shall any person be subject to penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

This final rule contains collection of information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). Approval from OMB will be obtained prior to the final rule becoming effective and prior to the collection of such information, except that NTIS will continue to collect information already approved by OMB under OMB Control No. 0692–0013.

List of Subjects in 15 CFR Part 1110

Administrative appeal, Certification program, Fees, Imposition of penalty.

Dated: May 23, 2016.

Bruce Borzino,

Director.

For reasons set forth in the preamble, the National Technical Information Service amends 15 CFR part 1110 as follows:

PART 1110—CERTIFICATION PROGRAM FOR ACCESS TO THE DEATH MASTER FILE

■ 1. The authority for part 1110 continues to read as follows:

Authority: Pub. L. 113–67, Sec. 203.

■ 2. Amend § 1110.2 by:

■ a. Adding, in alphabetical order, the definition, ''Accredited Conformity Assessment Body;'' and

■ b. Revising the definitions of ''Limited Access DMF'' and ''Person''.

The addition and revision read as follows:

§ 1110.2 Definitions used in this part.

* * * * *

Accredited Conformity Assessment Body. A third party conformity assessment body that is accredited by an accreditation body under nationally or internationally recognized criteria such as, but not limited to, International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) 27006–2011, ''Information technology—Security techniques—Requirements for bodies providing audit and certification of information security management systems,'' to attest that a Person or Certified Person has systems, facilities and procedures in place to safeguard Limited Access DMF.

* * * * *

Limited Access DMF. The DMF product made available by NTIS which includes DMF with respect to any deceased individual at any time during the three-calendar-year period beginning on the date of the individual's death. As used in this part, Limited Access DMF does not include an individual element of information (name, social security number, date of birth, or date of death) in the possession of a Person, whether or not certified, but obtained by such Person through a source independent of the Limited Access DMF. If a Person obtains, or a third party subsequently provides to such Person, death information (*i.e.,* the name, social security account number, date of birth, or date of death) independently, such information in the possession of such Person is not part of the Limited Access DMF or subject to this part.

* * * * *

Person. Includes corporations, companies, associations, firms, partnerships, societies, joint stock companies, and other private organizations, and state and local government departments and agencies, as well as individuals.

■ 3. Revise the section heading of § 1110.100 to read as follows:

§ 1110.100 Scope; term.

* * * * *

■ 4. Revise § 1110.101 to read as follows:

§ 1110.101 Submission of certification; attestation.

(a) In order to become certified under the certification program established under this part, a Person must submit a completed certification statement and any required documentation, using the

most current version of the Limited Access Death Master File Subscriber Certification Form, and its accompanying instructions at *https://dmf.ntis.gov,* together with the required fee.

(b) In addition to the requirements under paragraph (a) of this section, in order to become certified, a Person must submit a written attestation from an Accredited Conformity Assessment Body that such Person has systems, facilities, and procedures in place as required under § 1110.102(a)(2). Such attestation must be based on the Accredited Conformity Assessment Body's review or assessment conducted no more than three years prior to the date of submission of the Person's completed certification statement, but such review or assessment need not have been conducted specifically or solely for the purpose of submission under this part.

■ 5. Amend § 1110.102 by revising paragraphs (a)(2), (3), and (4) to read as follows:

§ 1110.102 Certification.

* * * * *

(a) * * *

(2) Such Person has systems, facilities, and procedures in place to safeguard the accessed information, and experience in maintaining the confidentiality, security, and appropriate use of accessed information, pursuant to requirements reasonably similar to the requirements of section 6103(p)(4) of the Internal Revenue Code of 1986;

(3) Such Person agrees to satisfy such similar requirements; and

(4) Such Person shall not, with respect to Limited Access DMF of any deceased individual:

(i) Disclose such deceased individual's Limited Access DMF to any person other than a person who meets the requirements of paragraphs (a)(1) through (3) of this section;

(ii) Disclose such deceased individual's Limited Access DMF to any person who uses the information for any purpose other than a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty;

(iii) Disclose such deceased individual's Limited Access DMF to any person who further discloses the information to any person other than a person who meets the requirements of paragraphs (a)(1) through (3) of this section; or

(iv) Use any such deceased individual's Limited Access DMF for any purpose other than a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty.

* * * * *

■ 6. In subpart B of part 1110, add §§ 1110.103, 1110.104, and 1110.105 to read as follows:

§ 1110.103 Disclosure to a certified person.

Disclosure by a Person certified under this part of Limited Access DMF to another Person certified under this part shall be deemed to satisfy the disclosing Person's obligation to ensure compliance with § 1110.102(a)(4)(i) through (iii).

§ 1110.104 Revocation of certification.

False certification as to any element of § 1110.102(a)(1) through (4) shall be grounds for revocation of certification, in addition to any other penalties at law. A Person properly certified who thereafter becomes aware that the Person no longer satisfies one or more elements of § 1110.102(a) shall promptly inform NTIS thereof in writing.

§ 1110.105 Renewal of certification.

(a) A Certified Person may renew its certification status by submitting, on or before the date of expiration of the term of its certification, a completed certification statement in accordance with § 1110.101, together with the required fee, indicating on the form NTIS FM161 that it is a renewal, and also indicating whether or not there has been any change in any basis previously relied upon for certification.

(b) Except as may otherwise be required by NTIS, where a Certified Person seeking certification status renewal has, within a three-year period preceding submission under paragraph (a) of this section, previously submitted a written attestation under § 1110.101(b), or has within such period been subject to a satisfactory audit under § 1110.201, such Certified Person shall so indicate on the form NTIS FM161, and shall not be required to submit a written attestation under § 1110.101(b).

(c) A Certified Person who submits a certification statement, attestation (if required) and fee pursuant to paragraph (a) of this section shall continue in Certified Person status pending notification of renewal or non-renewal from NTIS.

(d) A Person who is a Certified Person before November 28, 2016 shall be considered a Certified Person under this part, and shall continue in Certified Person status until the date which is one year from the date of acceptance of such Person's certification by NTIS under the Temporary Certification Program, provided that if such expiration date falls on a weekend or a federal holiday, the term of certification shall be considered to extend to the next business day.

■ 7. Revise § 1110.200 to read as follows:

§ 1110.200 Imposition of penalty.

(a) *General.* (1) Any Person certified under this part who receives Limited Access DMF, and who:

(i) Discloses Limited Access DMF to any person other than a person who meets the requirements of § 1110.102(a)(1) through (3);

(ii) Discloses Limited Access DMF to any person who uses the Limited Access DMF for any purpose other than a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty;

(iii) Discloses Limited Access DMF to any person who further discloses the Limited Access DMF to any person other than a person who meets the requirements of § 1110.102(a)(1) through (3); or

(iv) Uses any such Limited Access DMF for any purpose other than a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty; and

(2) Any Person to whom such Limited Access DMF is disclosed, whether or not such Person is certified under this part, who further discloses or uses such Limited Access DMF as described in paragraphs (a)(1)(i) through (iv) of this section, shall pay to the General Fund of the United States Department of the Treasury a penalty of $1,000 for each such disclosure or use, and, if such Person is certified, shall be subject to having such Person's certification revoked.

(b) *Limitation on penalty.* The total amount of the penalty imposed under this part on any Person for any calendar year shall not exceed $250,000, unless such Person's disclosure or use is determined to be willful or intentional. For the purposes of this part, a disclosure or use is willful when it is a ''voluntary, intentional violation of a known legal duty.''

(c) *Disclosure to a Certified Person.* No penalty shall be imposed under paragraphs (a)(1)(i) through (iii) of this section on a first Certified Person who discloses, to a second Certified Person, Limited Access DMF, where the sole basis for imposition of penalty on such first Certified Person is that such second

Certified Person has been determined to be subject to penalty under this part.

■ 8. Revise § 1110.201 to read as follows:

§ 1110.201 Audits.

Any Person certified under this part shall, as a condition of certification, agree to be subject to audit by NTIS, or, at the request of NTIS, by an Accredited Conformity Assessment Body, to determine the compliance by such Person with the requirements of this part. NTIS may conduct, or request that an Accredited Conformity Assessment Body conduct, periodic scheduled and unscheduled audits of the systems, facilities, and procedures of any Certified Person relating to such Certified Person's access to, and use and distribution of, the Limited Access DMF. NTIS may conduct, or request that an Accredited Conformity Assessment Body conduct, field audits (during regular business hours) or desk audits of a Certified Person. Failure of a Certified Person to submit to or cooperate fully with NTIS, or with an Accredited Conformity Assessment Body acting pursuant to this section, in its conduct of an audit, or to pay an audit fee to NTIS, will be grounds for revocation of certification.

Subpart E—[Redesignated as Subpart E]

■ 9. Redesignate subpart D as subpart E.

■ 10. Add new subpart D to read as follows:

Subpart D—Administrative Appeal

Sec.
1110.3000 Appeal.

Subpart D—Administrative Appeal

§ 1110.300 Appeal.

(a) *General.* Any Person adversely affected or aggrieved by reason of NTIS denying or revoking such Person's certification under this part, or imposing upon such Person under this part a penalty, may obtain review by filing, within 30 days (or such longer period as the Director of NTIS may, for good cause shown in writing, fix in any case) after receiving notice of such denial, revocation or imposition, an administrative appeal to the Director of NTIS.

(b) *Form of appeal.* An appeal shall be submitted in writing to Director, National Technical Information Service, at NTIS's current mailing address as found on its Web site: *www.ntis.gov.,* ATTENTION DMF APPEAL, and shall include the following:

(1) The name, street address, email address and telephone number of the Person seeking review;

(2) A copy of the notice of denial or revocation of certification, or the imposition of penalty, from which appeal is taken;

(3) A statement of arguments, together with any supporting facts or information, concerning the basis upon which the denial or revocation of certification, or the imposition of penalty, should be reversed;

(4) A request for hearing of oral argument before the Director, if desired.

(c) *Power of attorney.* A Person may, but need not, retain an attorney to represent such Person in an appeal. A Person shall designate any such attorney by submitting to the Director of NTIS a written power of attorney.

(d) *Hearing.* If requested in the appeal, a date will be set for hearing of oral argument before a representative of the Director of NTIS, by the Person or the Person's designated attorney, and a representative of NTIS familiar with the notice from which appeal has been taken. Unless it shall be otherwise ordered before the hearing begins, oral argument will be limited to thirty minutes for each side. A Person need not retain an attorney or request an oral hearing to secure full consideration of the facts and the Person's arguments.

(e) *Decision.* After a hearing on the appeal, if a hearing was requested, the Director of NTIS shall issue a decision on the matter within 120 days, or, if no hearing was requested, within 90 days of receiving the appeal. The decision of the Director of NTIS shall be made after consideration of the arguments and statements of fact and information in the Person's appeal, and the hearing of oral argument if a hearing was requested, but the Director of NTIS at his or her discretion and with due respect for the rights and convenience of the Person and the agency, may call for further statements on specific questions of fact or may request additional evidence in the form of affidavits on specific facts in dispute. After the original decision is issued, an appellant shall have 30 days (or a date as may be set by the Director of NTIS before the original period expires) from the date of the decision to request a reconsideration of the matter. The Director's decision becomes final 30 days after being issued, if no request for reconsideration is filed, or on the date of final disposition of a decision on a petition for reconsideration.

■ 11. Revise newly redesignated subpart E to read as follows:

Subpart E—Fees

Sec.
1110.400 Fees.

Subpart E—Fees

§ 1110.400 Fees.

Fees sufficient to cover (but not to exceed) all costs to NTIS associated with evaluating Certification Forms and auditing, inspecting, and monitoring certified persons under the certification program established under this part, as well as appeals, will be published (as periodically reevaluated and updated by NTIS) and available at *https://dmf.ntis.gov.* NTIS will not set fees for attestations or audits by an Accredited Conformity Assessment Body.

■ 12. Add subpart F to read as follows:

Subpart F—Accredited Conformity Assessment Bodies

Sec.
1110.500 Accredited conformity assessment bodies.
1110.501 Independent.
1110.502 Firewalled.
1110.503 Attestation by accredited conformity assessment body.
1110.504 Acceptance of accredited conformity assessment bodies.

Subpart F—Accredited Conformity Assessment Bodies

§ 1110.500 Accredited conformity assessment bodies.

This subpart describes Accredited Conformity Assessment Bodies and their accreditation for third party attestation and auditing of the information safeguarding requirement for certification of Persons under this part. NTIS will accept an attestation or audit of a Person or Certified Person from an Accredited Conformity Assessment Body that is:

(a) Independent of that Person or Certified Person; or

(b) Is firewalled from that Person or Certified Person, and that in either instance is itself accredited by a nationally or internationally recognized accreditation body.

§ 1110.501 Independent.

(a) An Accredited Conformity Assessment Body that is an independent third party conformity assessment body is one that is not owned, managed, or controlled by a Person or Certified Person that is the subject of attestation or audit by the Accredited Conformity Assessment Body.

(1) A Person or Certified Person is considered to own, manage, or control a third party conformity assessment body if any one of the following characteristics applies:

(i) The Person or Certified Person holds a 10 percent or greater ownership interest, whether direct or indirect, in

the third party conformity assessment body. Indirect ownership interest is calculated by successive multiplication of the ownership percentages for each link in the ownership chain;

(ii) The third party conformity assessment body and the Person or Certified Person are owned by a common ''parent'' entity;

(iii) The Person or Certified Person has the ability to appoint a majority of the third party conformity assessment body's senior internal governing body (such as, but not limited to, a board of directors), the ability to appoint the presiding official (such as, but not limited to, the chair or president) of the third party conformity assessment body's senior internal governing body, and/or the ability to hire, dismiss, or set the compensation level for third party conformity assessment body personnel; or

(iv) The third party conformity assessment body is under a contract to the Person or Certified Person that explicitly limits the services the third party conformity assessment body may perform for other customers and/or explicitly limits which or how many other entities may also be customers of the third party conformity assessment body.

(2) A state or local government office of Inspector General or Auditor General and a Person or Certified Person that is a department or agency of the same state or local government, respectively, are not considered to be owned by a common ''parent'' entity under paragraph (a)(1)(ii) of this section.

(b) [Reserved]

§ 1110.502 Firewalled.

(a) A third party conformity assessment body must apply to NTIS for firewalled status if it is owned, managed, or controlled by a Person or Certified Person that is the subject of attestation or audit by the Accredited Conformity Assessment Body, applying the characteristics set forth under § 1110.501(a)(1).

(b) The application for firewalled status of a third party conformity assessment body under paragraph (a) of this section will be accepted by NTIS where NTIS finds that:

(1) Acceptance of the third party conformity assessment body for firewalled status would provide equal or greater assurance that the Person or Certified Person has information security systems, facilities, and procedures in place to protect the security of the Limited Access DMF than would the Person's or Certified Person's use of an independent third party third party conformity assessment body; and

(2) The third party conformity assessment body has established procedures to ensure that:

(i) Its attestations and audits are protected from undue influence by the Person or Certified Person that is the subject of attestation or audit by the Accredited Conformity Assessment Body, or by any other interested party;

(ii) NTIS is notified promptly of any attempt by the Person or Certified Person that is the subject of attestation or audit by the third party conformity assessment body, or by any other interested party, to hide or exert undue influence over an attestation, assessment or audit; and

(iii) Allegations of undue influence may be reported confidentially to NTIS. To the extent permitted by Federal law, NTIS will undertake to protect the confidentiality of witnesses reporting allegations of undue influence.

(c) NTIS will review each application and may contact the third party conformity assessment body with questions or to request submission of missing information, and will communicate its decision on each application in writing to the applicant, which may be by electronic mail.

§ 1110.503 Attestation by accredited conformity assessment body.

(a) In any attestation or audit of a Person or Certified Person that will be submitted to NTIS under this part, an Accredited Conformity Assessment Body must attest that it is independent of that Person or Certified Person. The Accredited Conformity Assessment Body also must attest that it has read, understood, and agrees to the regulations in this part. The Accredited Conformity Assessment Body must also attest that it is accredited to a nationally or internationally recognized standard such as the ISO/IEC Standard 27006–2011 ''Information technology—Security techniques—Requirements for bodies providing audit and certification of information security management systems,'' or any other similar nationally or internationally recognized standard for bodies providing audit and certification of information security management systems. The Accredited Conformity Assessment Body must also attest that the scope of its accreditation encompasses the safeguarding and security requirements as set forth in this part.

(b) Where a Person seeks certification, or where a Certified Person seeks renewal of certification or is audited under this part, an Accredited Conformity Assessment Body may provide written attestation that such Person or Certified Person has systems, facilities, and procedures in place as required under § 1110.102(a)(2). Such attestation must be based on the Accredited Conformity Assessment Body's review or assessment conducted no more than three years prior to the date of submission of the Person's or Certified Person's completed certification statement, and, if an audit of a Certified Person by an Accredited Conformity Assessment Body is required by NTIS, no more than three years prior to the date upon which NTIS notifies the Certified Person of NTIS's requirement for audit, but such review or assessment or audit need not have been conducted specifically or solely for the purpose of submission under this part.

(c) Where review or assessment or audit by an Accredited Conformity Assessment Body was not conducted specifically or solely for the purpose of submission under this part, the written attestation or assessment report (if an audit) shall describe the nature of that review or assessment or audit, and the Accredited Conformity Assessment Body shall attest that on the basis of such review or assessment or audit, the Person or Certified Person has systems, facilities, and procedures in place as required under § 1110.102(a)(2).

(d) Notwithstanding paragraphs (a) through (c) of this section, NTIS may, in its sole discretion, require that review or assessment or audit by an Accredited Conformity Assessment Body be conducted specifically or solely for the purpose of submission under this part.

§ 1110.504 Acceptance of accredited conformity assessment bodies.

(a) NTIS will accept written attestations and assessment reports from an Accredited Conformity Assessment Body that attests, to the satisfaction of NTIS, as provided in § 1110.503.

(b) NTIS may decline to accept written attestations or assessment reports from an Accredited Conformity Assessment Body, whether or not it has attested as provided in § 1110.503, for any of the following reasons:

(1) When it is in the public interest under Section 203 of the Bipartisan Budget Act of 2013, and notwithstanding any other provision of this part;

(2) Submission of false or misleading information concerning a material fact(s) in an Accredited Conformity Assessment Body's attestation under § 1110.503;

(3) Knowing submission of false or misleading information concerning a material fact(s) in an attestation or

assessment report by an Accredited Conformity Assessment Body of a Person or Certified Person;

(4) Failure of an Accredited Conformity Assessment Body to cooperate in response to a request from NTIS to verify the accuracy, veracity, and/or completeness of information received in connection with an attestation under § 1110.503 or an attestation or assessment report by that Body of a Person or Certified Person. An Accredited Conformity Assessment Body ''fails to cooperate'' when it does not respond to NTIS inquiries or requests, or it responds in a manner that is unresponsive, evasive, deceptive, or substantially incomplete; or

(5) Where NTIS is unable for any reason to verify the accuracy of the Accredited Conformity Assessment Body's attestation.

[FR Doc. 2016–12479 Filed 5–31–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2016–0359]

Special Local Regulation; Annual Marine Events on the Colorado River, Between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona) Within the San Diego Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Great Western Tube Float marine event and associated waterway special local regulations from 7 a.m. through 4 p.m. on June 11, 2016. This annual marine event occurs in the navigable waters of the Colorado River in Parker, Arizona, covering eight miles of the waterway from the La Paz County Park to the Headgate Dam. This action is necessary to provide for the safety of the participants, crew, spectators, safety vessels, and general users of the waterway. During the enforcement period, persons and vessels are prohibited from entering into, transiting through, or anchoring within this regulated area unless authorized by the Captain of the Port, or his designated representative.

DATES: The regulations in 33 CFR 100.1102, Table 1, Item 9 will be enforced from 7 a.m. through 4 p.m. on June 11, 2016, for Item 9 in Table 1 of § 100.1102.

FOR FURTHER INFORMATION CONTACT: If you have questions on this publication, call or email Petty Officer Randolph Pahilanga, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone 619–278–7656, *D11-PF-MarineEventsSanDiego@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the regulations in 33 CFR 100.1102 for a special local regulation for the annual Great Western Tube Float in 33 CFR 100.1102, Table 1, Item 9 from 7 a.m. to 4 p.m. on June 11, 2016.

Under the provisions of 33 CFR 100.1102, persons and vessels are prohibited from entering into, transiting through, or anchoring within this regulated area of the Colorado River unless authorized by the Captain of the Port, or his designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This document is issued under authority of 33 CFR 100.1102 and 5 U.S.C. 552 (a). In addition to this document in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners and local advertising by the event sponsor.

If the Captain of the Port Sector San Diego or his designated representative determines that the regulated area need not be enforced for the full duration stated on this document, he or she may use a Broadcast Notice to Mariners or other communications coordinated with the event sponsor to grant general permission to enter the regulated area.

Dated: May 13, 2016.

E.M. Cooper,

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

[FR Doc. 2016–12936 Filed 5–31–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0421]

Drawbridge Operation Regulation; Rockaway Inlet, Queens, 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 Marine Parkway Bridge across the Rockaway Inlet, mile 3.0, at Queens, New York. This deviation is necessary to allow the bridge owner to facilitate asbestos abatement in the machinery room at the bridge.

DATES: This deviation is effective from 7 a.m. on June 6, 2016 to 5 p.m. on June 17, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0421] 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 Judy Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 514–4330, email *judy.k.leung-yee@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Marine Parkway Bridge, mile 3.0, across the Rockaway Inlet, has a vertical clearance in the closed position of 55 feet at mean high water and 59 feet at mean low water. The existing bridge operating regulations are found at 33 CFR 117.795(a).

The waterway is transited by commercial oil barge traffic of various sizes.

The bridge owner, MTA Bridges and Tunnels, requested a temporary deviation from the normal operating schedule to facilitate asbestos abatement in the machinery room at the bridge.

Under this temporary deviation, the Marine Parkway Bridge shall remain in the closed position from 7 a.m. on June 6, 2016 to 5 p.m. June 17, 2016.

Vessels able to pass under the bridge in the closed position may do so at anytime. The bridge will not be able to open for emergencies and there is no immediate alternate route for vessels to pass.

The Coast Guard will inform the users of the waterways through our Local Notice and Broadcast to Mariners of the change in operating schedule for the bridge so that vessel operations can arrange their transits to minimize any impact caused by the temporary deviation. The Coast Guard notified various companies of the commercial oil and barge vessels and they have no objections to 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: May 25, 2016.

C.J. Bisignano

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2016–12740 Filed 5–31–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0569; FRL–9946–07]

Fluensulfone; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fluensulfone in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) and Makhteshim Agan of North America, Inc (d/b/a ADAMA) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is June 1, 2016. Objections and requests for hearings must be received on or before August 1, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0569, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2015–0569 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or August 1, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2015–0569, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of October 21, 2015 (80 FR 63731) (FRL–9935–29), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5E8384) by IR–4, 500 College Road East, Suite 201 W., Princeton, NJ 08540. The petition requested that 40 CFR part 180 be amended by establishing a tolerance for residues of fluensulfone equivalents (*i.e.,* the sum of thiazole sulfonic acid (TSA) and butene sulfonic acid (BSA) expressed as total fluensulfone equivalents) in or on the raw agricultural commodity vegetable, tuberous and corm, subgroup 1C at 0.6 ppm. That document referenced a summary of the petition prepared by Makhteshim Agan of North America, Inc., the registrant, which is available in the docket, *http://www.regulations.gov.* A comment was received on the notice of filing, however it related to the chemical propenicol, not fluensulfone.

In the **Federal Register** of March 16, 2016 (81 FR 14030) (FRL–9942–86), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5F8351) by Makhteshim Agan of North America, Inc. (d/b/a ADAMA), 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604. The petition requested that 40 CFR part 180 be amended by establishing a tolerance for residues of nematicide fluensulfone, including its metabolites and degradates, in or on berry, low growing, subgroup 13–07G at 0.30 ppm; head and stem *Brassica* subgroup 5A at 1.3 ppm; leafy *Brassica* greens subgroup 5B at 13 ppm; leafy vegetables, group 4, except *Brassica* vegetables at 2.6 ppm; leaves of root and tuber vegetables, group 2 at 20 ppm; radish, oriental at 0.50 ppm; and root vegetables, subgroup

1B, except sugar beet and oriental radish at 3.3 ppm. In addition, the petition requested to amend 40 CFR 180.680 to revise the existing tolerance expression in the introductory paragraph (a) to read ''Tolerances are established for residues of the nematicide fluensulfone, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only 3,4,4-trifluoro-but-3-ene-1-sulfonic acid.'' That document referenced a summary of the petition prepared by Makhteshim Agan of North America, Inc., the registrant, which is available in the docket, EPA–HQ–OPP–2015–0478 at *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has modified the levels at which tolerances are being established for most commodities. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for fluensulfone including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fluensulfone follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The residue of concern for dietary assessment is the parent compound, fluensulfone. Residues of the metabolites butene sulfonic acid (BSA) and thiazole sulfonic acid (TSA) occur at levels significantly greater than fluensulfone; however, these metabolites are considered non-toxic at levels that may occur from the use of fluensulfone. Based on the available data addressing toxicity of the BSA and TSA metabolites, the Agency has determined that they are not of toxicological concern.

Exposure to fluensulfone results in effects on the hematopoietic system (decreased platelets, increased white blood cells, hematocrit, and reticulocytes), kidneys, and lungs. Body weight and clinical chemistry changes were observed across multiple studies and species. Evidence of qualitative increased susceptibility of infants and children to the effects of fluensulfone was observed in the 2-generation reproduction study in rats, wherein pup death was observed at a dose that resulted in body weight effects in the dams. There was no evidence of either qualitative or quantitative susceptibility in developmental toxicity studies in rats or rabbits.

The most sensitive endpoints for assessing safety of aggregate exposures to fluensulfone under the FFDCA are the increased pup-loss effects for acute dietary exposure; and body weight, hematological and clinical chemistry changes for chronic dietary as well as short/intermediate term dermal exposures.

Decreased locomotor activity in females, and decreased spontaneous activity, decreased rearing, and impaired righting response in both sexes were observed in the acute neurotoxicity study at the lowest dose tested. No other evidence for neurotoxicity was observed in the other studies in the toxicity database, including a subchronic neurotoxicity study. The doses and endpoints chosen for risk assessment are all protective of the effects seen in the acute neurotoxicity study. A developmental neurotoxicity study is not required.

Although the mouse carcinogenicity study showed an association with alveolar/bronchiolar adenomas and carcinomas in the female, EPA has determined that quantification of risk using the chronic reference dose (RfD) will account for all chronic toxicity, including carcinogenicity, that could result from exposure to fluensulfone and its metabolites. That conclusion is based on the following considerations:

1. The tumors occurred in only one sex in one species.
2. No carcinogenic response was seen in either sex in the rat.
3. The tumors in the mouse study were observed at a dose that is almost 13 times higher than the dose chosen for risk assessment.
4. Fluensulfone and its metabolites are not mutagenic.

Specific information on the studies received and the nature of the adverse effects caused by fluensulfone as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled ''Fluensulfone—Aggregate Human Health Risk Assessment Addressing Label Amendments, Changes to the Residue Definition, and New Uses on Multiple Crops'' on page 43 in docket ID number EPA–HQ–OPP–2015–0569.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a

complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for fluensulfone used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLUENSULFONE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All populations, including infants and children and females 13–49 years of age).	NOAEL = 16.2 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.16 mg/kg/day. aPAD = 0.16 mg/kg/day	2-generation reproduction—rat offspring. LOAEL = 122.0 mg/kg/day based on an increase in pup loss between PND 1 and 4 in the F1 and F2 offspring with the majority of deaths occurring on day 2.
Chronic dietary (All populations)	NOAEL= 9.6 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.10 mg/kg/day. cPAD = 0.10 mg/kg/day	2-year toxicity/carcinogenicity-rat. LOAEL = 57.7 mg/kg/day based on decreased body weight in males, and hematology changes, clinical chemistry changes and histopathological effects in the lung and esophagus of both sexes.
Incidental oral short-term (1 to 30 days).	NOAEL= 9.6 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	2-year toxicity/carcinogenicity-rat. LOAEL = 57.7 mg/kg/day based on decreased body weight in males, and hematology changes, clinical chemistry changes and histopathological effects in the lung and esophagus of both sexes.
Dermal short-term (1 to 30 days).	Oral study NOAEL = 9.6 mg/kg/day (dermal absorption factor = 9.5%) UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	2-year toxicity/carcinogenicity-rat. LOAEL = 57.7 mg/kg/day based on decreased body weight in males, and hematology changes, clinical chemistry changes and histopathological effects in the lung and esophagus of both sexes.
Cancer (Oral, dermal, inhalation).	EPA has determined that quantification of risk using the chronic RfD will adequately account for all chronic toxicity, including carcinogenicity.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fluensulfone, EPA considered exposure under the petitioned-for tolerances as well as all existing fluensulfone tolerances in 40 CFR 180.680. Parent fluensulfone occurs at residue levels well below those of the BSA metabolite, the residue defined for the enforcement of tolerances. As previously noted, the BSA metabolite is not of toxicological concern. Since tolerances do not include fluensulfone itself, EPA has used the Organization for Economic Cooperation and Development (OECD) maximum residue limit (MRL) calculation procedures to derive tolerance-equivalent residue levels for fluensulfone. For foods where the level of fluensulfone is expected to be below the limit of quantification (LOQ), 0.01 ppm, the Agency has assumed that residues occur at the LOQ. For foods with quantifiable levels of fluensulfone, EPA has assumed that residues occur at the tolerance-equivalent level. EPA assessed dietary exposures from fluensulfone in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for fluensulfone. In estimating acute dietary exposure, EPA used 2003–2008 food consumption information from the United States Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, the acute dietary risk assumed tolerance-equivalent residues and 100 percent crop treated (PCT).

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used 2003–2008 food consumption information from the USDA's NHANES/WWEIA. As to residue levels in food, the chronic dietary risk assumed tolerance-equivalent residues and 100 PCT.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to fluensulfone. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue or PCT information in the dietary assessment for fluensulfone. Tolerance-equivalent level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for fluensulfone in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fluensulfone. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Pesticide Root Zone Model Ground Water (PRZM GW) models, the estimated drinking water concentrations (EDWCs) for acute exposures are estimated to be 11.8 parts per billion (ppb) for surface water and 77.6 ppb for ground water and for chronic exposures are estimated to be 0.173 ppb for surface water and 52.5 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the acute dietary risk assessment, the water concentration value of 77.6 ppb was used to assess the contribution to drinking water. For the chronic dietary risk assessment, the water concentration of value 52.5 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Fluensulfone is currently registered for the following uses that could result in residential exposures: Turf/lawns. EPA assessed residential exposure using the following assumptions: For residential handlers, a quantitative exposure/risk assessment was not developed because the product is not intended to be applied by homeowners. For adult residential post-application exposure, the Agency evaluated dermal post-application exposure only to outdoor turf/lawn applications (high contact activities). The Agency also evaluated residential post-application exposure for children via dermal and hand-to-mouth routes of exposure, resulting from treated outdoor turf/lawn applications (high contact activities).

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found fluensulfone to share a common mechanism of toxicity with any other substances, and fluensulfone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fluensulfone does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* No evidence of quantitative or qualitative susceptibility was seen in developmental toxicity studies in rats and rabbits. Fetal effects in those studies occurred in the presence of maternal toxicity and were not considered more severe than the maternal effects. However, there was evidence of increased qualitative, but not quantitative, susceptibility of pups in the 2-generation reproduction study in rats. Maternal effects observed in that study were decreased body weight and body weight gain; at the same dose, effects in offspring were decreased pup weights, decreased spleen weight, and increased pup loss (PND 1–4).

Although there is evidence of increased qualitative susceptibility in the 2-generation reproduction study in rats, there are no residual uncertainties with regard to pre- and post-natal toxicity following *in utero* exposure to rats or rabbits and pre- and post-natal exposures to rats. Considering the overall toxicity profile, the clear NOAEL for the pup effects observed in the 2-generation reproduction study, and that the doses selected for risk assessment are protective of all effects in the toxicity database including the offspring effects, the degree of concern for the susceptibility is low.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for fluensulfone is complete.

ii. Evidence of potential neurotoxicity was only seen following acute exposure to fluensulfone and the current PODs chosen for risk assessment are protective of the effects observed. There is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no indication of quantitative susceptibility in the developmental and reproductive toxicity studies, and there are no residual uncertainties concerning pre- or post-natal toxicity. In addition, the endpoints and doses chosen for risk assessment are protective of the qualitative susceptibility observed in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance equivalent-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to fluensulfone in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by fluensulfone.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to fluensulfone will occupy 9.3% of the aPAD for all infants less than 1 year old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fluensulfone from food and water will utilize 3.9% of the cPAD for all infants less than 1 year old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of fluensulfone is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Fluensulfone is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to fluensulfone.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 5,700 for adults and 3,000 for children 1–2 years old. Because EPA's level of concern for fluensulfone is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

An intermediate-term adverse effect was identified; however, fluensulfone is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for fluensulfone.

5. *Aggregate cancer risk for U.S. population.* EPA assessed cancer risk using a non-linear approach (*i.e.,* RfD) since it adequately accounts for all chronic toxicity, including carcinogenicity, that could result from exposure to fluensulfone. As the chronic dietary endpoint and dose are protective of potential cancer effects, fluensulfone is not expected to pose an aggregate cancer risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fluensulfone residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (acetonitrile/water (1:1, v/v) extraction and analysis by reverse-phase high-performance liquid chromatography-mass spectrometry (HPLC–MS/MS)) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established any MRLs for fluensulfone for the commodities covered by this document.

C. Response to Comments

Three comments were submitted in response to the March 16, 2016 Notice of Filing. Two of them opposed the petition generally due to there being too many toxic chemicals being used in America without citing any specific human health concerns about fluensulfone itself. The Agency understands the commenters' concerns and recognizes that some individuals believe that pesticides should be banned on agricultural crops. However, the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. The comment appears to be directed at the underlying statute and not EPA's implementation of it; the citizen has made no contention that EPA has acted in violation of the statutory framework.

The second comment was from the Center for Food Safety and primarily concerned about Agency compliance with any relevant obligations under the Endangered Species Act. This comment is not relevant to the Agency's evaluation of safety of the fluensulfone tolerances; section 408 of the FFDCA focuses on potential harms to human health and does not permit consideration of effects on the environment.

D. Revisions to Petitioned-For Tolerances

Most of the petitioned-for tolerance levels differ from those being established by the Agency. In the cases of the tolerances proposed by ADAMA, it is not clear to the Agency how the tolerance levels proposed in the March 16, 2016 Notice of Filing (**Federal Register** 2016–05952) were derived. EPA's tolerance levels are based on residues of BSA only, without any conversion to fluensulfone equivalents. The Agency used the OECD MRL procedures to derive the levels being established in today's action. For crop groups, and per EPA's current policy, tolerance levels for each representative commodity were calculated separately, and then the maximum value within each crop group was selected as the tolerance level. For root vegetables except sugar beet (Subgroup 1B), the tolerance level is based on data from radish root (including Oriental radish root). Although a separate listing for Oriental radish was requested, EPA is not establishing a separate tolerance level since that crop is a member of crop subgroup 1B. For leaves of root and tuber vegetables (Crop Group 2), EPA is establishing a tolerance for residues in/on the leaves of root and tuber vegetable, except sugar beet because the petitioned-for uses do not include a use on sugar beet; the tolerance is based on data from radish tops (including Oriental radish tops). The tolerance for residues in/on leafy vegetables except *Brassica* vegetables (Group 4) is based on data from leaf lettuce and spinach, assessed separately. For head and stem *Brassica* (Subgroup 5A), the tolerance is

based on data from cabbage. For *Brassica* leafy greens (Subgroup 5B), data from mustard greens, komatsuna (Japanese mustard spinach), and mizuna (Japanese mustard) were combined to derive the tolerance level. All of EPA's tolerance levels are expressed to provide sufficient precision for enforcement purposes, and this may include the addition of trailing zeros (*e.g.,* 0.30 ppm rather than 0.3 ppm).

In the case of the tolerance proposed by IR–4, the petitioned-for tolerance is based on the sum of residues of BSA and TSA, expressed as fluensulfone, rather than on residues of BSA only, which is how the tolerance expression currently describes measurement of residues for compliance purposes. Basing enforcement on BSA alone provides a suitable marker of use, simplifies residue analysis, and avoids enforcement complications that may result from the potential for TSA to carry over in treated soil from one year to the next. Furthermore, IR–4 did not propose tolerances for residues of fluensulfone in processed potato commodities. The submitted potato processing study indicates that during processing, residues of BSA in chips and in granules/flakes are likely to concentrate to levels greater than in tubers. Therefore, EPA is establishing separate tolerances to cover residues in those commodities.

V. Conclusion

Therefore, tolerances are established for residues of fluensulfone in or on berry, low growing, subgroup 13–07G at 0.30 ppm; *Brassica,* head and stem, subgroup 5A at 1.50 ppm; *Brassica,* leafy greens, subgroup 5B at 9.0 ppm; potato, chips at 0.60 ppm; potato, granules/flakes at 0.80 ppm; vegetables, leafy, except *Brassica,* group 4 at 2.0 ppm; vegetable, leaves of root and tuber, group 2, except sugar beet at 30 ppm; vegetables, root, except sugar beet, subgroup 1B at 3.0 ppm; and vegetables, tuberous and corm, subgroup 1C at 0.50 ppm. Also, the time-limited Section 18 tolerance for ''carrot'' is removed since it is now covered by the permanent tolerance for ''vegetables, root, except sugar beet, subgroup 1B.'' And lastly, the tolerance expression is changed as requested by the petitioner.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 19, 2016.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.680 is revised to read as follows:

§ 180.680 Fluensulfone; tolerances for residues.

(a) *General.* Tolerances are established for residues of the nematicide fluensulfone, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only 3,4,4-trifluoro-but-3-ene-1-sulfonic acid.

Commodity	Parts per million
Berry, low growing, subgroup 13–07G	0.30
Brassica, head and stem, subgroup 5A	1.50
Brassica, leafy greens, subgroup 5B	9.0
Potato, chips	0.60
Potato, granules/flakes	0.80
Tomato, paste	1.0
Vegetables, cucurbits, group 9	0.50
Vegetables, fruiting, group 8–10	0.50
Vegetables, leafy, except *Brassica,* group 4	2.0
Vegetables, leaves of root and tuber, group 2, except sugar beet	30
Vegetables, root, except sugar beet, subgroup 1B	3.0
Vegetables, tuberous and corm, subgroup 1C	0.50

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertant residues.* [Reserved]

[FR Doc. 2016–12722 Filed 5–31–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0212; FRL–9943–73]

Aldicarb, Alternaria destruens, Ampelomyces quisqualis, Azinphos-methyl, Etridiazole, Fenarimol, et al.; Tolerance and Tolerance Exemption Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking certain tolerances in follow-up to canceled product registrations or uses for acephate, aldicarb, azinphos-methyl, etridiazole, fenarimol, imazamethabenz-methyl, tepraloxydim, thiazopyr, and tralkoxydim, and is revoking tolerance exemptions for certain pesticide active ingredients. However, EPA will not revoke the thiacloprid tolerances at this time that had been previously proposed for revocation. Also, EPA is making minor revisions to the section heading and introductory text for *Pythium oligandrum* DV 74. In addition, in accordance with current Agency practice, EPA is making revisions to the tolerance expression for imazamethabenz-methyl, and removing expired tolerances and tolerance exemptions for certain pesticide active ingredients.

DATES: This regulation is effective November 28, 2016. Objections and requests for hearings must be received on or before August 1, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0212, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; email address: *nevola.joseph@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2015–0212 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 1, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2015–0212, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Background

A. What action is the Agency taking?

In the **Federal Register** of July 22, 2015 (80 FR 43373) (FRL–9929–12), EPA issued a proposed rule to revoke certain tolerances for acephate, aldicarb, azinphos-methyl, etridiazole, fenarimol, imazamethabenz-methyl, tepraloxydim, thiacloprid, thiazopyr, and tralkoxydim, and tolerance exemptions for certain pesticide active ingredients, in follow-up to canceled product registrations or uses. Also, EPA proposed to make minor revisions to the section heading and introductory text for *Pythium oligandrum* DV 74. In addition, in accordance with current Agency practice, EPA proposed to make minor revisions to the tolerance expression for imazamethabenz-methyl, and remove expired tolerances and tolerance exemptions for certain pesticide active ingredients. The proposal provided a 60-day comment period.

Since the proposed rule of July 22, 2015, amendments for the last two acephate labels with succulent bean use (revising succulent bean to a non-food use) were approved by EPA, as anticipated and discussed in the

proposed rule. Therefore, EPA is revoking the acephate tolerances in 40 CFR 180.108(a)(1) and (a)(3) on bean, succulent.

In this final rule EPA is revoking certain tolerances and/or tolerance exemptions because either they are no longer needed or are associated with food uses that are no longer registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in the United States. Those instances where registrations were canceled were because the registrant failed to pay the required maintenance fee and/or the registrant voluntarily requested cancellation of one or more registered uses of the pesticide active ingredient. The tolerances revoked by this final rule are no longer necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. It is EPA's general practice to issue a final rule revoking those tolerances and tolerance exemptions for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person comments on the proposal indicating a need for the tolerance or tolerance exemption to cover residues in or on imported commodities or legally treated domestic commodities.

EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States.

Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed in Unit II.A. if one of the following conditions applies:

1. Prior to EPA's issuance of a FFDCA section 408(f) order requesting additional data or issuance of a FFDCA section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

2. EPA independently verifies that the tolerance is no longer needed.

3. The tolerance is not supported by data that demonstrate that the tolerance meets the requirements under the Food Quality Protection Act (FQPA).

Among the comments received by EPA are the following:

1. *Aldicarb.—Comment by Ag Logic Chemical LLC (Ag Logic).* The commenter requested that the aldicarb tolerances on sorghum be retained for possible future actions. Ag Logic stated that another registrant requested the voluntary cancellation of its aldicarb products for use on sorghum and now Ag Logic is the sole registrant for aldicarb. Also, Ag Logic stated it is reevaluating all current and potential agricultural uses for aldicarb and if it decides to apply for registration on sorghum it would be extremely beneficial to both Ag Logic and the Agency if the sorghum tolerances remained in place.

Agency response. The use of aldicarb on sorghum was officially canceled in 2009 (see details in the proposed rule of July 22, 2015) under section 6(f)(1) of FIFRA, 7 U.S.C. 136(d)(f)(1), under which a registrant of a pesticide product may request that the product registration be canceled or amended to terminate one or more uses. Because EPA canceled the sorghum use in response to a registrant's voluntary request, and no other aldicarb products include a use on sorghum, there is currently no legal use of aldicarb on sorghum. EPA will not retain the tolerance based on the possibility that someone may apply for a new use on sorghum in the future. Tolerances are generally maintained for current uses. In addition, no comment specific to the need for retaining tolerances for aldicarb residues of concern on sorghum for import purposes was received by the Agency during the 60-day comment period. Therefore, EPA is revoking the tolerances for aldicarb in 40 CFR 180.269(a) on sorghum, grain, bran; sorghum, grain, grain; and sorghum, grain, stover.

2. *Thiacloprid.—Comments by Bayer CropScience (BCS), BCS in Mexico, Power Farms Inc., the Ontario Apple Growers (OAG), and the Ontario Fruit and Vegetable Growers' Association (OFVGA).* The commenters requested that all the current tolerances for thiacloprid be retained for import purposes with the exception of the OFVGA, which asked that only the specific thiacloprid tolerances on pome fruit and wet apple pomace be maintained for import purposes. Also, BCS stated its intention to provide supporting data where necessary for all of the current thiacloprid tolerances.

Agency response. In comments to the proposed rule, persons expressed a need for retention of the thiacloprid tolerances for import purposes. Therefore, EPA will not revoke the thiacloprid tolerances in 40 CFR 180.594 at this time. However, because there are no longer any active food-use registrations in the United States and no comments were received by EPA which expressed a need for more time to exhaust existing stocks for domestic use, EPA is not changing its previous determination (as stated in the proposed rule of July 22, 2015) that existing stocks in the United States will be exhausted by February 8, 2017. EPA is noting in 40 CFR 180.594 that the tolerances for thiacloprid have no U.S. registrations as of August 6, 2014. Also, retaining these tolerances may require submission of data to demonstrate their safety. For example, domestic U.S. residue data may not be representative of growing conditions and use patterns in other countries. EPA published guidance on pesticide import tolerances and residue data for imported food in the **Federal Register** notices of April 5, 2006 (71 FR 17099) (FRL–7772–1) and June 1, 2000 (65 FR 35069) (FRL–6559–3).

With the exception of aldicarb and thiacloprid, the Agency did not receive any specific comments in the docket, during the 60-day comment period, concerning proposed tolerance actions associated with pesticide active ingredients, as described in the **Federal Register** of July 22, 2015. Therefore, with the exception of thiacloprid, EPA is finalizing revocations and amendments in the proposed rule of July 22, 2015. For a detailed discussion of the Agency's rationale for the finalized tolerance actions, refer to the proposed rule of July 22, 2015.

B. What is the Agency's authority for taking this action?

EPA may issue a regulation establishing, modifying, or revoking a tolerance under FFDCA section 408(e). In this final rule, EPA is revoking tolerances and tolerance exemptions as follow-up on canceled uses of pesticides.

C. When do these actions become effective?

As stated in the **DATES** section, this regulation is effective November 28, 2016. EPA is delaying the effective date of these finalized actions to allow a reasonable interval for producers in exporting members of the World Trade Organization's Sanitary and Phytosanitary Measures Agreement to adapt to the requirements of a final rule. With the exception of fenarimol, imazamethabenz-methyl, and thiacloprid, EPA believes that existing stocks of the canceled or amended pesticide products labeled for the uses associated with the revoked tolerances have been completely exhausted and that treated commodities have had sufficient time for passage through the channels of trade. EPA is revoking certain tolerances for fenarimol, imazamethabenz-methyl, and tepraloxydim with expiration/revocation dates. EPA believes that these revocation dates allow users to exhaust stocks and allow sufficient time

for passage of treated commodities through the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this unit, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA.

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

III. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for etridiazole, imazamethabenz-methyl, tepraloxydim, thiazopyr, and tralkoxydim.

The Codex has established MRLs for acephate, in or on various commodities, including beans, except broad bean and soya bean at 5 milligrams/kilogram (mg/kg). The beans, except broad bean and soya bean MRL is different than the tolerance established for acephate on succulent bean in the United States, which EPA is revoking in this final rule.

The Codex has established MRLs for aldicarb, in or on various commodities, including sorghum at 0.1 mg/kg, which is covered by a current U.S. tolerance at a higher level than the MRL, and sorghum straw and fodder, dry at 0.5 mg/kg, which is the same as the U.S. tolerance. The sorghum MRL is different than the tolerance established for aldicarb in the United States. In this final rule EPA is revoking the tolerances for aldicarb on sorghum, grain, bran; sorghum, grain, grain; and sorghum, grain, stover.

The Codex has established MRLs for azinphos-methyl in or on various commodities, including almond hulls and blueberries at 5 mg/kg, cherries, peach, and plums (including prunes) at 2 mg/kg, and walnuts at 0.3 mg/kg. These MRLs are the same as the tolerances established for azinphos-methyl in the United States. In this final rule EPA is revoking the tolerances for azinphos-methyl on almond, hulls; blueberry; cherry; peach; plum, prune; and walnut.

The Codex has established MRLs for azinphos-methyl, in or on various commodities, including almonds and apple at 0.05 mg/kg (which are covered by current U.S. tolerances at a higher level than the MRLs), and pear at 2 mg/kg. These MRLs are different than the tolerances established for azinphos-methyl in the United States. In this final rule EPA is revoking the tolerances for azinphos-methyl on almond; apple; and pear.

The Codex has established MRLs for fenarimol in or on various commodities, including cattle, liver at 0.05 mg/kg, cherries at 1 mg/kg, hops, dry at 5 mg/kg, and pecan at 0.02 mg/kg. These MRLs are the same as the tolerances established for fenarimol in the United States. In this final rule EPA is revoking the tolerances for fenarimol residues in or on cattle, meat byproducts, except kidney; cherry, sweet; cherry, tart; hop, dried cones; and pecan; each with an expiration/revocation date.

The Codex has established MRLs for fenarimol, in or on various commodities, including cattle kidney and cattle meat at 0.02 mg/kg; and grapes at 0.3 mg/kg. These MRLs are different than the tolerances established for fenarimol in the United States. In this final rule EPA is revoking the tolerances for fenarimol residues in or on cattle, kidney; cattle, meat; and grape; each with an expiration/revocation date.

The Codex has established MRLs for thiacloprid in or on various commodities, including cotton seed at 0.02 mg/kg, peppers, sweet at 1 mg/kg, and stone fruits at 0.5 mg/kg (for U.S. tolerances on cherry subgroup and peach subgroup). These MRLs are the same as the tolerances established for thiacloprid in the United States.

The Codex has established MRLs for thiacloprid, in or on various commodities, including milks at 0.05 mg/kg; pome fruits at 0.7 mg/kg, and stone fruits at 0.5 mg/kg (for U.S. tolerance on plum subgroup). These MRLs are different than the tolerances established for thiacloprid in the United States because of differences in use patterns and/or agricultural practices.

IV. Statutory and Executive Order Reviews

In this final rule, EPA revokes specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (*e.g.,* a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled ''*Regulatory Planning and Review*'' (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, entitled ''*Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*'' (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*). Nor does it require any special considerations as required by Executive Order 12898, entitled ''*Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*'' (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled ''*Protection of Children from Environmental Health Risks and Safety Risks*'' (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published in the **Federal Register** of December 17, 1997 (62 FR 66020) (FRL–5753–1), and was provided to the Chief

Counsel for Advocacy of the Small Business Administration. Taking into account this analysis and available information concerning the pesticides listed in this rule, the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. (This Agency document is available in the docket of the proposed rule.) Furthermore, for the pesticides named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled ''*Federalism*'' (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled ''*Consultation and Coordination with Indian Tribal Governments*'' (65 FR 67249, November 9, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 11, 2016.

Jack E. Housenger,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.108 [Amended]

■ 2. In § 180.108, remove the entries for ''Bean, succulent'' from the tables in paragraphs (a)(1) and (3).

§§ 180.121, 180.154, 180.232, 180.257, and 180.263 [Removed]

■ 3. Remove §§ 180.121, 180.154, 180.232, 180.257, and 180.263.

§ 180.269 [Amended]

■ 4. In § 180.269, remove the entries for ''Sorghum, grain, bran,'' ''Sorghum, grain, grain,'' and ''Sorghum, grain, stover,'' from the table in paragraph (a).

§§ 180.311 and 180.315 [Removed]

■ 5. Remove §§ 180.311 and 180.315.

■ 6. In § 180.370, revise the table in paragraph (a) to read as follows:

§ 180.370 5-Ethoxy-3-(trichloromethyl)-1,2,4-thiadiazole; tolerances for residues.

(a) * * *

Commodity	Parts per million
Cotton, gin byproducts	0.1
Cotton, undelinted seed	0.1
Tomato	0.15

* * * * *

■ 7. In § 180.421, revise the table in paragraph (a) to read as follows:

§ 180.421 Fenarimol; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ revocation date
Apple	0.3	7/31/16
Apple, wet pomace	0.3	7/31/16
Banana [1]	0.25	None
Cattle, fat	0.01	7/31/16
Cattle, kidney	0.01	7/31/16
Cattle, meat	0.01	7/31/16
Cattle, meat byproducts, except kidney	0.05	7/31/16
Cherry, sweet	1.0	7/31/16
Cherry, tart	1.0	7/31/16
Goat, fat	0.01	7/31/16
Goat, kidney	0.01	7/31/16
Goat, meat	0.01	7/31/16

Commodity	Parts per million	Expiration/ revocation date
Goat, meat byproducts, except kidney	0.05	7/31/16
Grape	0.1	7/31/16
Hazelnut	0.02	7/31/16
Hop, dried cones	5.0	7/31/16
Horse, fat	0.01	7/31/16
Horse, kidney	0.01	7/31/16
Horse, meat	0.01	7/31/16
Horse, meat byproducts, except kidney	0.05	7/31/16
Pear	0.1	7/31/16
Pecan	0.02	7/31/16
Sheep, fat	0.01	7/31/16
Sheep, kidney	0.01	7/31/16
Sheep, meat	0.01	7/31/16
Sheep, meat byproducts, except kidney	0.05	7/31/16
Vegetable, cucurbit, group 9 [2]	0.20	None

[1] There are no U.S. registrations for bananas as of April 26, 1995.
[2] There are no U.S. registrations for cucurbit vegetable group 9 as of August 27, 2010.

* * * * *

§ 180.422 [Removed]

■ 8. Remove § 180.422.

■ 9. Revise § 180.437 to read as follows:

§ 180.437 Imazamethabenz-methyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide imazamethabenz-methyl, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only imazamethabenz-methyl (methyl 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-4-methylbenzoate) or (methyl 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-methylbenzoate), as the sum of its para- and meta-isomers in or on the commodity.

Commodity	Parts per million	Expiration/ revocation date
Barley, grain	0.10	12/31/16
Barley, straw	2.00	12/31/16
Sunflower, seed	0.10	12/31/16
Wheat, grain	0.10	12/31/16
Wheat, straw	2.00	12/31/16

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§§ 180.496, 180.497, 180.530, and 180.548 [Removed]

■ 10. Remove §§ 180.496, 180.497, 180.530, and 180.548.

■ 11. In § 180.573, revise the table in paragraphs (a)(1), (a)(2), and (c) to read as follows:

§ 180.573 Tepraloxydim; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million	Expiration/ revocation date
Cotton, undelinted seed	0.2	12/31/18
Cotton, gin byproducts	3.0	12/31/18
Flax, seed	0.10	12/31/18
Grain, aspirated fraction	1200.0	12/31/18
Pea and bean, dried shelled, except soybean, subgroup 6C [1]	0.10	12/31/18
Soybean, seed	6.0	12/31/18
Soybean, hulls	8.0	12/31/18
Sunflower subgroup 20B [1]	0.20	12/31/18

[1] There are no U.S. registrations for commodities in this subgroup.

(2) * * *

Commodity	Parts per million	Expiration/ revocation date
Cattle, fat	0.15	12/31/18
Cattle, kidney	0.50	12/31/18
Cattle, meat	0.20	12/31/18
Cattle, meat byproducts, except kidney	0.20	12/31/18
Egg	0.20	12/31/18
Goat, fat	0.15	12/31/18
Goat, kidney	0.50	12/31/18
Goat, meat	0.20	12/31/18
Goat, meat byproducts, except kidney	0.20	12/31/18
Hog, fat	0.15	12/31/18
Hog, kidney	0.50	12/31/18
Hog, meat	0.20	12/31/18
Hog, meat byproducts, except kidney	0.20	12/31/18
Horse, fat	0.15	12/31/18
Horse, kidney	0.50	12/31/18
Horse, meat	0.20	12/31/18
Horse, meat byproducts, except kidney	0.20	12/31/18
Milk	0.10	12/31/18
Poultry, fat	0.30	12/31/18
Poultry, liver	1.00	12/31/18
Poultry, meat	0.20	12/31/18
Poultry, meat byproducts, except liver	0.20	12/31/18
Sheep, fat	0.15	12/31/18
Sheep, kidney	0.50	12/31/18
Sheep, meat	0.20	12/31/18
Sheep, meat byproducts, except kidney	0.20	12/31/18

* * * * *

(c) * * *

Commodity	Parts per million	Expiration/ revocation date
Canola, seed	0.50	12/31/18

* * * * *

■ 12. In § 180.594, revise the table in paragraph (a) to read as follows:

§ 180.594 Thiacloprid; tolerances for residues.

(a) * * *

Commodity	Parts per million
Apple, wet pomace [1]	0.60
Cattle, fat [1]	0.020
Cattle, kidney [1]	0.050
Cattle, liver [1]	0.15
Cattle, meat [1]	0.030
Cattle, meat byproducts [1]	0.050
Cherry subgroup 12–12A [1]	0.5
Cotton, gin byproducts [1]	11.0
Cotton, undelinted seed [1]	0.020
Fruit, pome, group 11 [1]	0.30
Goat, fat [1]	0.020
Goat, kidney [1]	0.050
Goat, liver [1]	0.15
Goat, meat [1]	0.030
Goat, meat byproducts [1]	0.050
Horse, fat [1]	0.020
Horse, kidney [1]	0.050
Horse, liver [1]	0.15
Horse, meat [1]	0.030
Horse, meat byproducts [1]	0.050
Milk [1]	0.030
Peach subgroup 12–12B [1]	0.5
Peach subgroup 12–12C [1]	0.05
Pepper [1]	1.0
Sheep, fat [1]	0.020
Sheep, kidney [1]	0.050
Sheep, liver [1]	0.15
Sheep, meat [1]	0.030
Sheep, meat byproducts [1]	0.050

[1] There are no U.S. registrations for the commodity since August 6, 2014.

* * * * *

§§ 180.630, 180.642, 180.1107, 180.1108, 180.1113, 180.1131, 180.1144, and 180.1154 [Removed]

■ 13. Remove §§ 180.630, 180.642, 180.1107, 180.1108, 180.1113, 180.1131, 180.1144, and 180.1154.

■ 14. Revise § 180.1180 to read as follows:

§ 180.1180 Kaolin; exemption from the requirement of a tolerance.

Kaolin is exempted from the requirement of a tolerance for residues when used on or in food commodities to aid in the control of insects, fungi, and bacteria (food/feed use).

§§ 180.1200, 180.1201, 180.1221, 180.1241, and 180.1256 [Removed]

■ 15. Remove §§ 180.1200, 180.1201, 180.1221, 180.1241, and 180.1256.

■ 16. Revise § 180.1275 to read as follows:

§ 180.1275 Pythium oligandrum DV 74; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established on all food/feed commodities for residues of *Pythium oligandrum* DV 74 when the pesticide is used on food crops.

§ 180.1279 [Removed]

■ 17. Remove § 180.1279.

[FR Doc. 2016–12723 Filed 5–31–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412 and 495

[CMS–3310 & 3311–F3]

RINs 0938–AS26 and AS58

Medicare and Medicaid Programs; Electronic Health Record Incentive Program—Stage 3 and Modifications to Meaningful Use in 2015 Through 2017; Corrections and Correcting Amendment

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

ACTION: Final rule; corrections and correcting amendment.

SUMMARY: This document corrects certain technical and typographical errors that appeared in the October 16, 2015 final rule with comment period titled ''Medicare and Medicaid Programs; Electronic Health Record Incentive Program—Stage 3 and Modifications to Meaningful Use in 2015 through 2017.''

DATES: This document is effective on June 1, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth S. Holland (410) 786–1309.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2015–25595 of October 16, 2015 (80 FR 62762), in the final rule with comment period titled ''Medicare and Medicaid Programs; Electronic Health Record Incentive Program—Stage 3 and Modifications to Meaningful Use in 2015 through 2017'' (hereafter referred to as the 2015 EHR Incentive Programs final rule with comment period) there were a number of technical errors that were identified and corrected in FR Doc. 2016–04785 of March 4, 2016 (81 FR 11447), titled ''Medicare and Medicaid Programs; Electronic Health Record Incentive Program—Stage 3 and Modifications to Meaningful Use in 2015 Through 2017; Corrections and Correcting Amendment'' .[1] This document corrects additional technical and typographical errors that appeared in the 2015 EHR Incentive Programs final rule with comment period. The provisions in this correcting amendment are treated as if they had been included in the 2015 EHR Incentive Programs final rule with comment period.

II. Summary of Errors

A. Summary of Errors in the Preamble

We specified in the October 16, 2015 final rule (80 FR 62903–62905) that the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) (Pub. L. 114–10) amended section 1848(a)(7)(A) of the Social Security Act (the Act) to sunset the meaningful use payment adjustment for eligible professionals (EPs) at the end of calendar year (CY) 2018 and added section 1848(q) of the Act requiring the establishment of a Merit-based Incentive Payment System (MIPS), which would incorporate certain existing provisions and processes related to meaningful use. However, on the following pages, we made erroneous statements concerning a meaningful use payment adjustment for EPs under section 1848(a)(7)(A) of the Act in 2019:

- Page 62905, in our response to a public comment on the EHR reporting period for a payment adjustment year for EPs, we erroneously added a phrase stating that the 90-day EHR reporting period in 2017 for Stage 3 would also apply for the purposes of avoiding the payment adjustment in 2019.
- Page 62906, in TABLE 18—EHR REPORTING PERIODS AND RELATED PAYMENT ADJUSTMENT YEARS FOR EPs, we incorrectly stated that, in 2017, the EHR reporting period for a payment adjustment year for Medicaid EP returning participants demonstrating Stage 3 is any continuous 90-day period in CY 2017 and applies to avoid a payment adjustment in CY 2019 if they successfully attest by February 28, 2018.

On page 62920, in TABLE 21—BURDEN ESTIMATES STAGE 3, we inadvertently included text that was proposed but not finalized which stated that, the EP, eligible hospital or CAH incorporates into the patient's record an electronic summary of care document ''from a source other than the provider's EHR system''. We are correcting this technical error to ensure that the language in the table is consistent with the language in the preamble and regulations text.

B. Summary of Errors in the Regulations Text

On page 62942, in paragraph (1)(ii)(C)(*2*) of the definition of ''EHR reporting period for a payment adjustment year'' at § 495.4, we incorrectly established an EHR reporting period in CY 2017 for a payment adjustment year identified as the ''FY 2019 payment adjustment year.'' As noted previously, the MACRA amended section 1848(a)(7)(A) of the Act to sunset the meaningful use payment adjustment for EPs at the end of CY 2018. Therefore, we are amending the definition of ''EHR reporting period for a payment adjustment year'' by removing and reserving paragraph (1)(ii)(C)(2) to correct this error.

On page 62952, in § 495.24(d)(7)(ii)(B)(*2*) (Stage 3 meaningful use objectives and measures for EPs, eligible hospitals, and CAHs for 2018 and subsequent years); we inadvertently included language for the eligible hospital or CAH measure that we did not include in the EP measure. We are correcting this technical error by revising the language to ensure that the regulations text for the eligible hospital or CAH measure is consistent with the regulations text for the EP measure.

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

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

We believe that this correcting amendment does not constitute a rulemaking that would be subject to these requirements. This correcting

[1] We note that the name of the program was stated incorrectly in the title of the March 4, 2016 Corrections and Correcting Amendment (81 FR 11447).

amendment corrects technical and typographic errors in the preamble and regulation text included in the 2015 EHR Incentive Programs final rule with comment period. The corrections contained in this document are consistent with, and do not make substantive changes to, the policies that were adopted subject to notice and comment procedures in the final rule with comment period. As a result, the corrections made through this correcting amendment are intended to ensure that the 2015 EHR Incentive Programs final rule with comment period accurately reflects the policies adopted in that rule. In addition, even if this were a rulemaking to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule with comment period or delaying the effective date would be contrary to the public interest because it is in the public's interest for EPs, eligible hospitals, and critical access hospitals to be advised, in a timely manner, of the meaningful use criteria and EHR reporting periods that they must meet in order to qualify for Medicare and Medicaid electronic health record incentive payments and avoid payment reductions under Medicare, and to ensure that the final rule with comment period accurately reflects our policies as of the date they take effect and are applicable. Furthermore, such procedures would be unnecessary due to the changes in the law made by the MACRA, under which the meaningful use payment adjustment for EPs under section 1848(a)(7)(A) of the Act will sunset at the end of CY 2018. The statements identified above in the preamble and the regulations text concerning a payment adjustment in 2019 are moot as a result of those changes in the law. In addition, such procedures would be unnecessary, as we are not altering our policies; rather, we are simply implementing correctly the policies that we previously proposed, received comment on, and subsequently finalized. This correcting document is intended solely to ensure that the 2015 EHR Incentive Programs final rule with comment period accurately reflects these policies. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

IV. Correction of Errors

In FR Doc. 2015–25595 of October 16, 2015 (80 FR 62762), we are making the following corrections:

1. On page 62905, first column, first partial paragraph, lines 7 through 10, the phrase ''the payment adjustment in 2019 for returning participants and for the payment adjustment in 2018 for new participants'' is corrected to read ''the payment adjustment in 2018 for new participants''.

2. On page 62906, in TABLE 18—EHR REPORTING PERIODS AND RELATED PAYMENT ADJUSTMENT YEARS FOR EPs, the entry for 2017 is corrected to read as follows:

2017			
	EHR reporting period for a payment adjustment year	Applies to avoid a payment adjustment in CY 2018	Applies to avoid a payment adjustment in CY 2019
EP new participants (including those demonstrating Stage 3 under Medicare or Medicaid).	Any continuous 90-day period in CY 2017.	Yes, if EP successfully attests by October 1, 2017.	N/A.
EP returning participants	N/A	N/A	N/A.

3. On page 62920, TABLE 21 —BURDEN ESTIMATES STAGE 3, third column, third full paragraph (Measure 2), lines 8 and 10, the phrase ''an electronic summary of care document from a source other than the provider's EHR system.'' is corrected to read ''an electronic summary of care document.''.

List of Subjects in 42 CFR Part 495

Administrative practice and procedure, Electronic health records, Health facilities, Health professions, Health maintenance organizations (HMO), Medicaid, Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

As noted in section II.B. of this correcting amendment, the Centers for Medicare & Medicaid Services is making the following correcting amendments to 42 CFR part 495:

PART 495—STANDARDS FOR THE ELECTRONIC HEALTH RECORD TECHNOLOGY INCENTIVE PROGRAM

■ 1. The authority citation for part 495 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 495.4 [Amended]

■ 2. In § 495.4, paragraph (1)(ii)(C)(*2*) of the definition of ''EHR reporting period for a payment adjustment year'' is removed and reserved.

§ 495.24 [Amended]

■ 3. In § 495.24, paragraph (d)(7)(ii)(B)(*2*) is amended by removing the phrase ''an electronic summary of care document from a source other than the provider's EHR system.'' and adding in its place the phrase ''an electronic summary of care document.''.

Dated: May 25, 2016.

Madhura Valverde,

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

[FR Doc. 2016–12853 Filed 5–31–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 414

[CMS–1631–F3]

RIN 0938–AS40

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2016; Corrections

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

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects technical and typographical errors that appeared in the final rule with comment period published in the November 16, 2015 **Federal Register** (80 FR 70886 through 71386) entitled ''Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule and

Other Revisions to Part B for CY 2016.'' The effective date for the rule was January 1, 2016.

DATES:

Effective Date: This correcting document is effective May 31, 2016.

Applicability Date: The corrections indicated in this document are applicable beginning January 1, 2016.

FOR FURTHER INFORMATION CONTACT: Michelle Peterman (410) 786–2591.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2015–28005 (80 FR 70886 through 71386), the final rule entitled ''Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2016'' (hereinafter referred to as the CY 2016 PFS final rule with comment period), there were a number of technical and typographical errors that are identified and corrected in section IV., the Correction of Errors. These corrections are applicable as of January 1, 2016.

II. Summary of Errors

A. Summary of Errors in the Preamble

On page 71138, due to typographical errors, the QualityNet Help Desk email address, the qualified clinical data registry (QCDR) data validation execution report delivery date, and the email subject are incorrect.

On page 71139, due to typographical errors, the QualityNet Help Desk email address, the qualified registry data validation execution report delivery date, and the email subject are incorrect.

On pages 71141 and 71145, we incorrectly stated the Measure Application Validation (MAV) process utilized to determine the reporting of Physician Quality Reporting System (PQRS) cross-cutting resources.

On page 71147, we inadvertently omitted language restating the Consumer Assessment of Healthcare Providers and Systems (CAHPS) requirements that apply to groups of 100 or more eligible professionals (EPs) that register to participate in the Group Practice Reporting Option (GPRO) regardless of reporting mechanism.

On pages 71148 through 71150, we inadvertently omitted language restating the CAHPS requirement for the QCDR reporting option in Table 28—Summary of Requirements for the 2018 PQRS Payment Adjustment: Group Practice Reporting Criteria for Satisfactory Reporting of Quality Measures Data via the GPRO.

B. Summary of Errors in Regulation Text

On page 71380 of the CY 2016 PFS final rule with comment period, we inadvertently omitted language in § 414.90(k)(5)(i). In this paragraph, we inadvertently omitted language restating the CAHPS requirements that apply to groups of 100 or more EPs that register to participate in the Group Practice Reporting Option (GPRO) regardless of reporting mechanism.

III. Waiver of Proposed Rulemaking

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

In our view, this correcting document does not constitute a rulemaking that would be subject to these requirements. This document merely corrects typographical and technical errors in the CY 2016 PFS final rule with comment period. The corrections contained in this document are consistent with, and do not make substantive changes to, the policies and payment methodologies that were adopted subject to notice and comment procedures in the CY 2016 PFS final rule with comment period. As a result, the corrections made through this correcting document are intended to ensure that the CY 2016 PFS final rule with comment period accurately reflects the policies adopted in that rule.

Even if this were a rulemaking to which the notice and comment and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the CY 2016 PFS final rule with comment period or delaying the effective date of the corrections would be contrary to the public interest because it is in the public interest to ensure that the CY 2016 PFS final rule with comment period accurately reflects our final policies as soon as possible following the date they take effect. Further, such procedures would be unnecessary, because we are not altering the payment methodologies or policies, but rather, we are simply correcting the **Federal Register** document to reflect the policies that we previously proposed, received comment on, and subsequently finalized. This correcting document is intended solely to ensure that the CY 2016 PFS final rule with comment period accurately reflects these policies. For these reasons, we believe there is good cause to waive the requirements for notice and comment and delay in effective date.

IV. Correction of Errors

In FR Doc. 2015–28005 of November 16, 2015 (80 FR 70886), make the following corrections:

A. Correction of Errors in the Preamble

1. On page 71138, second column, second paragraph, lines 8 through 12, the phrase and sentence ''Desk at *Qnetsupport@sdps.org* by 5:00 p.m. e.s.t. on June 30, 2016. The email subject should be ''PY2015 Qualified Registry Data Validation Execution Report.'' '' are corrected to read ''Desk at *Qnetsupport@hcqis.org* by 5:00 p.m. e.s.t. on June 30, 2017. The email subject should be ''PY2016 Qualified Registry Data Validation Execution Report.'' ''.

2. On page 71139, third column, fifth full paragraph, lines 8 through 14, the phrase and sentence ''Desk at *Qnetsupport@sdps.org* by 5:00 p.m. ET on June 30 of the year in which the reporting period occurs (that is, June 30, 2016 for reporting periods occurring in 2016). The email subject should be ''PY2015 Qualified Registry Data Validation Execution Report.'' '' are corrected to read ''Desk at *Qnetsupport@*

hcqis.org by 5:00 p.m. ET on June 30 following the year in which the reporting period occurs (that is, June 30, 2017 for the reporting periods occurring in 2016). The email subject should be ''PY2016 Qualified Registry Data Validation Execution Report.'' ''.

3. On page 71141, first column, first partial paragraph, lines 5 through 9, the sentence ''In addition, the MAV process will also allow us to determine whether an EP should have reported on any of the PQRS cross-cutting measures.'' is corrected to read ''Please note, the MAV process is not utilized to determine whether an EP should have reported on any of the PQRS cross-cutting measures. This analysis occurs prior to the EP being subject to MAV.''.

4. On page 71145, third column, first partial paragraph, lines 4 through 8, the sentence ''However, please note that the MAV process for the 2018 PQRS payment adjustment will now allow us to determine whether a group practice should have reported on at least 1 cross-cutting measure.'' is corrected to read ''Please note, the MAV process is not utilized to determine whether an EP should have reported on any of the PQRS cross-cutting measures. This analysis occurs prior to the EP being subject to MAV.''.

5. On page 71147, the third column is corrected by adding the following paragraph after the first partial paragraph:

''For group practices of 100 or more EPs registered to participate in the GPRO via QCDR for the 2018 PQRS payment adjustment: The administration of the CAHPS for PQRS survey is REQUIRED. Therefore, if reporting via QCDR, these group practices must meet the following criterion for satisfactory reporting for the 2018 PQRS payment adjustment: For the 12-month reporting period for the 2018 PQRS payment adjustment, report all CAHPS for PQRS survey measures via a certified survey vendor, and report at least 6 measures available for reporting under a QCDR covering at least 2 of the NQS domains, AND report each measure for at least 50 percent of the group practice's patients. Of the non-CAHPS for PQRS measures, the group practice would report on at least 2 outcome measures, OR, if 2 outcomes measures are not available, report on at least 1 outcome measures and at least 1 of the following types of measures—resource use, patient experience of care, efficiency/appropriate use, or patient safety.''

6. On page 71148 through 71150, Table 28—Summary of Requirements for the 2018 PQRS Payment Adjustment: Group Practice Reporting Criteria for Satisfactory Reporting of Quality Measures Data via the GPRO is corrected to read as follows:

Reporting period	Group practice size	Measure type	Reporting mechanism	Satisfactory reporting criteria
12-month (Jan 1–Dec 31, 2016).	25–99 EPs; 100+ EPs (if CAHPS for PQRS does not apply).	Individual GPRO Measures in the Web Interface.	Web Interface	Report on all measures included in the web interface; AND populate data fields for the first 248 consecutively ranked and assigned beneficiaries in the order in which they appear in the group's sample for each module or preventive care measure. If the pool of eligible assigned beneficiaries is less than 248, then the group practice must report on 100 percent of assigned beneficiaries. In other words, we understand that, in some instances, the sampling methodology we provide will not be able to assign at least 248 patients on which a group practice may report, particularly those group practices on the smaller end of the range of 25–99 EPs. If the group practice is assigned less than 248 Medicare beneficiaries, then the group practice must report on 100 percent of its assigned beneficiaries. A group practice must report on at least 1 measure for which there is Medicare patient data.
12-month (Jan 1–Dec 31, 2016).	25–99 EPs that elect CAHPS for PQRS;. 100+ EPs (if CAHPS for PQRS applies).	Individual GPRO Measures in the Web Interface + CAHPS for PQRS.	Web Interface + CMS-Certified Survey Vendor.	The group practice must have all CAHPS for PQRS survey measures reported on its behalf via a CMS-certified survey vendor. In addition, the group practice must report on all measures included in the Web Interface; AND populate data fields for the first 248 consecutively ranked and assigned beneficiaries in the order in which they appear in the group's sample for each module or preventive care measure. If the pool of eligible assigned beneficiaries is less than 248, then the group practice must report on 100 percent of assigned beneficiaries. A group practice will be required to report on at least 1 measure for which there is Medicare patient data. Please note that, if the CAHPS for PQRS survey is applicable to a group practice who reports quality measures via the Web Interface, the group practice must administer the CAHPS for PQRS survey in addition to reporting the Web Interface measures.

Reporting period	Group practice size	Measure type	Reporting mechanism	Satisfactory reporting criteria
12-month (Jan 1–Dec 31, 2016).	2–99 EPs; 100+ EPs (if CAHPS for PQRS does not apply).	Individual Measures ...	Qualified Registry	Report at least 9 measures, covering at least 3 of the NQS domains. Of these measures, if a group practice sees at least 1 Medicare patient in a face-to-face encounter, the group practice would report on at least 1 measure in the PQRS cross-cutting measure set. If less than 9 measures covering at least 3 NQS domains apply to the group practice, the group practice would report on each measure that is applicable to the group practice, AND report each measure for at least 50 percent of the group's Medicare Part B FFS patients seen during the reporting period to which the measure applies. Measures with a 0 percent performance rate would not be counted.
12-month (Jan 1–Dec 31, 2016).	2–99 EPs that elect CAHPS for PQRS; 100+ EPs (if CAHPS for PQRS applies).	Individual Measures + CAHPS for PQRS.	Qualified Registry + CMS-Certified Survey Vendor.	The group practice must have all CAHPS for PQRS survey measures reported on its behalf via a CMS-certified survey vendor, and report at least 6 additional measures, outside of the CAHPS for PQRS survey, covering at least 2 of the NQS domains using the qualified registry. If less than 6 measures apply to the group practice, the group practice must report on each measure that is applicable to the group practice. Of the additional measures that must be reported in conjunction with reporting the CAHPS for PQRS survey measures, if any EP in the group practice sees at least 1 Medicare patient in a face-to-face encounter, the group practice must report on at least 1 measure in the PQRS cross-cutting measure set.
12-month (Jan 1–Dec 31, 2016).	2–99 EPs; 100+ EPs (if CAHPS for PQRS does not apply).	Individual Measures ...	Direct EHR Product or EHR Data Submission Vendor Product.	Report 9 measures covering at least 3 domains. If the group practice's direct EHR product or EHR data submission vendor product does not contain patient data for at least 9 measures covering at least 3 domains, then the group practice must report all of the measures for which there is Medicare patient data. A group practice must report on at least 1 measure for which there is Medicare patient data.
12-month (Jan 1–Dec 31, 2016).	2–99 EPs that elect CAHPS for PQRS; 100+ EPs (if CAHPS for PQRS applies).	Individual Measures + CAHPS for PQRS.	Direct EHR Product or EHR Data Submission Vendor Product + CMS-Certified Survey Vendor.	The group practice must have all CAHPS for PQRS survey measures reported on its behalf via a CMS-certified survey vendor, and report at least 6 additional measures, outside of CAHPS for PQRS, covering at least 2 of the NQS domains using the direct EHR product or EHR data submission vendor product. If less than 6 measures apply to the group practice, the group practice must report all of the measures for which there is Medicare patient data. Of the additional 6 measures that must be reported in conjunction with reporting the CAHPS for PQRS survey measures, a group practice would be required to report on at least 1 measure for which there is Medicare patient data.

Reporting period	Group practice size	Measure type	Reporting mechanism	Satisfactory reporting criteria
12-month (Jan 1–Dec 31, 2016).	2–99 EPs; 100+ EPs (if CAHPS for PQRS does not apply).	Individual PQRS measures and/or non-PQRS measures reportable via a QCDR.	Qualified Clinical Data Registry (QCDR).	Report at least 9 measures available for reporting under a QCDR covering at least 3 of the NQS domains, AND report each measure for at least 50 percent of the group practice's patients. Of these measures, the group practice would report on at least 2 outcome measures, OR, if 2 outcomes measures are not available, report on at least 1 outcome measures and at least 1 of the following types of measures—resource use, patient experience of care, efficiency/appropriate use, or patient safety.
12-month (Jan 1–Dec 31, 2016).	2–99 EPs that elect CAHPS for PQRS; 100+ EPs (if CAHPS for PQRS applies).	Individual PQRS measures and/or non-PQRS measures reportable via a QCDR + CAHPS for PQRS.	Qualified Clinical Data Registry (QCDR) + CMS-Certified Survey Vendor.	The group practice must have all CAHPS for PQRS survey measures reported on its behalf via a CMS-certified survey vendor, and report at least 6 additional measures, outside of the CAHPS for PQRS survey, covering at least 2 of the NQS domains using the QCDR AND report each measure for at least 50 percent of the group practice's patients. Of these non-CAHPS measures, the group practice would report on at least 2 outcome measures, OR, if 2 outcomes measures are not available, report on at least 1 outcome measures and at least 1 of the following types of measures—resource use, patient experience of care, efficiency/appropriate use, or patient safety.

List of Subjects in 42 CFR Part 414

Administrative practices and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

Accordingly, 42 CFR chapter IV is corrected by making the following correcting amendments to part 414:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

■ 1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(l) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(l)).

■ 2. Section 414.90 is amended by revising paragraph (k)(5)(i) to read as follows:

§ 414.90 Physician Quality Reporting System (PQRS).

* * * * *

(k) * * *

(5) * * *

(i) If a group practice does not report the CAHPS for PQRS survey measures, report at least 9 measures available for reporting under a QCDR covering at least 3 of the NQS domains, and report each measure for at least 50 percent of the eligible professional's patients. Of these measures, report on at least 3 outcome measures, or, if 3 outcomes measures are not available, report on at least 2 outcome measures and at least 1 of the following types of measures—resource use, patient experience of care, efficiency/appropriate use, or patient safety. If a group practice reports the CAHPS for PQRS survey measures, apply reduced criteria as follows: 6 QCDR measures covering 2 NQS domains; and, of the non-CAHPS for PQRS measures, 2 outcome measures or 1 outcome and 1 other specified type of measure, as applicable.

* * * * *

Dated: May 25, 2016.

Madhura Valverde,

Executive Secretary to the Department.

[FR Doc. 2016–12841 Filed 5–31–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Part 300

[Docket Number: 160523450–6450–01]

RIN 0660–AA32

Revision to the Manual of Regulations and Procedures for Federal Radio Frequency Management

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: The National Telecommunications and Information Administration (NTIA) is making certain changes to its regulations relating to the public availability of the Manual of Regulations and Procedures for Federal Radio Frequency Management (NTIA Manual). Specifically, NTIA is releasing an update to the current edition of the NTIA Manual, with which federal agencies must comply when requesting use of radio frequency spectrum. NTIA is also making changes to the regulatory text to comply with the Incorporation by Reference formatting structure.

DATES: This regulation is effective on June 1, 2016. The incorporation by

reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 1, 2016.

ADDRESSES: A reference copy of the NTIA Manual, including all revisions in effect, is available in the Office of Spectrum Management, 1401 Constitution Avenue NW., Room 1087, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: William Mitchell, Office of Spectrum Management, at (202) 482–8124 or *wmitchell@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

NTIA authorizes the U.S. Government's use of radio frequency spectrum. 47 U.S.C. 902(b)(2)(A). As part of this authority, NTIA developed the NTIA Manual to provide further guidance to applicable federal agencies on the use of the radio frequency spectrum for radio transmissions for telecommunications or for other purposes. The NTIA Manual is the compilation of policies and procedures that govern the use of the radio frequency spectrum by the U.S. Government. Federal government agencies are required to follow these policies and procedures in their use of spectrum.

Part 300 of title 47 of the Code of Federal Regulations provides information about the process by which NTIA regularly revises the NTIA Manual and makes public this document and all revisions. Federal agencies are required to comply with the specifications in the NTIA Manual when requesting frequency assignments. *See* 47 U.S.C. 901 *et seq.,* Executive Order 12046 (March 27, 1978), 43 FR 13349, 3 CFR 1978 Comp. at 158.

This rule updates § 300.1(b) of title 47 of the Code of Federal Regulations to specify the edition of the NTIA Manual with which federal agencies must comply when requesting frequency assignments. In particular, this rule amends § 300.1(b) by replacing ''2013 Edition of the NTIA Manual, dated May 2014'' with ''2013 Edition of the NTIA Manual, as revised through September 2015.'' *See* Revision to the Manual of Regulations and Procedures for Federal Radio Frequency Management, 79 FR 73486, 73486–87 (Dec. 11, 2014). (revising the Manual through May 2014). Upon the effective date of this rule, federal agencies must comply with the requirements set forth in the 2013 edition of the NTIA Manual, as revised through September 2015.

The NTIA Manual is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, by referring to Catalog Number 903–008–00000–8. A reference copy of the NTIA Manual, including all revisions in effect, is available in the Office of Spectrum Management, 1401 Constitution Avenue NW., Room 1087, Washington, DC 20230, by calling William Mitchell on (202) 482–8124, and available online at *https://www.ntia.doc.gov/osmhome/redbook/redbook.html.*

This rule also amends the regulatory text in section 300.1(b) of title 47 of the Code of Federal Regulations to comply with the Incorporation by Reference formatting structure.

Paperwork Reduction Act

This action does not contain collection of information requirements subject to the Paperwork Reduction Act (PRA). 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 Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

Executive Order 12866

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

Administrative Procedure Act/ Regulatory Flexibility Act

NTIA finds good cause under 5 U.S.C. 553(b)(3)(B) to waive prior notice and opportunity for public comment as it is unnecessary. This action amends the regulations to include the date of the most current edition of the NTIA Manual. These changes do not impact the rights or obligations to the public. The NTIA Manual applies only to federal agencies. Because these changes impact only federal agencies, NTIA finds it unnecessary to provide for the notice and comment requirements of 5 U.S.C. 553. NTIA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for the reasons provided above. Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Congressional Review Act

The NTIA Manual provides for policies and procedures for federal agencies' use of spectrum. The NTIA Manual and the changes thereto do not substantially affect the rights or obligations of the public. As a result, this notice is not a ''rule'' as defined by the Congressional Review Act, 5 U.S.C. 804(3)(C).

Executive Order 13132

This rule does not contain policies having federalism implications as that term is defined in Executive Order 13132.

Regulatory Text

List of Subjects in 47 CFR Part 300

Communications, Incorporation by reference, Radio.

For the reasons set forth in the preamble, NTIA amends 47 CFR part 300 as follows:

PART 300—MANUAL OF REGULATIONS AND PROCEDURES FOR FEDERAL RADIO FREQUENCY MANAGEMENT

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 47 U.S.C. 901 *et seq.,* Executive Order 12046 (March 27, 1978), 43 FR 13349, 3 CFR 1978 Comp., p. 158.

■ 2. Amend § 300.1 by revising paragraph (b) and removing paragraph (c).

The revision reads as follows:

§ 300.1 Incorporation by reference of the Manual of Regulations and Procedures for Federal Radio Frequency Management.

* * * * *

(b) The Federal agencies shall comply with the requirements set forth in the 2013 edition of the NTIA Manual, as revised through September 2015, which is incorporated by reference with approval of the Director, Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The NTIA Manual is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, by referring to Catalog Number 903–008–00000–8. A reference copy of the NTIA Manual, including all revision in effect, is available in the Office of Spectrum Management, 1401 Constitution Avenue NW., Room 1087, Washington, DC 20230, or call William Mitchell at (202) 482–8124. The NTIA Manual is available online at *https://www.ntia.doc.gov/osmhome/redbook/redbook.html.*

Dated: May 24, 2016.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

[FR Doc. 2016–12640 Filed 5–31–16; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150916863–6211–02]

RIN 0648–XE647

Fisheries of the Exclusive Economic Zone Off Alaska; Kamchatka Flounder in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Kamchatka flounder in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2016 Kamchatka flounder initial total allowable catch (ITAC) in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), May 26, 2016, through 2400 hours, A.l.t., December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2016 Kamchatka flounder ITAC in the BSAI is 4,250 metric tons (mt) as established by the final 2016 and 2017 harvest specifications for groundfish in the BSAI (81 FR 14773, March 18, 2016). In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2016 Kamchatka flounder ITAC in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,000 mt, and is setting aside the remaining 2,250 mt as incidental catch. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Kamchatka flounder in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Kamchatka flounder to directed fishing in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of May 24, 2016.

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

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

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

Dated: May 25, 2016.

Emily H. Menashes,

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

[FR Doc. 2016–12819 Filed 5–26–16; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 105
Wednesday, June 1, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[Docket No. PRM–73–17; NRC–2013–0214]

Programmable Logic Computers in Nuclear Power Plant Control Systems

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM), filed by Mr. Alan Morris (petitioner) on March 14, 2013, as supplemented most recently on December 19, 2013. The petition was docketed by the NRC on February 7, 2014, and was assigned Docket No. PRM–73–17. The petitioner requested that the NRC require that his ''new-design programmable logic computers [PLCs]'' be installed in the control systems of nuclear power plants to block malware attacks on the industrial control systems of those facilities. In addition, the petitioner requested that nuclear power plant staff be trained ''in the programming and handling of the non-rewriteable memories'' for nuclear power plants. The NRC is denying the petition because the petitioner did not present any significant new information or arguments that would support the requested changes, nor has he demonstrated that a need exists for a new regulation requiring the installation of his new-design PLCs in the control systems of NRC-licensed nuclear power plants.

DATES: The docket for the petition for rulemaking PRM–73–17 is closed on June 1, 2016.

ADDRESSES: Please refer to Docket ID NRC–2013–0214 when contacting the NRC about the availability of information regarding this petition. You may obtain publicly-available documents related to the petition using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0214. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the section of this document entitled, Availability of Documents.
- *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: Natreon Jordan, Office of Nuclear Reactor Regulation, telephone: 301–415–7410, email: *Natreon.Jordan@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. The Petition

Section 2.802 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Petition for rulemaking,'' provides an opportunity for any interested person to petition the Commission to issue, amend, or rescind any regulation. A § 2.802 petition was filed by the petitioner on March 14, 2013, and was supplemented several times through December 19, 2013. (ADAMS Accession No. ML14016A458). On February 7, 2014 (79 FR 7406), the NRC published a notice of receipt of PRM–73–17. The petitioner requested that the NRC amend its regulations that protect digital computer and communication systems and networks. The petitioner requested that the NRC specifically require that ''new-design programmable logic computers,'' with his patented write-once, read-many (WORM) media, be installed in the control systems of nuclear power plants in order to ''block malware attacks on the industrial control systems of those facilities.'' The petitioner also requested that nuclear power plant staff ''be trained to maintain and secure records of all memory programming,'' and recommended ''maintenance in secure storage of programmed memories, as specified in this petition, which may be again employed, as the control systems of critical facilities are essentially steady-state.'' The petitioner stated that the proposed action would ''[r]educe impact on quality of the natural and social environments by stopping disastrous events at critical facilities.''

The NRC staff sent a letter to the petitioner on June 12, 2014 (ADAMS Accession No. ML14120A006), asking the petitioner to provide additional information. Staff specifically asked the petitioner:

- To indicate the inadequacies that he identified in the NRC's current regulatory approach (*i.e.,* performance-based, programmatic) and framework (*i.e.,* NRC's cyber security rule at § 73.54 and Regulatory Guide (RG) 5.71, ''Cyber Security Programs for Nuclear Facilities'') that would be remedied by the proposed rulemaking. Specifically, what cyber threat or vulnerability is not addressed by the current NRC regulations and guidance?
- If one of the PLCs with his patented WORM media has been installed in any operating facility (nuclear or non-nuclear)? Are these PLCs alone sufficient to protect against cyber threats? What other cyber controls may be required at nuclear power plants if a PLC with his patented WORM media is installed?

The petitioner responded to the NRC letter in a series of emails dated June 18, 2014, and June 19, 2014. (ADAMS Accession Nos. ML14181B296, ML14181B276, ML14181B286, and ML14181B270).

Based on the petition and the petitioner's responses to requests for additional information, the NRC staff identified three issues raised by the petitioner:

Issue 1: PLCs currently installed in U.S. nuclear power plants are vulnerable to malware attacks that could negatively affect or challenge plant safety and control systems. The petitioner stated that malware can ''maliciously reprogram the re-writeable memories of the present programmable logic computers'' in the control systems of nuclear power plants.

Issue 2: By using the petitioner's patented PLC design, nuclear power plant safety and control systems would be safe from malware attacks.

Issue 3: Nuclear power plant staff should be trained to maintain and secure records of all memory programming, and recommends maintenance in secure storage of programmed memories that may be again employed, as ''the control systems of critical facilities are essentially steady-state.''

The NRC staff decided not to seek public comment on PRM–73–17 because no additional information was needed for the NRC staff's evaluation of the petitioner's claim.

II. Reasons for Denial

The NRC is denying the petition because the petitioner did not present any significant new information or arguments that would support the requested changes, nor has he demonstrated a need for a new requirement for his new-design of PLCs in nuclear power plant control systems. This section provides detailed responses to the issues raised in the petition.

Issue 1: PLCs that are currently installed in nuclear power plant control systems are vulnerable to malware attacks that could negatively affect or challenge plant safety and control systems.

NRC Response: The NRC disagrees with Issue 1 because the petitioner does not take into account the comprehensive NRC cyber security program requirements for nuclear power plants in § 73.54. Section 73.54, ''Protection of digital computer and communication systems and networks,'' which is known as the NRC's ''cyber security rule,'' requires licensees to protect digital systems in nuclear power plants from cyber attacks. The cyber security rule presumes that any digital system (including PLC designs) is vulnerable to various cyber attacks. The regulations in § 73.54 establish a series of performance-based requirements to ensure that the functions of digital computers, communication systems, and networks are protected from cyber attack. In particular, § 73.54(a)(1) requires nuclear power plant licensees to protect digital computers, communications systems, and networks associated with the following:

- Safety-related and important-to-safety functions;
- security functions;
- emergency preparedness functions, including offsite communications; and
- support systems and equipment which, if compromised, would adversely impact safety, security, or emergency preparedness (SSEP) functions.

As required by §§ 73.54(b)(2) and 73.55(b)(8), a nuclear power plant licensee must establish, implement, and maintain a cyber security program that protects any digital system, network, or communication system associated with SSEP functions. Licensees are required to submit their cyber security plans to NRC for review and approval. Once approved, these plans become part of the licensee's licensing basis, and compliance with the plans is evaluated by the NRC during periodic inspections. Civil penalties may be imposed in the event that licensees are found in violation of their approved cyber security plans. The NRC-approved cyber security plans, which are implemented through the licensee's cyber security programs, significantly reduce the possibility that a PLC installed at a nuclear power plant would be vulnerable to a malware attack that would negatively impact or challenge the plant's safety and control systems. The NRC inspects the implementation of the licensee's cyber security programs, at specified intervals, to confirm that they are being implemented in accordance with the NRC-approved cyber security plans.

To properly understand the petitioner's concerns, the NRC staff asked the petitioner to indicate the inadequacies he had identified in the NRC's current regulatory approach and framework that would be remedied by the NRC's undertaking of his proposed action. The NRC staff asked, specifically, ''What cyber threat or vulnerability is not addressed by the current NRC regulations and guidance?'' The petitioner stated ''the inadequacies in the NRC's current regulatory approach are that the regulations do not address correction for the vulnerability to corruption of the rewriteable PLC memories.'' The NRC staff disagrees with the petitioner's assertion because the cyber security rule does, in fact, require licensees to have the capability to detect, prevent, respond to, mitigate, and recover from cyber attacks under § 73.54(c)(2). To comply with this requirement, nuclear power plant licensees must implement an overall site defensive strategy to protect critical digital assets (CDAs) from cyber attacks, as well as implementing operational and management security controls.

Issue 2: By using the petitioner's patented PLC design, nuclear power plant safety and control systems would be safe from malware attacks.

NRC Response: The NRC staff disagrees with Issue 2 because the proposed vulnerability to malware attacks described in the petition is already addressed in the current NRC regulations. In addition, the ''new-design'' PLCs recommended in the petition have not been proven to offer protection from cyber attacks.

The approach recommended in the petition presumes that a ''one size fits all'' solution would be adequate for the wide variety of industrial control systems and safety systems used in nuclear power plants. However, it does not take into account other attacks that could be made (*e.g.,* man-in-the-middle attacks where an attacker inserts malicious commands between the PLC and the controlled devices). The objective of the petitioner's PLC design, which was to correct a proposed vulnerability (*i.e.,* to ''block malware attacks on the industrial control systems of those facilities''), is already accomplished by the defense-in-depth strategy in the current regulatory framework. As required by § 73.54(c)(2), nuclear power plant licensees must design their cyber security programs to apply and maintain an integrated defense-in-depth protective strategy to ensure that licensees have the capability to detect, prevent, respond to, mitigate, and recover from cyber attacks. The approach used by nuclear power plant licensees may vary in that NRC regulations are generally not prescriptive, and allow licensees and applicants to propose different methods for meeting the requirements. To comply with the requirements in § 73.54(c)(2), licensees must implement an overall site defensive strategy to protect CDAs from cyber attacks as well as implementing operational and management security controls.

Defense-in-depth strategies are a documented collection of complementary and redundant security controls that establish multiple layers of protection to safeguard CDAs. Under a defense-in-depth strategy, the failure of a single protective strategy would not result in the compromise of an SSEP function. One example of a defense-in-depth strategy involves setting up multiple security boundaries to protect CDAs and networks from cyber attack. In this way, multiple protection levels must fail for a cyber attack to progress and impact a critical system or network.

Even if a failure occurred (*e.g.,* such as through a violation of policy), or if a protection mechanism was bypassed (*e.g.,* by a new virus that is not yet identified as a cyber attack), other mechanisms would still be in place to detect and respond to a cyber attack on a CDA, to mitigate the impacts of the cyber attack, and to recover normal operations of the CDA and its system before an adverse impact could happen.

In addition to the fact that a need has not been justified for use of the petitioner's new-design PLCs, the approach recommended in the petition has not been proven by the petitioner to be effective in preventing cyber attacks. Based on email correspondence, the petitioner states that the proposed ''new-design programmable logic computers'' currently are not used in any facility (nuclear or otherwise). As such, the petitioner was unable to present any evidence that his PLCs would be effective in preventing cyber attacks. Furthermore, no information was provided by the petitioner as to how the ''new-design programmable logic computers'' would comply with the requirements in § 73.54 for use in the safety systems and control systems of a nuclear power plant.

Issue 3: Nuclear power plant licensee staff should be trained to maintain and secure records of all memory programming, and recommends maintenance in secure storage of programmed memories that may be again employed, as ''the control systems of critical facilities are essentially steady-state.''

NRC Response: The NRC staff disagrees with Issue 3 because the petition does not take into account the awareness and training requirements each nuclear power plant licensee must perform as part of their comprehensive cyber security program as required in § 73.54.

Under § 73.54(d)(1), each licensee is required to ensure, as part of its cyber security program, that appropriate facility personnel, including contractors, are aware of the cyber security requirements and receive the necessary training to perform their assigned duties and responsibilities. As an example, licensees may comply with the awareness and training requirements by performing the following actions:

- Develop, disseminate, and periodically review and update the site cyber security training and awareness plan. This plan defines the purpose, scope, roles, responsibilities, and management commitment to provide high assurance that individuals have received training to properly perform their job functions;
- Perform gap analyses in areas where additional training is needed in cyber security;
- Establish measures to determine whether cyber security policies and procedures are being followed, and if not, determine whether a training or awareness issue is the cause and develop measures to be taken to correct the deficiency;
- Develop, disseminate, and periodically review and update procedures that are used to facilitate and maintain the cyber security training and awareness program; and
- Implement training and awareness security controls.

In addition, § 73.54(d)(3) requires each nuclear power plant licensee, as part of its cyber security program, to evaluate all modifications to assets identified in § 73.54(a)(1) (*i.e.* systems with SSEP functions) before their implementation. This ensures that the cyber security performance objectives are maintained. As stated above, the NRC inspects licensee cyber security programs, at specified intervals, to confirm that the programs are being implemented in accordance with the NRC-approved cyber security plans.

III. Conclusion

The NRC has reviewed the petition and appreciates the concerns raised by the petitioner. For the reasons described in Section II, ''Reasons for Denial,'' of this document, the NRC is denying the petition under § 2.802. The petitioner did not present any significant new information or arguments, as part of this petition, that would support the requested changes, nor has the petitioner demonstrated that a need exists for a new provision requiring use of the petitioner's new-design PLCs.

IV. Availability of Documents

The documents identified in the following table are available to interested persons as indicated. For more information on accessing ADAMS, see the **ADDRESSES** section of this document.

Date	Document	ADAMS Accession number/ **Federal Register** citation
January 2010	Regulatory Guide 5.71; ''Cyber Security Programs for Nuclear Facilities''	ML090340159
March 14, 2013, as supplemented through December 19, 2013.	Petition for Rulemaking from Mr. Alan Morris Regarding Programmable Logic Computers in Nuclear Power Plant Control Systems.	ML14016A458
January 27, 2014	Letter to Petitioner Enclosing **Federal Register** Notice—Receipt of Petition for Rulemaking.	ML13308A385
February 7, 2014	**Federal Register** Notice—Receipt of Petition for Rulemaking	79 FR 7406
June 12, 2014	Letter to Petitioner; ''PRM–73–17 Cyber Malware Attacks on Programmable Logic Computers''.	ML14120A006
June 18, 2014	E-mail from Petitioner; ''PRM–73–17''	ML14181B296
June 18, 2014	E-mail from Petitioner; ''RE: PRM–73–17''	ML14181B276
June 18, 2014	E-mail from Petitioner; ''RE: PRM–73–17''	ML14181B286
June 19, 2014	E-mail from Petitioner; ''RE: PRM–73–17''	ML14181B270

Dated at Rockville, Maryland, this 25th day of May, 2016.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2016–12926 Filed 5–31–16; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 404, 405, 420, 431, 435, 437, 460

[Docket No.: FAA–2016–6761; Notice No. 16–03]

RIN 2120–AK76

Updates to Rulemaking and Waiver Procedures and Expansion of the Equivalent Level of Safety Option

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action would streamline and improve commercial space transportation regulations' general rulemaking and petition procedures by reflecting current practice; reorganizing the regulations for clarity and flow; and allowing petitioners to file their petitions to the FAA's Office of Commercial Space Transportation electronically. Further, it would expand the option to satisfy commercial space transportation requirements by demonstrating an equivalent level of safety. These changes are necessary to ensure the regulations are current, accurate, and are not unnecessarily burdensome. The intended effect of these changes is to improve the clarity of the regulations and reduce burden on the industry and on the FAA.

DATES: Send comments on or before August 1, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–6761 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions concerning this proposed rule, contact Shirley McBride, AST–300, Office of Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7470; email *Shirley.McBride@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The Commercial Space Launch Act of 1984, as amended and re-codified at 51 U.S.C. 50901–50923 (the Act), authorizes the Department of Transportation and thus the FAA, through delegations, to oversee, license, and regulate commercial launch and reentry activities, and the operation of launch and reentry sites as carried out by U.S. citizens or within the United States. 51 U.S.C. 50904, 50905. The Act directs the FAA to exercise this responsibility consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States. 51 U.S.C. 50905. The Act directs the FAA to regulate only to the extent necessary to protect the public health and safety, safety of property, and national security and foreign policy interests of the United States. 51 U.S.C. 50901(a)(7). The FAA is also responsible for encouraging, facilitating, and promoting commercial space launches by the private sector. 51 U.S.C. 50903.

I. Background

The Office of Commercial Space Transportation (AST) was established under the Act as part of the Office of the Secretary of Transportation within the Department of Transportation. In 1988, the general rulemaking and petition procedures, under the authority of the Act, were codified in 14 CFR, chapter III, part 404.

In November 1995, AST was transferred to the FAA as the agency's only space-related line of business. The FAA's general rulemaking and petition procedures, for which the agency follows public rulemaking procedures under the Administrative Procedure Act, 5 U.S.C. 553, reside in 14 CFR chapter I, part 11. When AST became part of the FAA, the general rulemaking and petition procedures in part 404 were not conformed to those in part 11 to remove duplicate and outdated information, or to clarify those provisions that apply specifically to the FAA's commercial space transportation regulations. The proposed rule would update parts 404 and 11 to remove duplicate information from part 404 and add appropriate cross references between part 11 and part 404. In addition, the proposal would update part 404 to reflect current practice, clarify the requirements, and add an option to submit petitions to AST electronically.

Currently, the option to satisfy a commercial space transportation regulation by demonstrating an ''equivalent level of safety'' is limited to part 417 [1] and to some specific sections of chapter III. This restricts the FAA's flexibility in approving launch and reentry related activities where the operator can convincingly demonstrate that an alternative approach to the requirements of chapter III provides an equivalent level of safety. This proposal would expand the equivalent level of safety option so that it applies more broadly to chapter III requirements for both launch and reentry activities.

The current title of part 405 is ''Investigations and Enforcement.'' However, part 405 does not relate to investigations. To avoid confusion, the FAA proposes to revise the title of part 405 to a title more descriptive of its contents, namely, ''Compliance and Enforcement.''

II. Discussion of the Proposal

1. General Rulemaking Procedures (Part 11)

The general rulemaking and petition procedures for commercial space transportation regulations, 14 CFR

[1] *See* § 417.1(g): *Equivalent level of safety.* The requirements of this part apply to a launch operator and the launch operator's launch unless the launch operator clearly and convincingly demonstrates that an alternative approach provides an equivalent level of safety.

chapter III, part 404, are not aligned with the FAA's general rulemaking and petition procedures located in 14 CFR chapter I, part 11. This has caused some confusion about how the two parts relate to each other and what requirements apply specifically to commercial space transportation regulations. Additionally, there is no option to file petitions electronically under chapter III.

The FAA proposes minor changes to part 11 to clarify that this part applies to all FAA regulations, including commercial space transportation regulations, except as otherwise noted. Also, the FAA proposes to correct an outdated Internet link in part 11.

§ 11.15—What is a petition for exemption?

The FAA proposes to amend § 11.15 to cross reference part 404 for commercial space transportation waivers. Authority for the FAA's aviation safety oversight falls under Title 49 U.S.C., while the agency's authority for commercial space transportation oversight falls under 51 U.S.C. 50901–50923. Title 49 allows for ''exemptions'' as requests for relief from a regulatory requirement, whereas Title 51 allows the Secretary to ''waive'' regulatory requirements. To retain the distinction of terms under both statutes, the FAA proposes to revise § 11.15 to cross reference part 404, which describes the agency's delegated authority to issue commercial space transportation waivers.

§ 11.27—Are there other ways FAA collects specific rulemaking recommendations before we issue an NPRM?

The FAA proposes to add the Commercial Space Transportation Advisory Committee (COMSTAC) as an example of an advisory committee the FAA uses to review and provide advice on various issues. While the FAA uses the Aviation Rulemaking Advisory Committee (ARAC) for aviation-specific issues, it uses COMSTAC for commercial space transportation issues. ARAC is comprised of representatives from the aviation industry. COMSTAC includes representatives from the commercial space industry.

§ 11.63—How and to whom do I submit my petition for rulemaking or petition for exemption?

The proposal would amend this section to remove an outdated Internet address in § 11.63(a)(1), ''*http://www.faa.gov/regulations,*'' where petitioners are directed to find additional instructions on filing their petitions, and replace it with a description of where it could be found. This is because an Internet address may be subject to change, and a description would be more flexible while still providing adequate instruction.

2. Petitions for Waiver and Rulemaking (Part 404)

Currently, part 404, subpart A is organized such that requirements for filing and processing a petition for waiver and a petition for rulemaking are combined in the same sections, §§ 404.3 and 404.5. This causes confusion because while some requirements apply to both petition for waiver and petition for rulemaking, certain others apply only to one or to the other. Having requirements for both types of petitions in the same sections make it difficult to determine which requirement applies to which type of petition. The agency proposes to establish separate sections for requirements applicable to both petitions for waiver and petitions for rulemaking (proposed §§ 404.1 and 404.3), requirements applicable only to petitions for waiver (proposed §§ 404.5 and 404.7), and those applicable only to petitions for rulemaking (proposed §§ 404.9 and 404.11).

Current subpart B of part 404 includes general rulemaking procedures that duplicate those in chapter I, part 11. The FAA proposes to reorganize subpart B to remove the duplicate information and add relevant cross references to part 11.

The FAA also proposes to remove the subpart titles in part 404 because the other organizational changes to part 404 would remove the need to use subpart titles as guides.

Additionally, and as indicated in the ''Proposed Reorganization—Part 404'' table below, in order to accommodate the reorganization of part 404, the current part title, some section titles, and some section numbers would change. Also, new sections would be added.

Proposed Reorganization—Part 404

Current Part 404	Proposed Part 404
PART 404—REGULATIONS AND LICENSING REQUIREMENTS	**PART 404—PETITION AND RULEMAKING PROCEDURES**
Subpart A—General	
§ 404.1 Scope	**§ 404.1 Scope**
§ 404.3 Filing of petitions to the Associate Administrator	**§ 404.3 General**
§ 404.5 Action on petitions	**§ 404.5 Filing a petition for waiver**
	§ 404.7 Action on a petition for waiver
	§ 404.9 Filing a petition for rulemaking
	§ 404.11 Action on a petition for rulemaking
Subpart B—Rulemaking	
§ 404.11 General	
§ 404.13 Petitions for extension of time to comment	**§ 404.13 Rulemaking**
§ 404.15 Consideration of comments received	**§ 404.15 [Removed and Reserved]**
§ 404.17 Additional Rulemaking Procedures	**§ 404.17 Additional Rulemaking Procedures**
§ 404.19 Hearings	**§ 404.19 Hearings**

Further, the proposal would update part 404 to reflect current practice. For example, part 404 does not include the option for petitioners to file their petitions electronically.

A discussion of the specific, proposed changes for part 404 follows.

Proposed § 404.1—Scope

The FAA proposes to revise § 404.1 to clarify the scope of part 404. Currently § 404.1 states that part 404 ''establishes procedures for issuing regulations to implement 51 U.S.C. Subtitle V, chapter 509, and for eliminating or waiving requirements for licensing or permitting of commercial space transportation activities under that statute.'' The FAA would revise § 404.1 to state that part 404 establishes procedures for issuing regulations and for filing a petition for waiver or a petition for rulemaking to the Associate Administrator for Commercial Space Transportation.

Proposed § 404.3—General

The FAA proposes to change the title of this section from ''Filing of petitions to the Associate Administrator'' to ''General'' to reflect the reorganization of the part.

The reorganized section would include information applicable to both petitions for waiver and petitions for rulemaking. This information would include the physical address to which petitioners should send their petitions, as well as the option to file petitions to AST electronically by using the specified FAA email address.

Current § 404.3(d), which explains a petitioner's rights, provided by Congress in 51 U.S.C. 50916, to request the agency withhold certain sensitive information or data from the public, subject to certain conditions, would be moved to proposed § 404.3(b). Also, proposed § 404.3(a)(3) would reference the waiver exception described in proposed § 404.7(b). Further, the provision about public hearings in current § 404.5(a) would be moved to proposed § 404.3(g).

Current § 404.3 requires petitioners to send two copies of their petition to either AST's physical address or to the docket's physical address. The FAA proposes to require all petitions be sent to AST to ensure timely consideration. The FAA also proposes to remove the requirement to submit duplicate copies so that petitioners need only send one copy of the petition to AST.

The proposal would remove from § 404.3 the requirement that a petition for rulemaking contain a summary that the FAA may cause to be published in the **Federal Register** because part 11 does not require such a summary and the FAA does not seek public comment on petitions for rulemaking.

The proposal also would move the provisions in current §§ 404.5(d) and 404.5(e) to §§ 404.3(e) and 404.3(f), respectively, because notification and reconsideration of the Associate Administrator's decision applies to both petitions for waiver and petitions for rulemaking.

Proposed § 404.5—Filing a Petition for Waiver

The proposal would change the section title from ''Action on petitions'' to ''Filing a Petition for Waiver.'' Also, it would move the waiver procedures from current § 404.3 to proposed § 404.5. Proposed § 404.5 would clarify the requirements for filing a waiver request and, as noted in the discussion of proposed § 404.3, would move the information in current § 404.5(a) about public hearings related to petitions to proposed § 404.3(g).

Current § 404.3 states that the petition must ''set forth the text or substance of the regulation . . . to be waived.'' Proposed § 404.5 would clarify that the petition must reference the specific section or sections of 14 CFR chapter III from which relief is sought. Further, to help ensure petitions are complete and meet the requirements of the Act, 51 U.S.C. 50905(b)(3), proposed § 404.5 would clarify that the petition must state the reasons why granting the request for relief is in the public interest and will not jeopardize the public health and safety, safety of property, and national security and foreign policy interests of the United States.

Proposed § 404.7—Action on a Petition for Waiver

The requirements in current § 404.5 that describe the FAA's actions on petitions for waiver would be moved to proposed § 404.7. Proposed § 404.7 would clarify that under 51 U.S.C. 50905(b)(3), the FAA is not authorized to grant a waiver that would permit the launch or reentry of a launch vehicle or a reentry vehicle without a license or permit if a human being would be on board.

Proposed § 404.9—Filing a Petition for Rulemaking

As noted, the current requirements for filing a petition for rulemaking reside in § 404.3. This proposal would remove those requirements and, instead, new § 404.9 would require a petitioner to follow § 11.71 for filing a petition for rulemaking. This proposed change would align the procedures for filing a petition for rulemaking under part 404 with the procedures for filing all other petitions for rulemaking made to the agency.

There are no substantive differences in the process for filing a petition for rulemaking with the FAA under part 404 or under § 11.71 of part 11. Therefore, the FAA does not foresee any issues with using part 11 procedures for commercial space petitions for rulemaking.

Proposed § 404.11—Action on a Petition for Rulemaking

The requirements in current § 404.5 that describe the FAA's actions on petitions for rulemaking would be removed, and new § 404.11 would cross reference § 11.73, which includes the FAA's actions on petitions for rulemaking. This change would align the actions of the FAA on petitions for rulemaking under part 404 with its actions regarding all other petitions for rulemaking made to the agency.

Proposed § 404.13—Rulemaking

Since the FAA's general rulemaking procedures, which apply to all FAA regulations, including commercial space transportation regulations, reside in 14 CFR chapter I, part 11, the agency proposes to remove the general rulemaking procedures in current §§ 404.11, 404.13, and 404.15 and, instead, add a cross reference in proposed § 404.13(a) to part 11's general rulemaking procedures. Also, current § 404.17 (Additional rulemaking proceedings) and § 404.19 (Hearings) of subpart B would be retained as is. As a result, proposed § 404.13(b) states that in addition to the procedures referenced in § 404.13(a), the provisions in §§ 404.17 and 404.19 also apply.

Proposed § 404.15—Removed and Reserved

As discussed under proposed § 404.13, the proposal would remove the current, specified contents of subpart B, including § 404.15, and add a cross reference to part 11. In addition, it would reserve § 404.15 to prevent gaps in the CFR numbering for part 404.

3. Investigations and Enforcement (Part 405)

The agency proposes to change the title of part 405 to better reflect the part's requirements. Part 405 has not substantially changed since 1988. Although its current title is ''Investigations and Enforcement,'' the part does not apply to investigations. Instead, requirements for investigations reside in part 406, entitled ''Investigations, Enforcement, and Administrative Review.''

What part 405 actually contains is requirements for FAA monitoring of licensed and permitted activities; the agency's authority to modify, suspend or revoke a license or permit; and the FAA's authority to issue emergency orders to terminate, prohibit, or suspend a licensed or permitted launch or reentry activity. To avoid confusion, the FAA proposes to revise the title of part 405 to ''Compliance and Enforcement,'' to better reflect the content of the part.

4. Equivalent Level of Safety

Currently, the option to satisfy the requirements of 14 CFR, chapter III by demonstrating an ''equivalent level of safety'' is limited to part 417 (safety of expendable launch vehicles) and to specific sections of parts 420 (operation of a launch site), 437 (experimental permits), and 460 (human space flight). The option does not apply to parts 431 and 435, which govern reentry of reusable launch vehicles and other reentry vehicles. The FAA addresses this limitation through the waiver process, which places an unnecessary burden on the industry and on the FAA. Thus, the agency proposes to expand the availability of its equivalent level of safety option.

Currently, in parts 420 and 437, the equivalent level of safety option only applies to §§ 420.23(a)(3), (b)(4), and (c)(2); 420.25(a); and, 437.65(b). The FAA proposes to expand the availability of the option so that it applies not just to these specific sections but to parts 420 and 437 in their entirety. Therefore, this proposal would remove the equivalent level of safety provision in these specific sections and replace them with proposed §§ 420.1(b) and 437.1(b). The proposed change to § 420.23 would remove current § 420.23(c)(2), move current § 420.23(c)(3) to proposed § 420.23(c)(2) to prevent a gap in paragraph numbering, and remove current § 420.23(c)(3) to prevent identical language from appearing in both § 420.23(c)(2) and (c)(3). These proposed sections would require that each requirement of the part would apply unless an applicant or licensee under part 420, or a permittee under part 437, clearly and convincingly demonstrates that an alternative provides an equivalent level of safety to the requirement of the part.

Current parts 431 and 435 have no equivalent level of safety option. Therefore, the FAA proposes to add this option to the ''General'' sections of parts 431 and 435 (§§ 431.1 and 435.1, respectively) so that the option would apply to these parts in their entirety.

The agency further proposes to expand the equivalent level of safety provision now in § 460.5. That provision, which includes qualification requirements for a pilot and a remote operator, currently only extends the equivalent level of safety option (*see* § 460.5(d)) to a remote operator but not to a pilot. The FAA proposes amending § 460.5(d) to allow an applicant, licensee, or permittee to satisfy pilot qualification requirements by demonstrating an equivalent level of safety.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate

likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

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

This rule proposes to streamline and improve commercial space transportation regulations' general rulemaking and petition procedures. It proposes to do this by updating the rule language to reflect current practice; reorganizing it for clarity and flow; and allowing petitioners to file their petitions to the FAA's Office of Commercial Space Transportation electronically. In addition, this rule proposes to expand the option to satisfy commercial space transportation requirements by demonstrating an equivalent level of safety. These changes are necessary to ensure the regulations are current, accurate, and not unnecessarily burdensome.

The intended effect of these proposed changes is to improve the clarity of the regulations and reduce burden on the industry and on the FAA. Increased clarity could result in fewer requests for more information and, therefore, in cost savings. Expanding the equivalent level of safety option provides more choice to operators and lowers the number of waiver requests the FAA must process, resulting in reduced FAA burden. Allowing petitioners the option to submit electronically could result in small cost savings, from reduced mail expense.

Since the expected outcome of this proposal is increased regulatory clarity with the potential of a minimal cost impact, a regulatory evaluation was not prepared. The FAA requests comments with supporting justification about the FAA determination of minimal impact.

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

B. Regulatory Flexibility Determination

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

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

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

This proposal is expected to have an effect on States, local governments, large entities such as Boeing and a significant number of small entities such as Scaled Composites, LLC, Masten Space Systems, XCOR Aerospace, Escape Dynamics, and Space Information Laboratories.

As this proposed rule would streamline and clarify FAA rulemaking procedures, codify current practice and expand options to demonstrate an equivalent level of safety, the expected outcome would have only minimal costs to minor cost savings impact on any small entity affected by this rulemaking action.

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

C. International Trade Impact Assessment

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

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $155 million in lieu of $100 million.

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

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there would be no new requirement for information collection associated with this proposed rule.

F. International Compatibility and Cooperation

(1) In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA

has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

(2) Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

G. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a ''significant energy action'' under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or
3. Accessing the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

List of Subjects

14 CFR Part 11

Administrative practice and procedure, Reporting and recordkeeping requirements.

14 CFR Part 404

Administrative practice and procedure, Space transportation and exploration.

14 CFR Part 405

Investigations, Penalties, Space transportation and exploration.

14 CFR Part 420

Environmental protection, Reporting and recordkeeping requirements, Space transportation and exploration.

14 CFR Part 431

Aviation safety, Environmental protection, Investigations, Reporting and recordkeeping requirements, Space transportation and exploration.

14 CFR Part 435

Aviation safety, Environmental protection, Investigations, Reporting and recordkeeping requirements, Space transportation and exploration.

14 CFR Part 437

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Space transportation and exploration.

14 CFR Part 460

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Space transportation and exploration.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapters I and III of title 14, Code of Federal Regulations as follows:

PART 11—GENERAL RULEMAKING PROCEDURES

■ 1. The authority citation for part 11 is amended to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701–44702, 44711, 46102, and 51 U.S.C. 50901–50923.

■ 2. Revise § 11.15 to read as follows:

§ 11.15 What is a petition for exemption?

A petition for exemption is a request to the FAA by an individual or entity asking for relief from the requirements of a current regulation. For petitions for waiver of commercial space transportation regulations, see part 404 of this title.

■ 3. Revise § 11.27 to read as follows:

§ 11.27 Are there other ways FAA collects specific rulemaking recommendations before we issue an NPRM?

Yes, the FAA obtains advice and recommendations from advisory committees, including the Aviation Rulemaking Advisory Committee (ARAC) for aviation issues and the Commercial Space Transportation Advisory Committee (COMSTAC) for

commercial space transportation issues. These advisory committees are formal standing committees comprised of representatives of industry, consumer groups, and interested individuals. In conducting their activities, ARAC and COMSTAC comply with the Federal Advisory Committee Act (FACA) and the direction of FAA. We task these advisory committees with providing us with recommended rulemaking actions dealing with specific areas and problems. If we accept their recommendation to change an FAA rule, we ordinarily publish an NPRM using the procedures in this part. The FAA may establish other rulemaking advisory committees for a limited period of time as needed to focus on aviation-specific issues.

■ 4. Amend § 11.63 by revising paragraph (a)(1) to read as follows:

§ 11.63 How and to whom do I submit my petition for rulemaking or petition for exemption?

(a) * * *

(1) By electronic submission, submit your petition for rulemaking or exemption to the FAA through the Internet at *http://www.regulations.gov,* the Federal Docket Management System Web site. For additional instructions, you may visit *http://www.faa.gov/regulations_policies/,* and navigate to the Rulemaking home page.

* * * * *

PART 404—PETITION AND RULEMAKING PROCEDURES

■ 5. The authority citation for part 404 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 6. The heading of part 404 is revised to read as set forth above.

■ 7. Remove the headings of subparts A and B.

■ 8. Revise § 404.1 to read as follows:

§ 404.1 Scope.

This part establishes procedures for issuing regulations and for filing a petition for waiver or petition for rulemaking to the Associate Administrator for Commercial Space Transportation.

■ 9. Amend § 404.3 by revising the section heading and paragraphs (a)(3), (b), (c), (d), and adding new paragraphs (e), (f), and (g) to read as follows:

§ 404.3 General.

(a) * * *

(3) Waive the requirement for a license, except as provided in § 404.7(b) of this part.

(b) A petition filed under this section may request, under § 413.9 of this chapter, that the Associate Administrator withhold certain trade secrets or proprietary commercial or financial data from public disclosure.

(c) Each petitioner filing under this section must:

(1) For electronic submission, send one copy of the petition by email to the Office of Commercial Space Transportation at *ASTpetition@faa.gov;* or

(2) For paper submission, send the petition to the Office of Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Room 331, Washington, DC 20591.

(d) Each petition filed under this section must include the petitioner's name, mailing address, telephone number and any other contact information, such as an email address or a fax number.

(e) *Notification.* When the Associate Administrator determines that a petition should be granted or denied, the Associate Administrator notifies the petitioner of the Associate Administrator's action and the reasons supporting the action.

(f) *Reconsideration.* Any person may petition the FAA to reconsider a denial of a petition the person filed. The petitioner must send a request for reconsideration within 60 days after being notified of the denial to the same address to which the original petition was filed. For the FAA to accept the reconsideration request, the petitioner must show—

(1) There is a significant additional fact and the reason it was not included in the original petition;

(2) The FAA made an important factual error in its denial of the original petition; or

(3) The denial is not in accordance with the applicable law and regulations.

(g) *Public hearing.* No public hearing, argument or other proceeding is held on a petition before its disposition under this section.

■ 10. Revise § 404.5 to read as follows:

§ 404.5 Filing a petition for waiver.

A petition for waiver must be submitted at least 60 days before the proposed effective date of the waiver unless the petitioner shows good cause for later submission in the petition, and the petition for waiver must—

(a) Include the specific section or sections of 14 CFR chapter III from which the petitioner seeks relief;

(b) Include the extent of the relief sought and the reason the relief is being sought;

(c) Include any facts, views, and data available to the petitioner to support the waiver request; and

(d) Show why granting the request for relief is in the public interest and will not jeopardize the public health and safety, safety of property, and national security and foreign policy interests of the United States.

■ 11. Add new § 404.7 to read as follows:

§ 404.7 Action on a petition for waiver.

(a) *Grant of waiver.* The Associate Administrator may grant a waiver, except as provided in paragraph (b) of this section, if the Associate Administrator determines that the waiver is in the public interest and will not jeopardize public health and safety, the safety or property, or any national security or foreign policy interest of the United States.

(b) The FAA may not grant a waiver that would permit the launch or reentry of a launch vehicle or a reentry vehicle without a license or permit if a human being will be on board.

(c) *Denial of waiver.* If the Associate Administrator determines that the petition does not justify granting a waiver, the Associate Administrator denies the petition.

■ 12. Add new § 404.9 to read as follows:

§ 404.9 Filing a petition for rulemaking.

A petition for rulemaking filed under this part must be made in accordance with 14 CFR 11.71.

■ 13. Revise § 404.11 to read as follows:

§ 404.11 Action on a petition for rulemaking.

The FAA will process petitions for rulemaking under this part in accordance with 14 CFR 11.73.

■ 14. Revise § 404.13 to read as follows:

§ 404.13 Rulemaking.

(a) The FAA's rulemaking procedures are located in subpart A chapter I, part 11 under the General, Written Comments, and Public Meetings and Other Proceedings headings.

(b) In addition to the rulemaking procedures referenced in paragraph (a) of this section, the provisions of §§ 404.17 and 404.19 of this subpart also apply.

§ 404.15 [Removed and Reserved]

■ 15. Remove and reserve § 404.15.

PART 405—COMPLIANCE AND ENFORCEMENT

■ 16. The authority citation for part 405 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 17. Amend part 405 by revising the part heading to read as set forth above.

PART 420—LICENSE TO OPERATE A LAUNCH SITE

■ 18. The authority citation for part 420 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 19. Revise § 420.1 to read as follows:

§ 420.1 General.

(a) *Scope.* This part prescribes the information and demonstrations that must be provided to the FAA as part of a license application, the bases for license approval, license terms and conditions, and post-licensing requirements with which a licensee shall comply to remain licensed. Requirements for preparing a license application are contained in part 413 of this subchapter.

(b) *Equivalent level of safety.* Each requirement of this part applies unless the applicant or licensee clearly and convincingly demonstrates that an alternative approach provides an equivalent level of safety to the requirement of this part.

■ 20. Amend § 420.23 by revising paragraphs (a)(3), (b)(4), and (c)(2), and removing paragraph (c)(3) to read as follows:

§ 420.23 Launch site location review—flight corridor.

(a) * * *

(3) Uses one of the methodologies provided in appendix A or B of this part.

(b) * * *

(4) Uses one of the methodologies provided in appendices A or B to this part.

(c) * * *

(2) An applicant shall base its analysis on an unguided suborbital launch vehicle whose final launch vehicle stage apogee represents the intended use of the launch point.

* * * * *

■ 21. Amend § 420.25 by revising paragraph (a) to read as follows:

§ 420.25 Launch site location review—risk analysis.

(a) If a flight corridor or impact dispersion area defined by § 420.23 contains a populated area, the applicant shall estimate the casualty expectation associated with the flight corridor or impact dispersion area. An applicant shall use the methodology provided in appendix C to this part for guided orbital or suborbital expendable launch vehicles and appendix D for unguided suborbital launch vehicles.

* * * * *

PART 431—LAUNCH AND REENTRY OF A REUSABLE LAUNCH VEHICLE (RLV)

■ 22. The authority citation for part 431 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 23. Revise § 431.1 to read as follows:

§ 431.1 General.

(a) *Scope.* This part prescribes requirements for obtaining a reusable launch vehicle (RLV) mission license and post-licensing requirements with which a licensee must comply to remain licensed. Requirements for preparing a license application are contained in part 413 of this subchapter.

(b) *Equivalent level of safety.* Each requirement of this part applies unless the applicant or licensee clearly and convincingly demonstrates that an alternative approach provides an equivalent level of safety to the requirement of this part.

PART 435—REENTRY OF A REENTRY VEHICLE OTHER THAN A REUSABLE LAUNCH VEHICLE (RLV)

■ 24. The authority citation for part 435 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 25. Revise § 435.1 to read as follows:

§ 435.1 General.

(a) *Scope.* This part prescribes requirements for obtaining a license to reenter a reentry vehicle other than a reusable launch vehicle (RLV), and post-licensing requirements with which a licensee must comply to remain licensed. Requirements for preparing a license application are contained in part 413 of this subchapter.

(b) *Equivalent level of safety.* Each requirement of this part applies unless the applicant or licensee clearly and convincingly demonstrates that an alternative approach provides an equivalent level of safety to the requirement of this part.

PART 437—EXPERIMENTAL PERMITS

■ 26. The authority citation for part 437 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 27. Revise § 437.1 to read as follows:

§ 437.1 Scope and organization of this part.

(a) *Scope.* This part prescribes requirements for obtaining an experimental permit. It also prescribes post-permitting requirements with which a permittee must comply to maintain its permit. Part 413 of this subchapter contains procedures for applying for an experimental permit.

(b) *Equivalent level of safety.* Each requirement of this part applies unless the applicant or permittee clearly and convincingly demonstrates that an alternative approach provides an equivalent level of safety to the requirement of this part.

(c) *Organization of this part.* Subpart A contains general information about an experimental permit. Subpart B contains requirements to obtain an experimental permit. Subpart C contains the safety requirements with which a permittee must comply while conducting permitted activities. Subpart D contains terms and conditions of an experimental permit.

■ 28. Amend § 437.65 by revising paragraph (b) to read as follows:

§ 437.65 Collision avoidance analysis.

* * * * *

(b) The collision avoidance analysis must establish each period during which a permittee may not initiate flight to ensure that a permitted vehicle and any jettisoned components do not pass closer than 200 kilometers to a manned or mannable orbital object.

PART 460—HUMAN SPACE FLIGHT REQUIREMENTS

■ 29. The authority citation for part 460 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 30. Amend § 460.5 by revising paragraph (d) to read as follows:

§ 460.5 Crew qualifications and training.

* * * * *

(d) A pilot or a remote operator may demonstrate an equivalent level of safety to paragraph (c)(1) of this section through the license or permit process.

* * * * *

Issued under authority provided by 49 U.S.C. 106(f) and (g), 44701(a), 44703 and 51 U.S.C. 50901–50923 in Washington, DC, on May 16, 2016.

George Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2016–12129 Filed 5–31–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6983; Directorate Identifier 2016–CE–012–AD]

RIN 2120–AA64

Airworthiness Directives; RUAG Aerospace Services GmbH Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for RUAG Aerospace Services GmbH Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 airplanes that would supersede AD 2009–13–04. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as excessive wear on the guide pin of the power lever or condition lever which could cause functional loss of the flight idle stop. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by July 18, 2016.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact RUAG Aerospace Services GmbH, Dornier 228 Customer Support, P.O. Box 1253, 82231 Wessling, Federal Republic of Germany, telephone: +49 (0) 8153–30–2280; fax: +49 (0) 8153–30–3030; email: *custsupport.dorner228@ruag.com;* Internet: *http://www.ruag.com/.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6983; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4123; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–6983; Directorate Identifier 2016–CE–012–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On June 10, 2009, we issued AD 2009–13–04, Amendment 39–15943 (74 FR 29116; June 19, 2009) (''AD 2009–13–04''). AD 2009–13–04 required actions intended to address an unsafe condition on RUAG Aerospace Services GmbH Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 airplanes and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country.

Since we issued AD 2009–13–04, further analysis has determined that the inspection interval in cases of no pin replacement can be extended.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2009–0031R1, dated March 29, 2016 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Excessive wear on a guide pin of a power lever was detected during inspections. The failure of a power lever or condition lever guide pin could cause functional loss of the flight idle stop. This condition, if not corrected, could lead to inadvertent activation of the beta mode in flight, possibly resulting in loss of control of the aeroplane.
>
> Prompted by this finding, RUAG issued Alert Service Bulletin (ASB) ASB–228–279 to provide inspection instructions. Consequently, EASA issued AD 2009–0031 to require repetitive detailed inspections of the guide pins of the power levers and condition levers, and replacement of any pin that exceeds the allowable wear-limits.
>
> Since that AD was issued, further analysis has determined that the inspection interval, in case of no pin replacement, can be extended and RUAG published Revision 1 of ASB–228–279, which also included landings (expressed in this AD as flight cycles—FC) as a determining factor.
>
> For the reason described above, this AD revises EASA AD 2009–0031, amending the compliance times without changing the technical requirements, and also introducing some editorial changes for standardization.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6983.

Related Service Information Under 1 CFR Part 51

RUAG Aerospace Services GmbH has issued Dornier 228 Alert Service Bulletin No. ASB–228–279, revision 1, dated September 22, 2015. The service information describes procedures for repetitive inspections of the guide pins of the power and condition levers and replacement of those pins if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the

MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD will affect 18 products of U.S. registry. We also estimate that it would take about 20 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $10 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $30,780, or $1,710 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15943 (74 FR 29116; June 19, 2009), and adding the following new AD:

RUAG Aerospace Services GmbH: Docket No. FAA–2016–6983; Directorate Identifier 2016–CE–012–AD.

(a) Comments Due Date

We must receive comments by July 18, 2016.

(b) Affected ADs

This AD replaces 2009–13–04, Amendment 39–15943 (74 FR 29116; June 19, 2009) (''AD 2009–13–04'').

(c) Applicability

This AD applies to RUAG Aerospace Services GmbH Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 76: Engine Controls.

(e) Reason

This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as excessive wear on the guide pin of the power lever or condition lever which could cause functional loss of the flight idle stop. The total loss of the pin could cause loss of the flight idle stop and lead to inadvertent activation of the beta mode in flight, resulting in possible loss of control. We are issuing this proposed AD to amend the compliance times of the guide pin inspections.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) through (f)(4) of this AD based on a compliance time of hours time-in-service (TIS) or flight cycles, whichever occurs first:

(1) *For throttle box assemblies with less than 9,600 hours TIS or 9,600 flight cycles since installed:* Inspect the guide pins of the power and condition levers for excessive wear following the Accomplishment Instructions in paragraph 2 of Dornier 228 Alert Service Bulletin No. ASB–228–279, revision 1, dated September 22, 2015, at the following times:

(i) Initially unless already done within the last 1,200 hours TIS or 1,200 flight cycles as of July 24, 2009 (the effective date retained from AD 2009–13–04), upon accumulating 9,600 hours TIS or 9,600 flight cycles, or within the next 100 hours TIS or 100 flight cycles after July 24, 2009 (the effective date retained from AD 2009–13–04), whichever occurs later, inspect the guide pins of the power and condition levers for excessive wear; and

(ii) Repetitively thereafter within 4,800 hours TIS or 4,800 flight cycles since any previous inspection in which the power and condition levers guide pins were not replaced or within 9,600 hours TIS or 9,600 flight cycles, whichever occurs first since the previous inspection in which the power and condition levers guide pins were replaced.

(2) *For throttle box assemblies with 9,600 hours TIS or 9,600 flight cycles or more but less than 13,200 hours TIS or 13,200 flight cycles since installed:* Inspect the guide pins of the power and condition levers for excessive wear within the next 1,200 hours TIS or 1,200 flight cycles after July 24, 2009 (the effective date retained from AD 2009–13–04) following the Accomplishment Instructions in paragraph 2 of Dornier 228 Alert Service Bulletin No. ASB–228–279, revision 1, dated September 22, 2015; and

(i) Repetitively inspect the guide pins of the power and condition levers for excessive wear thereafter within 4,800 hours TIS or 4,800 flight cycles since any previous inspection in which the power and condition levers guide pins were not replaced; or

(ii) Repetitively inspect the guide pins of the power and condition levers for excessive wear within 9,600 hours TIS or 9,600 flight cycles, whichever occurs first, since the previous inspection in which the power and condition levers guide pins were replaced.

(3) *For throttle box assemblies with 13,200 hours TIS or 13,200 flight cycles or more since installed:* Within 100 hours TIS or flight cycles after July 24, 2009 (the effective date retained from AD 2009–13–04) inspect the guide pins of the power and condition levers for excessive wear following the Accomplishment Instructions in paragraph 2 of Dornier 228 Alert Service Bulletin No. ASB–228–279, revision 1, dated September 22, 2015, at the following times:

(i) Initially within the next 100 hours TIS or 100 flight cycles after July 24, 2009 (the effective date retained from AD 2009–13–04); and

(ii) Repetitively thereafter within 4,800 hours TIS or 4,800 flight cycles since any previous inspection in which the power and condition levers guide pins were not replaced or within 9,600 hours TIS or 9,600 flight cycles since the previous inspection in which the power and condition levers guide pins were replaced.

(4) *For all throttle box assemblies:* Before further flight after any inspection required in paragraph (f)(1), (f)(2), or (f)(3) of this AD, replace any guide pin that exceeds the acceptable wear-limits as defined in paragraph 4.1 of Dornier 228 Alert Service Bulletin No. ASB–228–279, revision 1, dated September 22, 2015.

Note 1 to paragraph (f)(1), (f)(2) and (f)(3) of this AD: If the flight cycles or hours TIS of the throttle box assembly is unknown, use the hours TIS of the airplane to determine the compliance time for the inspection.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4123; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2009–0031R1, dated March 29, 2016, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6983. For service information related to this AD, contact RUAG Aerospace Services GmbH, Dornier 228 Customer Support, P.O. Box 1253, 82231 Wessling, Federal Republic of Germany, telephone: +49 (0) 8153–30–2280; fax: +49 (0) 8153–30–3030; email: *custsupport.dorner228@ruag.com;* Internet: *http://www.ruag.com/.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on May 20, 2016.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–12609 Filed 5–31–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6895; Directorate Identifier 2015–NM–068–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Fokker Services B.V. Model F.28 airplanes. This proposed AD prompted by reports indicating that the main landing gear (MLG) could not be extended and locked down during approach. This proposed AD would require a detailed inspection of the restrictor check valve filter screens to detect any degraded or failed filter screens, and installation of serviceable parts. We are proposing this AD to detect and correct any degraded or failed filter screens. This condition, if not corrected, could prevent MLG extension and lock-down and result in an emergency landing with consequent injury to occupants and damage to the airplane.

DATES: We must receive comments on this proposed AD by July 18, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, 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.

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–2016–6895; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: 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:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–6895; Directorate Identifier 2015–NM–068–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0077, dated May 6, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Fokker Services B.V. Model F.28 airplanes. The MCAI states:

Two occurrences were reported concerning two different aeroplanes, where during approach, after selecting landing gear down, one of the main landing gears (MLG) could not be extended and locked down. In both cases, subsequent investigation revealed that the filter screen of the corresponding restrictor check valve (integrated in a hydraulic hose assembly) was broken, and debris inside the restrictor check valve was blocking the return flow from the affected MLG actuator. Additional inspection of the fleet of the operator involved revealed more damaged or failed filter screens.

This condition, if not detected and corrected, could prevent MLG extension and lock-down, possibly resulting in an emergency landing with consequent damage to the aeroplane and injury to occupants.

To address this unsafe condition, Fokker Services published SBF28–32–164 and SBF100–32–166 to provide instructions for removal of the affected hydraulic hoses (including the restrictor check valve) to be inspected in-shop, and for installation of serviceable parts. Fokker Services also published Component SB CSB–32–026 to provide those in-shop inspection instructions to detect any damaged filter screen.

For the reasons described above, this [EASA] AD requires a onetime removal of the landing gear hydraulic hoses for the purpose of an in-shop inspection of the affected restrictor check valves filter screens and, depending on findings, re-installation, or replacement of the affected hose(s) with a serviceable part.

This [EASA] AD is considered to be an interim action to detect any degraded or failed filter screens and remove them from service and to collect additional data; further [EASA] AD action may follow. More information on this subject can be found in Fokker Services All Operators Messages AOF28.041 and AOF100.189#02.

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–2016–6895.

Related Service Information Under 1 CFR Part 51

We reviewed Fokker Services B.V. has issued the following service information, which describe procedures for the replacement of hydraulic hose assemblies.

- Fokker Service Bulletin SBF28–32–164, dated January 14, 2015.
- Fokker Service Bulletin SBF100–32–166, dated January 14, 2015.

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 and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type design.

Costs of Compliance

We estimate that this proposed AD affects 8 airplanes of U.S. registry.

We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD, and 1 work-hour per product for reporting. The average labor rate is $85 per work-hour. Required parts would cost about $3,100 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $26,160, or $3,270 per product.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this proposed AD is 2120–0056. The paperwork cost associated with this proposed AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this proposed AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Services B.V.: Docket No. FAA–2016–6895; Directorate Identifier 2015–NM–068–AD.

(a) Comments Due Date

We must receive comments by July 18, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Fokker Services B.V. airplanes, certificated in any category, as identified in paragraphs (c)(l) and (c)(2) of this AD.

(1) Model F.28 Mark 0070 and Mark 0100 airplanes, all serial numbers (S/Ns).

(2) Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes, S/Ns 11003 through 11110 inclusive and S/N 11992, modified in service as specified in Fokker Service Bulletin SBF28–32–123; and S/Ns 11111 through 11241 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Reason

This AD was prompted by reports indicating that the main landing gear (MLG) could not be extended and locked down during approach. We are issuing this AD to detect and correct any degraded or failed filter screens. This condition, if not corrected, could prevent MLG extension and lock-down and result in an emergency landing with consequent injury to occupants and damage to the airplane.

(f) Compliance

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

(g) Inspection

Within 18 months after the effective date of this AD, do a detailed inspection of the restrictor check valve filter screens to detect any degraded or failed filter screens including dents and missing wire, and install serviceable parts (hydraulic hose assemblies), in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF28–32–164, dated January 14, 2015 (for Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes); or SBF100–32–166, dated January 14, 2015 (for Model F.28 Mark 0070 and 0100 airplanes); as applicable. Any affected hydraulic hose assembly must be replaced before further flight after the inspection.

(h) Serviceable Part

For the purpose of this AD, a serviceable part is a part number (P/N) 97867–1 or P/N 97867–3 hydraulic hose assembly (including the restrictor check valve) that has not previously been installed on an airplane, or a P/N 97867–1 or P/N 97867–3 hydraulic hose assembly (including the restrictor check valve) that has passed an inspection as specified in Fokker Services Component Service Bulletin CSB–32–026.

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install a replacement P/N 97867–1 or P/N 97867–3 hydraulic hose assembly on an airplane, unless the hydraulic hose assembly is a serviceable part as defined in paragraph (h) of this AD.

(j) Reporting Requirements

At the applicable time specified in paragraph (j)(l) or (j)(2) of this AD, submit a report of the results (including no findings) of the inspection required by paragraph (g) of this AD. Send the report to Fokker Services B.V., Technical Services, Service Engineering, P.O. Box 1357, 2130 EL Hoofddorp, The Netherlands, email *technicalservices@fokker.com*. The report must include the type of damage found and airplane flight cycles and also any no findings.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(k) 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.

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive 2015–0077, dated May 6, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6895.

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

Issued in Renton, Washington, on May 17, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–12521 Filed 5–31–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

[Docket No. DOT–OST–2015–0246]

RIN 2105–AE12

Nondiscrimination on the Basis of Disability in Air Travel: Negotiated Rulemaking Committee Second Meeting

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of second public meeting of advisory committee.

SUMMARY: This notice announces the second meeting of the Advisory Committee on Accessible Air Transportation (ACCESS Advisory Committee).

DATES: The second meeting of the ACCESS Advisory Committee will be held on June 14 and 15, 2016, from 9 a.m. to 5 p.m., Eastern Daylight Time.

ADDRESSES: The meeting will be held at the Capital Hilton, 1001 16th Street NW., Washington DC 20036, in the Congressional Room. Attendance is open to the public up to the room's capacity of 150 attendees. Since space is limited, any member of the general public who plans to attend this meeting must notify the registration contact identified below no later than June 7, 2016.

FOR FURTHER INFORMATION CONTACT: To register to attend the meeting, please contact Alyssa Battle (*Abattle@linkvisum.com;* 703–442–4575 extension 127) or Kyle Illgenfritz (*kilgenfritz@linkvisum.com;* 703–442–4575 extension 128). For other information, please contact Livaughn Chapman or Vinh Nguyen, Office of the Aviation Enforcement and Proceedings, U.S. Department of Transportation, by email at *livaughn.chapman@dot.gov* or *vinh.nguyen@dot.gov* or by telephone at 202–366–9342.

SUPPLEMENTARY INFORMATION:

I. Second Public Meeting of the ACCESS Committee

The second meeting of the ACCESS Advisory Committee will be held on June 14 and 15, 2016, from 9:00 a.m. to 5:00 p.m., Eastern Daylight Time. The meeting will be held at the Capital Hilton, 1001 16th Street NW., Washington DC 20036, in the Congressional Room. At the meeting, the ACCESS Advisory Committee will continue to address whether to require accessible inflight entertainment (IFE) and strengthen accessibility requirements for other in-flight communications, whether to require an accessible lavatory on new single-aisle aircraft over a certain size, and whether to amend the definition of ''service animals'' that may accompany passengers with a disability on a flight. This meeting will include reports from working groups formed to address the three issues listed above. Prior to the meeting, the agenda will be available on the ACCESS Advisory Committee's Web site, *www.transportation.gov/access-advisory-committee.* The agenda will also be posted to the Federal Docket Management System (FDMC), Docket Number DOT–OST–2015–0246. Information on how to access advisory committee documents via the FDMC is contained in Section III, below.

The meeting will be open to the public. Attendance will be limited by the size of the meeting room (maximum 150 attendees). Because space is limited, we ask that any member of the public who plans to attend the meeting notify the registration contact, Alyssa Battle (*Abattle@linkvisum.com;* 703–442–4575 extension 127) or Kyle Illgenfritz (*kilgenfritz@linkvisum.com;* 703–442–4575 extension 128) at Linkvisum, no later than June 7, 2016. At the discretion of the facilitator and the Committee and time permitting, members of the public are invited to contribute to the discussion and provide oral comments.

II. Submitting Written Comments

Members of the public may submit written comments on the topics to be considered during the meeting by June 7, 2016, to FDMC, Docket Number DOT–OST–2015–0246. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. DOT recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that DOT can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, DOT–OST–2015–0246, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

III. Viewing Comments and Documents

To view comments and any documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov.* Enter the docket number, DOT–OST–2015–0246, in the keyword box, and click ''Search.'' Next, click the link to ''Open Docket Folder'' and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays.

IV. ACCESS Advisory Committee Charter

The ACCESS Advisory Committee is established by charter in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. Secretary of Transportation Anthony Foxx approved the ACCESS Advisory Committee charter on April 6, 2016. The committee's charter sets forth policies for the operation of the advisory committee and is available on the Department's Web site at *www.transportation.gov/office-general-counsel/negotiated-regulations/charter.*

V. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

VI. Future Committee Meetings

DOT anticipates that the ACCESS Advisory Committee will have four additional two-day meetings in Washington DC The meetings are tentatively scheduled for following dates: third meeting, July 11–12; fourth meeting, August 16–17; fifth meeting, September 22–23, and the sixth and final meeting, October 13–14. Notices of all future meetings will be published in the **Federal Register** at least 15 calendar days prior to each meeting.

Notice of this meeting is being provided in accordance with the Federal Advisory Committee Act and the General Services Administration regulations covering management of Federal advisory committees. *See* 41 CFR part 102–3.

Issued under the authority of delegation in 49 CFR 1.27(n).

Dated: May 25, 2016.

Judith S. Kaleta,

Acting General Counsel.

[FR Doc. 2016–12882 Filed 5–31–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0173]

RIN 1625–AA09

Drawbridge Operation Regulation; Hackensack River, Jersey City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily modify the operating schedule that governs the Route 1 & 9 (Lincoln Highway) Bridge across the Hackensack River, mile 2.0, Jersey City, New Jersey. The bridge owner, New Jersey Department of Transportation, submitted a request to restrict bridge openings during the morning and afternoon rush hour periods to alleviate traffic congestion resulting from area roadway closures. It is expected that this change to the regulations would provide relief to vehicular traffic while continuing to meet the reasonable needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before August 1, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0173 using Federal eRulemaking Portal at *http://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the Supplementary Information section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Joe M. Arca, Project Officer, First Coast Guard District, telephone (212) 514–4336, email *joe.m.arca@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive order
FR Federal Register
NPRM Notice of proposed rulemaking
SNPRM Supplemental notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code

II. Background, Purpose and Legal Basis

The Route 1 & 9 (Lincoln Highway) Bridge at mile 2.0, across the Hackensack River between Kearny and Jersey City, New Jersey, has a vertical clearance of 40 feet at mean high water and 45 feet at mean low water. The waterway users include recreational and commercial vessels.

The owner of the bridge, New Jersey Department of Transportation, submitted a request to the Coast Guard to temporarily change the drawbridge operating regulations.

The purpose of this temporary rule is to help provide relief from vehicular traffic congestion during the morning and afternoon vehicular rush hour periods due to local construction detours. Vehicular traffic on the bridge has increased due to additional traffic detoured from the adjacent Pulaski Skyway Bridge, which is currently under construction to replace its deck. Construction on the Pulaski Skyway Bridge is expected to continue through September 2017.

The existing regulations require the bridge to open on signal at all times. Under this proposed temporary rule the Route 1 & 9 (Lincoln Highway) Bridge would open on signal, except that the draw need not open for the passage of vessel traffic between 6 a.m. and 10 a.m. and 2 p.m. and 6 p.m., Monday through Friday, except holidays.

Tide dependent deep draft vessels may request bridge openings during the rush hour closure periods provided that at least a twelve hour advance notice is given by calling the number posted at the bridge, which is (973) 589–5143.

III. Discussion of Proposed Rule

The Coast Guard proposes to change the drawbridge operation regulations at 33 CFR 117.723 by adding paragraph (k). This change will facilitate additional vehicular traffic detoured from the Pulaski Skyway Bridge which is expected to be under construction through September 30, 2017.

The Coast Guard believes it is reasonable to allow the Route 1 & 9 (Lincoln Highway) Bridge to remain in the closed position during the morning and afternoon rush hours to accommodate the anticipated 40,000 vehicles, daily, detoured from the Pulaski Skyway Bridge. Given the additional detoured vehicular traffic, if the Route 1 & 9 Bridge opened frequently for vessel traffic during the morning and afternoon rush hours, it would likely result in significant vehicular traffic delays and could negatively impact the ability of emergency vehicles to respond.

Review of the bridge logs in the last three years shows that the bridge openings average 25 per month.

Tide dependent deep draft vessels may request bridge openings between 6 a.m. and 10 a.m. and between 2 p.m. and 6 p.m. provided that at least a twelve hour advance notice is given by calling the number posted at the bridge. The twelve hour advance notice requirement for bridge openings during the rush hour periods gives tide dependent deep draft vessels ample time to plan and optimize their transits through the waterway, and also gives the bridge owner the opportunity to alert commuters of any expected delays caused by pending bridge openings.

Other vessels can still transit the bridge outside the rush hours. It is our opinion that this temporary rule meets the reasonable needs of marine and vehicular traffic.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the ability that tide dependent deep draft vessels can still transit the bridge given advanced notice and vessels that are not tide dependant can still transit outside the closure hours. We believe that the proposal to change the drawbridge operation regulations at 33 CFR 117.723 to allow the bridge owner to keep the Route 1 & 9 (Lincoln Highway) Bridge in the closed position during the morning and afternoon rush hour periods as stated in Section III above, will meet the reasonable needs of navigation.

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 proposed rule would not have a significant economic impact on a substantial number of small entities.

The Bridge provides 40 feet of vertical clearance at mean high water that should accommodate all the present vessel traffic except deep draft vessels. The bridge will continue to open on signal for commercial deep draft vessel traffic provided at least a twelve hour advance notice is given. While some

owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A., above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Government

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

Also, this proposed temporary 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. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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 will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

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

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed 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. 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 eRulemaking 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 instructions.

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 notice and all public comments, are 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.

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. Through September 30, 2017, in § 117.723, add paragraph (k) to read as follows:

§ 117.723 Hackensack River.

* * * * *

(k) The draw of the Route 1 & 9 (Lincoln Highway) Bridge, mile 2.0, between Kearny and Jersey City, shall open on signal, except that the draw need not open for the passage of vessel traffic between 6 a.m. and 10 a.m. and between 2 p.m. and 6 p.m., Monday through Friday, except holidays.

Tide dependent deep draft vessels may request bridge openings between 6 a.m. and 10 a.m. and between 2 p.m. and 6 p.m. provided that at least a

twelve hour advance notice is given by calling the number posted at the bridge.

Dated: May 18, 2016.

K.C. Kiefer,

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

[FR Doc. 2016–12929 Filed 5–31–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2015–0042; FRL–9947–09–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Second Ten-Year PM_{10} Maintenance Plan for Lamar

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Colorado. On May 13, 2013, the Governor of Colorado's designee submitted to the EPA a revised maintenance plan for the Lamar area for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM_{10}). EPA is proposing to approve the revised maintenance plan with the exception of one aspect of the plan's contingency measures.

DATES: Written comments must be received on or before July 1, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2015–0042 at *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.*

FOR FURTHER INFORMATION CONTACT: James Hou, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6210, *hou.james@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. General Information
II. Background
III. What was the State's process?
IV. EPA's Evaluation of the Revised Lamar PM_{10} Maintenance Plan
V. Proposed Action
VI. Statutory and Executive Order Reviews

I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting Confidential Business Information (CBI).* Do not submit CBI to EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** volume, date, and page number);
- Follow directions and organize your comments;
- Explain why you agree or disagree;
- Suggest alternatives and substitute language for your requested changes;
- Describe any assumptions and provide any technical information and/or data that you used;
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
- Provide specific examples to illustrate your concerns, and suggest alternatives;
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and,
- Make sure to submit your comments by the comment period deadline identified.

II. Background

The Lamar area was designated nonattainment for PM_{10} and classified as moderate by operation of law upon enactment of the CAA Amendments of 1990. See 56 FR 56694, 56705, 56736 (November 6, 1991). EPA approved Colorado's nonattainment area SIP for the Lamar PM_{10} nonattainment area on June 9, 1994 (59 FR 29732).

On July 31, 2002, the Governor of Colorado submitted a request to EPA to redesignate the Lamar moderate PM_{10} nonattainment area to attainment for the 1987 PM_{10} NAAQS. Along with this request, the State submitted a maintenance plan, which demonstrated that the area was expected to remain in attainment of the PM_{10} NAAQS through 2015. EPA approved the Lamar maintenance plan and redesignation to attainment on October 25, 2005 (70 FR 61563).

Eight years after an area is redesignated to attainment, the CAA section 175A(b) requires the state to submit a subsequent maintenance plan to the EPA, covering a second 10-year period.[1] This second 10-year maintenance plan must demonstrate continued maintenance of the applicable NAAQS during this second 10-year period. To fulfill this requirement of the Act, the Governor of Colorado's designee submitted the second 10-year update of the PM_{10} maintenance plan to the EPA on May 13, 2013 (hereafter, ''revised Lamar PM_{10} Maintenance Plan'').

As described in 40 CFR 50.6, the level of the national primary and secondary 24-hour ambient air quality standards for PM_{10} is 150 micrograms per cubic meter ($\mu g/m^3$). An area attains the 24-hour PM_{10} standard when the expected number of days per calendar year with a 24-hour concentration in excess of the standard (referred to herein as

[1] In this case, the initial maintenance period described in CAA section 175A(a) was required to extend for at least 10 years after the redesignation to attainment, which was effective on November 25, 2005. See 70 FR 61563. Therefore, the first maintenance plan was required to show maintenance through 2015. CAA section 175A(b) requires that the second 10-year maintenance plan maintain the NAAQS for ''10 years after the expiration of the 10-year period referred to in [section 175A(a)].'' Thus, for the Lamar area, the second 10-year period ends in 2025.

''exceedance''), as determined in accordance with 40 CFR part 50, appendix K, is equal to or less than one, averaged over a three-year period.[2] See 40 CFR 50.6 and 40 CFR part 50, appendix K.

Table 1 below shows the maximum monitored 24-hour PM_{10} values for the Lamar PM_{10} maintenance area for 2001 through 2015, excluding 34 values the State flagged as being caused by exceptional events. The table reflects that most of the values for the Lamar area were below the PM_{10} NAAQS of 150 μg/m³. In 2008 the area experienced an exceedance measured at 367 μg/m³; in 2009 exceedances measured at 233 μg/m³ and 171 μg/m³; and in 2015 an exceedance measured at 423μg/m³. Notably, the 2015 exceedance was flagged as an exceptional event due to natural high winds, but concurrence was not requested by Colorado at the time of this proposal. This exceedance did not cause a violation of the PM_{10} NAAQS.

TABLE 1—LAMAR PM_{10} MAXIMUM 24-HOUR VALUES

[Based on data from power plant and municipal complex sites, AQS identification number 08–099–0001 and 08–099–0002]

Year	Maximum concentration (μg/m³)	2nd maximum concentration (μg/m³)	Monitoring site
2001	133	111	Power Plant.
2002	141	125	Power Plant.
2003	132	120	Power Plant.
2004	93	82	Municipal Complex.
2005	116	110	Power Plant.
2006	136	127	Power Plant
2007	93	82	Power Plant.
2008	367	123	Power Plant.
2009	233	171	Power Plant.
2010	136	131	Power Plant.
2011	122	115	Municipal Complex.
2012	147	133	Power Plant.
2013	147	141	Municipal Complex.
2014	129	102	Municipal Complex.
2015	423	94	Municipal Complex.

40 CFR 50.1(j) defines an exceptional event as an event which affects air quality, is not reasonably controllable or preventable, is an event caused by human activity that is unlikely to recur at a particular location or a natural event, and is determined by the Administrator in accordance with 40 CFR 50.14 to be an exceptional event. Exceptional events do not include stagnation of air masses or meteorological inversions, meteorological events involving high temperatures or lack of precipitation, or air pollution relating to source noncompliance. 40 CFR 50.14(b) states that the EPA shall exclude data from use in determinations of exceedances and NAAQS violations where a state demonstrates to the EPA's satisfaction that an exceptional event caused a specific air pollution concentration in excess of one or more NAAQS at a particular air quality monitoring location and otherwise satisfies the requirements of section 50.14.

Throughout the years 2001 to 2014, the Lamar area monitors have recorded several exceedances of the PM_{10} NAAQS that have resulted from natural high wind exceptional events. The Colorado Air Pollution Control Division (APCD) flagged a total of 55 exceedances as exceptional events in the EPA's Air Quality System, which is the EPA's repository for ambient air quality data. Of these 55 flagged exceedances, the EPA has concurred on 34. Table 2 summarizes the exceptional events exceedances that the EPA has concurred on, due to the State's successful demonstrations that the exceedances were caused by natural high wind exceptional events. Thus, we are proposing to exclude 34 flagged exceedances from use in determining that Lamar continues to attain the 24-hour PM_{10} NAAQS. See 40 CFR 50.14(b) and (c)(2)(ii).

TABLE 2—LAMAR PM_{10} EPA APPROVED EXCEPTIONAL EVENTS

[Based on data from power plant and municipal complex sites, AQS identification number 08–099–0001 and 08–099–0002]

Event date	Monitoring site	24-hr PM_{10} Value (μg/m³)	Data flag
02/09/02	Power Plant	246	High Wind.
03/07/02	Power Plant	246	High Wind.
05/21/02	Power Plant	196	High Wind.
05/21/02	Municipal	183	High Wind.
06/20/02	Power Plant	181	High Wind.
06/20/02	Municipal	162	High Wind.
04/05/05	Power Plant	203	High Wind.
04/05/05	Municipal	164	High Wind.

[2] An exceedance is defined as a daily value that is above the level of the 24-hour standard, 150 μg/m³, after rounding to the nearest 10 μg/m³ (*i.e.,* values ending in five or greater are to be rounded up). Thus, a recorded value of 154 μg/m³ would not be an exceedance since it would be rounded to 150 μg/m³; whereas, a recorded value of 155 μg/m³ would be an exceedance since it would be rounded to 160 μg/m³. See 40 CFR part 50, appendix K, section 1.0.

TABLE 2—LAMAR PM_{10} EPA APPROVED EXCEPTIONAL EVENTS—Continued

[Based on data from power plant and municipal complex sites, AQS identification number 08–099–0001 and 08–099–0002]

Event date	Monitoring site	24-hr PM_{10} Value ($\mu g/m^3$)	Data flag
05/22/08	Power Plant	227	High Wind.
01/19/09	Power Plant	174	High Wind.
01/19/09	Municipal	173	High Wind.
04/03/11	Power Plant	169	High Wind.
11/05/11	Power Plant	192	High Wind.
03/18/12	Municipal	242	High Wind.
04/2/12	Municipal	163	High Wind.
02/08/13	Municipal	159	High Wind.
04/09/13	Municipal	1220	High Wind.
05/01/13	Municipal	207	High Wind.
05/24/13	Municipal	406	High Wind.
05/25/13	Municipal	168	High Wind.
05/28/13	Municipal	201	High Wind.
12/24/13	Municipal	168	High Wind.
02/16/14	Municipal	153	High Wind.
03/11/14	Municipal	387	High Wind.
03/15/14	Municipal	173	High Wind.
03/18/14	Municipal	299	High Wind.
03/29/14	Municipal	263	High Wind.
03/30/14	Municipal	264	High Wind.
03/31/14	Municipal	223	High Wind.
04/23/14	Municipal	350	High Wind.
04/29/14	Municipal	321	High Wind.
11/10/14	Municipal	298	High Wind.
04/01/15	Municipal	253	High Wind.
04/02/15	Municipal	419	High Wind.

Table 3 below shows the estimated number of exceedances for the Lamar PM_{10} maintenance area for the three-year periods of 2001 through 2003, 2002 through 2004, 2003 through 2005, 2004 through 2006, 2005 through 2007, 2006 through 2008, 2007 through 2009, 2008 through 2010, 2009 through 2011, 2010 through 2012, 2010 through 2013, 2012 through 2014, and 2013 through 2015. To attain the standard, the three-year average number of expected exceedances (values greater than 150 $\mu g/m^3$) must be less than or equal to one. The table reflects continuous attainment of the PM_{10} NAAQS.

TABLE 3—LAMAR PM_{10} ESTIMATED EXCEEDANCES

[Based on data from power plant and municipal complex sites, AQS identification number 08–099–0001 and 08–099–0002]

Design value period	3-Year estimated number of exceedances at power plant monitor	3-Year estimated number of exceedances at municipal complex monitor
2001–2003	0	0
2002–2004	0	0
2003–2005	0	0
2004–2006	0	0
2005–2007	0	0
2006–2008	0.3	0
2007–2009	1	0
2008–2010	1	0
2009–2011	0.7	0
2010–2012	0	0
2011–2013 [3]	NA	0
2012–2014 [3]	NA	0
2013–2015 [3]	NA	0.4

III. What was the State's process?

Section 110(a)(2) of the CAA requires that a state provide reasonable notice and public hearing before adopting a SIP revision and submitting it to the EPA.

The Colorado Air Quality Control Commission (AQCC) held a public hearing for the revised Lamar PM_{10} Maintenance Plan on December 20, 2012. The AQCC approved and adopted

[3] On November 21, 2011, the State of Colorado requested the removal of the Power Plant monitor due to poor citing conditions, as well as serving as a redundant monitor to the Lamar Municipal PM_{10} monitoring site, which is located 0.5 miles to the southeast. On August 28, 2012 the EPA concurred with the request for removal of the Lamar Power Plant PM_{10} SLAMS site/sampler AQS ID:08–099–0001.

the revised Lamar PM_{10} Maintenance Plan during this hearing. The Governor's designee submitted the revised plan to the EPA on May 13, 2013.

We have evaluated the revised maintenance plan and have determined that the State met the requirements for reasonable public notice and public hearing under section 110(a)(2) of the CAA. On November 13, 2013, by operation of law under CAA section 110(k)(1)(B), the revised maintenance plan was deemed to have met the minimum ''completeness'' criteria found in 40 CFR part 51, appendix V.

IV. EPA's Evaluation of the Revised Lamar PM_{10} Maintenance Plan

The following are the key elements of a maintenance plan for PM_{10}: Emission Inventory, Maintenance Demonstration, Monitoring Network/Verification of Continued Attainment, Contingency Plan, and Transportation Conformity Requirements/Motor Vehicle Emission Budget for PM_{10}. Below, we describe our evaluation of these elements as they pertain to the revised Lamar PM_{10} Maintenance Plan.

A. Emission Inventory

The revised Lamar PM_{10} Maintenance Plan includes three inventories of daily PM_{10} emissions for the Lamar area, one for 2010 as the base year, one interim inventory for 2020, and one inventory for 2025 as the maintenance year. The APCD developed these emission inventories using the EPA-approved emissions modeling methods and updated transportation and demographics data. Each emission inventory lists estimated PM_{10} emissions for individual source categories within the Lamar PM_{10} maintenance area. A more detailed description of the 2010, 2020 and 2025 inventories and information on model assumptions and parameters for each source category are contained in the State's PM_{10} maintenance plan Technical Support Document (TSD). The inventories include the following source categories: Helicopters, construction, fuel combustion, railroads, structure fires, wood burning, paved road dust, unpaved road dust, non-road commercial equipment, non-road construction and mining equipment, non-road industrial equipment, non-road lawn and garden equipment (commercial), non-road lawn and garden equipment (residential), non-road railroad equipment, and highway vehicles. We find that Colorado has prepared adequate emission inventories for the area.

B. Maintenance Demonstration

The revised Lamar PM_{10} Maintenance Plan uses emissions roll-forward modeling to demonstrate maintenance of the 24-hour PM_{10} NAAQS through 2025. Using assumptions about the inventory source categories, the State applied the percent change in emissions for the relevant inventory source categories between 2010 and 2025 to ''roll-forward'' the baseline PM_{10} concentration. For example, the State determined that the projected growth of the emissions inventory from 2010 to 2025 is 4.8%. The growth factor was applied to the baseline design day PM_{10} concentration, less the background PM_{10} concentration, to obtain a projected PM_{10} concentration for the maintenance year. Using 2009 to 2011 data from the Power Plant Monitor and the Municipal Complex Monitor, the calculated PM_{10} maintenance concentration in the year 2025 are 140.2 $\mu g/m^3$ and 125.6 $\mu g/m^3$, respectively.

To account for new data acquired since the submission of the State's Plan, we evaluated the 2012–2014 data in AQS to determine whether maintenance would be demonstrated using a more recent design value as a starting point. Excluding the exceedances in 2012, 2013 and 2014 that were caused by high wind exceptional events, the EPA employed an upper tail data distribution curve fit method [4] and determined the 2012–2014 design value to be 137.7 $\mu g/m^3$. As noted, the State's emissions inventories contain emissions estimates for 2010, 2020, and 2025. An examination of these inventories reveals that total emissions in 2020 represent a point on a line of near linear growth from 2015 to 2025.

Acknowledging that the State's analysis is complete, we used a roll-forward analysis in order to estimate emissions growth from 2014 to 2025 and ensure that growth in emissions would result in PM_{10} remaining below the NAAQS. We did this to evaluate future maintenance in light of the somewhat higher 2012–2014 design value, compared to the 2009–2011 design value Colorado evaluated. Following the same approach as Colorado, we first removed the 21 $\mu g/m^3$ background concentration from the 137.7 $\mu g/m^3$ design value, which left 116.7 $\mu g/m^3$. Next, relying on the linear growth in emissions, we estimated 2014 emissions would grow 3.5 percent by 2025.[5] Using this factor, we projected the 116.7 $\mu g/m^3$ from 2014 forward to 2025 to arrive at a concentration of 120.8 $\mu g/m^3$. We then added the 21 $\mu g/m^3$ of background to this value to predict a total concentration in 2025 of 141.8 $\mu g/m^3$. This value is below the PM_{10} NAAQS of 150 $\mu g/m^3$ and, thus, is consistent with maintenance.

C. Monitoring Network/Verification of Continued Attainment

In the revised Lamar PM_{10} Maintenance Plan, the State commits to continue to operate an air quality monitoring network in accordance with 40 CFR part 58 and the EPA-approved Colorado Monitoring SIP Element to verify continued attainment of the PM_{10} NAAQS. This includes the continued operation of a PM_{10} monitor in the Lamar area, which the State will rely on to track PM_{10} emissions in the maintenance area. At the time of the State's submittal, the EPA had not approved the November 21, 2011 request for removal of the Lamar Power Plant monitoring site. On August 28, 2012, EPA approved this request, and the Lamar Power Plant monitoring site ceased operations on December 31, 2012. We are proposing to approve the State's commitment as satisfying the relevant requirements.

D. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of an area. To meet this requirement the State has identified contingency measures along with a schedule for the development and implementation of such measures. The revised Lamar PM_{10} Maintenance Plan indicates that, upon notification of an exceedance of the PM_{10} NAAQS, the APCD and local government staff in the Lamar area will develop appropriate contingency measures intended to prevent or correct a violation of the PM_{10} standard. Upon a violation, a public hearing process at the State and

[4] The PM_{10} SIP Development Guideline indicates that the table look-up method only provides an estimation of the PM_{10} design value, and that more accurate design values can be obtained through the upper tail data distribution curve fit method. Further information regarding the determination of the 2012–2014 design value can be found in the March 25, 2016 memo from Richard M. Payton to the Lamar PM_{10} Maintenance Plan Approval Docket.

[5] Total emissions in 2010 were 248.0 tons/year, while total emissions were projected to be 253.7 tons/year in 2020 and 259.9 tons/year in 2025; these values are nearly collinear. Updating the roll forward for growth from a 2014 monitored value to 2025 requires a projection of the growth in emissions from 2014 to 2025. Linear emissions growth from 2010 to 2014 is (259.9 tons/year − 248.0 tons/year)*(2014–2010)/(2025–2010), or 3.2 tons/year, bringing 2014 emissions to (248.0 + 3.2) = 251.2 tons/year. Growth from 2014 to 2025, therefore, is (259.9 tons/year − 251.2 tons/year)/251.2 tons/year * 100% = 3.5%.

local level will begin. The AQCC may endorse or approve local measures, or it may adopt State enforceable measures. The revised Lamar PM_{10} Maintenance Plan states that contingency measures will be adopted and fully implemented within one year of a violation.

The State identifies the following as potential contingency measures in the revised Lamar PM_{10} Maintenance Plan: (1) Increased street sweeping requirements; (2) additional road paving requirements; (3) more stringent street sand specifications; (4) wood burning restrictions; (5) expanded use of alternative de-icers; (6) re-establishing new source review permitting requirements for stationary sources; (7) controls at existing stationary sources; (8) transportation control measures designed to reduce vehicle miles traveled; and (9) other emission control measures appropriate for the area based on the following considerations: Cost effectiveness, PM_{10} emission reduction potential, economic and social concerns, and/or other factors.

We find that the contingency measures provided in the revised Lamar PM_{10} Maintenance Plan are sufficient and meet the requirements of section 175A(d) of the CAA.

E. Transportation Conformity Requirements: Motor Vehicle Emission Budget for PM_{10}

Transportation conformity is required by section 176(c) of the CAA. EPA's conformity rule at 40 CFR part 93 requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. To effectuate its purpose, the conformity rule requires a demonstration that emissions from the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with the motor vehicle emissions budget(s) (MVEB(s)) contained in a control strategy SIP revision or maintenance plan (40 CFR 93.101, 93.118, and 93.124). An MVEB is defined as the level of mobile source emissions of a pollutant relied upon in the attainment or maintenance demonstration to attain or maintain compliance with the NAAQS in the nonattainment or maintenance area. Further information concerning the EPA's interpretations regarding MVEBs can be found in the preamble to the EPA's November 24, 1993, transportation conformity rule (see 58 FR 62193–62196).

The revised Lamar PM_{10} Maintenance Plan contains a single MVEB of 764 lbs/day of PM_{10} for the year 2025, the maintenance year. Once the State submitted the revised plan with the 2025 MVEB to the EPA for approval, 40 CFR 93.118 required that the EPA determine whether the MVEB was adequate.

Our criteria for determining whether a SIP's MVEB is adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4), which was promulgated August 15, 1997 (see 62 FR 43780). Our process for determining adequacy is described in our July 1, 2004 Transportation Conformity Rule Amendments (see 69 FR 40004) and in relevant guidance.[6] We used these resources in making our adequacy determination described below.

On November 15, 2013 EPA announced the availability of the revised Lamar PM_{10} Maintenance Plan, and the PM_{10} MVEB, on the EPA's transportation conformity adequacy Web site. The EPA solicited public comment on the MVEB, and the public comment period closed on December 16, 2013. We did not receive any comments. This information is available at the EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm#lamar-co.*

By letter to the Colorado Department of Public Health and Environment dated January 23, 2014, the EPA found that the revised Lamar PM_{10} Maintenance Plan and the 2025 PM_{10} MVEB were adequate for transportation conformity purposes.[7]

According to 40 CFR 93.118(e)(1), the EPA-approved 2015 PM_{10} MVEB must continue to be used for analysis years 2015 through 2024 (as long as such years are within the timeframe of the transportation plan), unless the State elects to submit a SIP revision to revise the 2015 PM_{10} MVEB and the EPA approves the SIP revision. The revised Lamar PM_{10} Maintenance Plan did not revise the previously-approved 2015 PM_{10} MVEB nor establish a new MVEB for 2015. Accordingly, the MVEB ''. . . for the most recent prior year . . .'' (*i.e.,* 2015) from the original maintenance plan must continue to be used (see 40 CFR 93.118(b)(1)(ii) and (b)(2)(iv)).

We note that there is a considerable difference between the 2025 and 2015 budgets—764 lbs/day versus 7,534 lbs/day. This is largely an artifact of changes in the methods, models, and emission factors used to estimate mobile source emissions. The 2025 MVEB is consistent with the State's 2025 emissions inventory for vehicle exhaust and road dust, and, thus, is consistent with the State's maintenance demonstration for 2025.

The discrepancy between the 2015 and 2025 MVEBs is not a significant issue for several reasons. As a practical matter, the 2025 MVEB of 764 lbs/day of PM_{10} would be controlling for any conformity determination involving the relevant years because conformity would have to be shown to both the 2015 MVEB and the 2025 MVEB. Also, for any maintenance plan like the revised Lamar PM_{10} Maintenance Plan that only establishes a MVEB for the last year of the maintenance plan, 40 CFR 93.118(b)(2)(i) requires that the demonstration of consistency with the budget be accompanied by a qualitative finding that there are no factors that would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan. Therefore, when a conformity determination is prepared which assesses conformity for the years before 2025, the 2025 MVEB and the underlying assumptions supporting it would have to be considered. Finally, 40 CFR 93.110 requires the use of the latest planning assumptions in conformity determinations. Thus, the most current motor vehicle and road dust emission factors would need to be used, and we expect the analysis would show greatly reduced PM_{10} motor vehicle and road dust emissions from those calculated in the first maintenance plan. In view of the above, the EPA is proposing to approve the 2025 PM_{10} MVEB of 764 lbs/day.

V. Proposed Action

We are proposing to approve the revised Lamar PM_{10} Maintenance Plan that was submitted to us on May 13, 2013, with one exception. We are not acting on the submitted update to the Natural Events Action Plan (NEAP), as the NEAP is not part of the SIP. We are proposing to approve the remainder of the revised maintenance plan because it demonstrates maintenance through 2025 as required by CAA section 175A(b), retains the control measures from the initial PM_{10} maintenance plan that EPA approved on October 25, 2005, and meets other CAA requirements for a section 175A maintenance plan. We are

[6] ''Companion Guidance for the July 1, 2004 Final Transportation Conformity Rule, Conformity Implementation in Multi-Jurisdictional Nonattainment and Maintenance Areas for Existing and New Air Quality Standards'' (EPA420–B–04–012 July, 2004).

[7] In a **Federal Register** notice dated October 3, 2014, we notified the public of our finding (see 79 FR 59767). This adequacy determination became effective on October 20, 2014.

proposing to exclude from use in determining that Lamar continues to attain the PM_{10} NAAQS, exceedances of the PM_{10} NAAQS that were recorded at the Lamar Power Plant PM_{10} monitor on February 9, 2002; March 7, 2002; May 21, 2002; June 20, 2002; April 5, 2002; May 22, 2008; Jan 19, 2009; April 3, 2011; and November 5, 2011 because the exceedances meet the criteria for exceptional events caused by high wind natural events. Additionally, the EPA is proposing to exclude from use in determining that Lamar continues to attain the PM_{10} NAAQS, exceedances of the PM_{10} NAAQS that were recorded at the Municipal Complex PM_{10} monitor on May 21, 2002; June 20, 2002; April 5, 2005; January 19, 2009; February 8, 2013; March 18, 2012; April 2, 2012; April 9, 2013; May 1, 2013; May 24, 2013; May 25, 2013; May 28, 2013; December 24, 2013; February 16, 2014; March 11, 2014; March 15, 2014; March 18, 2014; March 29, 2014; March 30, 2014; March 31, 2014; April 23, 2014; April 29, 2014; November 10, 2014; April 1, 2015; and April 2, 2015 because the exceedances meet the criteria for exceptional events caused by high wind natural events. We are also proposing to approve the revised maintenance plan's 2025 transportation conformity MVEB for PM_{10} of 764 lbs/day.

VI. Statutory and Executive Orders Review

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, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This proposed action merely proposes to approve state law as meeting federal requirements and does not propose to impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 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 the 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 the 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 s ubstantial 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile Organic Compounds.

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

Dated: May 19, 2016.

Shaun L. McGrath,

Regional Administrator, Region 8.

[FR Doc. 2016–12804 Filed 5–31–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0011; FRL–9947–18–Region 4]

Air Plan Approval; Tennessee; Revision and Removal of Stage I and II Gasoline Vapor Recovery Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve changes to the State Implementation Plan (SIP) submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation (TDEC) on February 8, 2016, for parallel processing. This draft SIP revision seeks to lower applicability thresholds for certain sources subject to Federal Stage I requirements, remove the Stage II vapor control requirements, and add requirements for decommissioning gasoline dispensing facilities, as well as requirements for new and upgraded gasoline dispensing facilities in the Nashville, Tennessee Area (hereinafter also known as the ''Middle Tennessee Area''). EPA has preliminarily determined that Tennessee's February 8, 2016, draft SIP revision is approvable because it is consistent with the Clean Air Act (CAA or Act).

DATES: Written comments must be received on or before July 1, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2016–0011 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* 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. 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: Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Sheckler's phone number is (404) 562–9222. She can also be reached via electronic mail at *sheckler.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What is parallel processing?

Consistent with EPA regulations found at 40 CFR part 51, Appendix V, section 2.3.1, for purposes of expediting review of a SIP submittal, parallel processing allows a state to submit a plan to EPA prior to actual adoption by the state. Generally, the state submits a copy of the proposed regulation or other revisions to EPA before conducting its public hearing. EPA reviews this proposed state action and prepares a notice of proposed rulemaking. EPA's notice of proposed rulemaking is published in the **Federal Register** during the same time frame that the state is holding its public process. The state and EPA then provide for concurrent public comment periods on both the state action and federal action.

If the revision that is finally adopted and submitted by the state is changed in aspects other than those identified in the proposed rulemaking on the parallel process submission, EPA will evaluate those changes and if necessary and appropriate, issue another notice of proposed rulemaking. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by the state and submitted formally to EPA for incorporation into the SIP.

On February 8, 2016, the State of Tennessee, through TDEC, submitted a formal letter request for parallel processing of a draft SIP revision that the State was already taking through public comment. TDEC requested parallel processing so that EPA could begin to take action on its draft SIP revision in advance of the State's submission of the final SIP revision. As stated above, the final rulemaking action by EPA will occur only after the SIP revision has been: (1) Adopted by Tennessee; (2) submitted formally to EPA for incorporation into the SIP; and (3) evaluated by EPA, including any changes made by the State after the February 8, 2016, draft was submitted to EPA.

II. Background for Federal Stage I and II Requirements

Stage I vapor recovery is a type of emission control system that captures gasoline vapors that are released when gasoline is delivered to a storage tank. The vapors are returned to the tank truck as the storage tank is being filled with fuel, rather than released to the ambient air. Stage II and onboard refueling vapor recovery (ORVR) are two types of emission control systems that capture fuel vapors from vehicle gas tanks during refueling. Stage II systems are specifically installed at gasoline dispensing facilities and capture the refueling fuel vapors at the gasoline pump nozzle. The system carries the vapors back to the underground storage tank at the gasoline dispensing facility to prevent the vapors from escaping to the atmosphere. ORVR systems are carbon canisters installed directly on automobiles to capture the fuel vapors evacuated from the gasoline tank before they reach the nozzle. The fuel vapors captured in the carbon canisters are then combusted in the engine when the automobile is in operation.

Under section 182(b)(3) of the CAA, each state was required to submit a SIP revision to implement Stage II for all ozone nonattainment areas classified as moderate, serious, severe, or extreme, primarily for the control of volatile organic compounds (VOC)—a precursor to ozone formation.[1] However, section 202(a)(6) of the CAA states that the section 182(b)(3) Stage II requirements for moderate ozone nonattainment areas shall not apply after the promulgation of ORVR standards.[2] ORVR standards were promulgated by EPA on April 6, 1994. *See* 59 FR 16262 and 40 CFR parts 86, 88 and 600. As a result, the CAA no longer requires moderate areas to impose Stage II controls under section 182(b)(3), and such areas were able to submit SIP revisions, in compliance with section 110(l) of the CAA, to remove Stage II requirements from their SIPs. EPA's policy memoranda related to ORVR, dated March 9, 1993, and June 23, 1993, provide further guidance on removing Stage II requirements from certain areas. The policy memorandum dated March 9, 1993, states that ''[w]hen onboard rules are promulgated, a State may withdraw its Stage II rules for moderate areas from the SIP (or from consideration as a SIP revision) consistent with its obligations under sections 182(b)(3) and 202(a)(6), so long as withdrawal will not interfere with any other applicable requirement of the Act.'' [3]

CAA section 202(a)(6) also provides discretionary authority to the EPA Administrator to, by rule, revise or waive the section 182(b)(3) Stage II requirement for serious, severe, and extreme ozone nonattainment areas after the Administrator determines that ORVR is in widespread use throughout the motor vehicle fleet. On May 16, 2012, in a rulemaking entitled ''Air Quality: Widespread Use for Onboard Refueling Vapor Recovery and Stage II Waiver,'' EPA determined that ORVR technology is in widespread use throughout the motor vehicle fleet for purposes of controlling motor vehicle refueling emissions. *See* 77 FR 28772. By that action, EPA waived the requirement for states to implement Stage II gasoline vapor recovery systems at gasoline dispensing facilities in nonattainment areas classified as serious and above for the ozone NAAQS. Effective May 16, 2012, states implementing mandatory Stage II programs under section 182(b)(3) of the CAA were allowed to submit SIP revisions to remove this program. *See* 40 CFR 51.126(b).[4] On April 7, 2012, EPA released the guidance entitled ''Guidance on Removing Stage II Gasoline Vapor Control Programs from

[1] Section 182(b)(3) states that each State in which all or part of an ozone nonattainment area classified as moderate or above shall, with respect to that area, submit a SIP revision requiring owners or operators of gasoline dispensing systems to install and operate vapor recovery equipment at their facilities. Specifically, the CAA specifies that the Stage II requirements must apply to any facility that dispenses more than 10,000 gallons of gasoline per month or, in the case of an independent small business marketer (ISBM), as defined in section 324 of the CAA, any facility that dispenses more than 50,000 gallons of gasoline per month. Additionally, the CAA specifies the deadlines by which certain facilities must comply with the Stage II requirements. For facilities that are not owned or operated by an ISBM, these deadlines, calculated from the time of State adoption of the Stage II requirements, are: (1) 6 months for facilities for which construction began after November 15, 1990, (2) 1 year for facilities that dispense greater than 100,000 gallons of gasoline per month, and (3) by November 15, 1994, for all other facilities. For ISBMs, section 324(a) of the CAA provides the following three-year phase-in period: (1) 33 percent of the facilities owned by an ISBM by the end of the first year after the regulations take effect; (2) 66 percent of such facilities by the end of the second year; and (3) 100 percent of such facilities after the third year.

[2] ORVR is a system employed on gasoline-powered highway motor vehicles to capture gasoline vapors displaced from a vehicle fuel tank during refueling events. These systems are required under section 202(a)(6) of the CAA and implementation of these requirements began in the 1998 model year. Currently they are used on all gasoline-powered passenger cars, light trucks and complete heavy trucks of less than 14,000 pounds GVWR. ORVR systems typically employ a liquid file neck seal to block vapor escape to the atmosphere and otherwise share many components with the vehicles' evaporative emission control system including the onboard diagnostic system sensors.

[3] Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to EPA Regional Air Directors, *Impact of the Recent Onboard Decision on Stage II Requirements in Moderate Areas* (March 9, 1993), available at: *http://www.epa.gov/ttn/naaqs/aqmguide/collection/cp2/19930309_seitz_onboard_impact_stage2_.pdf.*

[4] As noted above, EPA found, pursuant to CAA section 202(a)(6), that ORVR systems are in widespread use in the motor vehicle fleet and waived the CAA section 182(b)(3) Stage II vapor recovery requirement for serious and higher ozone nonattainment areas on May 16, 2012. Thus, in its implementation rule for the 2008 ozone NAAQS, EPA removed the section 182(b)(3) Stage II requirement from the list of applicable requirements in 40 CFR 51.1100(o). See 80 FR 12264 for additional information.

State Implementation Plans and Assessing Comparable Measures'' for states to consider in preparing their SIP revisions to remove existing Stage II programs from state implementation plans.[5]

III. Tennessee's Stage I and II Vapor Recovery Requirements for the Middle Tennessee Area

On November 6, 1991, EPA designated and classified the Nashville Area (Davidson, Rutherford, Sumner, Williamson and Wilson counties) as a moderate ozone nonattainment area for the 1-hour ozone NAAQS. *See* 56 FR 56694, 56829. As mentioned above, the ''moderate'' classification triggered various statutory requirements for this Area, including the requirement pursuant to section 182(b)(3) of the CAA for the Area to require all owners and operators of gasoline dispensing systems to install and operate a system for gasoline vapor recovery of emissions from the fueling of motor vehicles known as ''Stage II.''[6] On November 5, 1992, May 18, 1993, and July 6, 1993, the State of Tennessee submitted SIP revisions to EPA for Stage I and II vapor recovery in the Nashville Area.[7]

On February 9, 1995, EPA approved Tennessee's November 5, 1992, May 18, 1993, and July 6, 1993, SIP revision containing Tennessee Air Pollution Control Regulations (TAPCR) rule 1200–03–18–.24, Gasoline Dispensing Facilities, Stage I and Stage II Vapor Recovery which regulates the emissions of VOCs from petroleum product storage and distribution network. 60 FR 7713.[8] TAPCR 1200–03–18–.24 includes requirements for control of VOC emissions from filling of certain gasoline storage tanks in several Tennessee counties using Stage I vapor recovery systems. Subsequently, on January 10, 2008, EPA promulgated similar requirements for Stage I vapor recovery as 40 CFR part 63, subpart CCCCCC. 73 FR 1945.

On November 14, 1994, TDEC submitted to EPA a request (later supplemented on August 9, 1995, and January 19, 1996) to redesignate the Middle Tennessee Area to attainment for the 1-hour ozone standard and an associated maintenance plan. The maintenance plan, as required under section 175A of the CAA, showed that nitrogen oxides and VOC emissions in the Area would remain below the 1994 ''attainment year'' levels through the greater than ten-year period from 1994–2006. In making these projections, TDEC factored in the emissions benefit of the Area's Stage II program, thereby maintaining this program as an active part of its 1-hour ozone SIP. The redesignation request and maintenance plan was approved by EPA, effective October 30, 1996. *See* 61 FR 55903. Subsequently, the maintenance plan was extended by TDEC to 2016, and this extension was approved by EPA, effective January 3, 2006. *See* 70 FR 65838.

IV. Analysis of the State's Submittal

On February 8, 2016, Tennessee submitted a draft SIP revision to EPA seeking modifications of the Stage II and Stage I requirements in the State. First, in relation to Stage II, TDEC seeks the removal of the Stage II vapor recovery requirements from TAPCR 1200–03–18–.24 through the addition of requirements for decommissioning, and the phase out of the Stage II vapor recovery systems over a 3-year period from January 1, 2016, to January 1, 2019, in Davidson, Rutherford, Sumner, Williamson and Wilson Counties. Second, TDEC seeks to amend the Stage I requirements for gasoline dispensing facilities by adopting by reference the Federal requirements of 40 CFR part 63, subpart CCCCCC and removing most of the State-specific language for Stage I vapor recovery.[9] Below are additional details regarding EPA's rationale for the actions proposed in today's rulemaking in relation to Tennessee's requested changes.

A. Analysis of Changes to Tennessee's Stage II Requirements for Middle Tennessee

EPA's primary consideration in determining the approvability of Tennessee's request regarding removal of the Stage II program in the Middle Tennessee Area is whether this requested action complies with section 110(l) of the CAA.[10] Section 110(l) requires that a revision to the SIP not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act. EPA evaluates each section 110(l) noninterference demonstration on a case-by-case basis, considering the circumstances of each SIP revision. EPA interprets 110(l) as applying to all NAAQS that are in effect, including those that have been promulgated but for which the EPA has not yet made designations. The degree of analysis focused on any particular NAAQS in a noninterference demonstration varies depending on the nature of the emissions associated with the proposed SIP revision. EPA's analysis of Tennessee's February 8, 2016, SIP revision pursuant to section 110(l) is provided below.

In its February 8, 2016, draft SIP revision, TDEC used EPA's guidance entitled ''Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures'' to conduct a series of calculations to determine the potential impact on air quality of removing the Stage II program.[11] Tennessee's analysis focused on VOC emissions because, as mentioned above, Stage II requirements affect VOC emissions and because VOCs are a precursor for ozone formation.[12]

[5] This guidance document is available at: *http://www.epa.gov/groundlevelozone/pdfs/20120807guidance.pdf.*

[6] As discussed above, Stage II is a system designed to capture displaced vapors that emerge from inside a vehicle's fuel tank when gasoline is dispensed into the tank. There are two basic types of Stage II systems, the balance type and the vacuum assist type.

[7] ''Gasoline Dispensing Facility, Stage 1'' under Section 7–13, covering Nashville/Davidson County was first submitted on February 16, 1990 for EPA approval into the SIP and was approved March 11, 1991. *See* 56 FR 10171. The last revision for regulations related to Nashville/Davidson County was submitted on July 3, 1991, and later approved by EPA on June 26, 1992. *See* 57 FR 28625.

[8] Revisions to this rule were subsequently approved by EPA on April 14, 1997, and August 26, 2005.

[9] However, any gasoline dispensing facility with a monthly throughput of 10,000 gallons or more of gasoline that is located in Anderson, Blount, Carter, Cheatham, Davidson, Dickson, Fayette, Hamilton, Hawkins, Haywood, Jefferson, Knox Loudon, Marion, Meigs, Montgomery, Putnam, Robertson, Rutherford, Sevier, Shelby, Sullivan, Sumner, Tipton, Unicoi, Union, Washington, Williamson, or Wilson Counties will be subject to expanded requirements under subpart CCCCCC.

[10] CAA section 193 is not relevant because Tennessee's Stage II rule was not included in the SIP before the 1990 CAA amendments.

[11] EPA, Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures, EPA–457/B–12–001 (Aug. 7, 2012), available at: *https://www.epa.gov/ozone-pollution/ozone-stage-two-vapor-recovery-rule-and-guidance.* This guidance document notes that ''the potential emission control losses from removing Stage II VRS are transitional and relatively small. ORVR-equipped vehicles will continue to phase in to the fleet over the coming years and will exceed 80 percent of all highway gasoline vehicles and 85 percent of all gasoline dispensed during 2015. As the number of these ORVR-equipped vehicles increase, the control attributed to Stage II VRS will decrease even further, and the potential foregone Stage II VOC emission reductions are generally expected to be no more than one percent of the VOC inventory in the area.''

[12] Several counties in Middle Tennessee are currently designated nonattainment for the 1997 Annual fine particulate matter ($PM_{2.5}$) standard. While VOC is one of the precursors for particulate

The results of TDEC's analysis are provided in the table below.

TABLE 1—VOC EMISSIONS PER OZONE SEASON FROM STAGE II CONTROLS

Year	VOC emissions reduction (tons per year)
2010	510.60
2011	397.39
2012	281.97
2013	188.45
2014	107.28
2015	38.62
2016	−20.50
2017	−67.19
2018	−106.81
2019	−137.24
2020	−154.83

The removal of Stage II vapor recovery systems in the five-county Middle Tennessee area starting in 2016 will result in a VOC emission decrease, with emission reduction benefits increasing over time. Conversely, as Table 1 shows, if Stage II requirements are kept in place, an increase in VOC emissions will occur beyond 2015, and it will become detrimental to air quality in the five-county Middle Tennessee area to keep Stage II systems in operation.[13]

The affected sources covered by Tennessee's Stage II vapor recovery requirements are sources of VOCs. Other criteria pollutants (carbon monoxide, sulfur dioxide, nitrogen dioxide, particulate matter, and lead) are not emitted by gasoline dispensing facilities and will not be affected by the removal of Stage II controls.

The proposed revisions to TAPCR 1200–03–18–.24 include that gasoline dispensing facilities located in Davidson, Rutherford, Sumner, Williamson, and Wilson counties shall decommission and remove the systems no later than 3 years from the effective date of this rule. Tennessee noted in its submission that procedures to decommission and remove systems will be conducted in accordance with Petroleum Equipment Institute (PEI) guidance, ''Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Refueling Sites,'' PEI/RP300–09.

EPA is proposing to determine that TDEC's technical analysis is consistent with EPA's guidance on removing Stage II requirements from a SIP, including those provisions related to the decommissioning and phasing out of the Stage II requirements for the Middle Tennessee Area. EPA is also making the preliminary determination that Tennessee's SIP revision is consistent with the CAA and with EPA's regulations related to removal of Stage II requirements from the SIP and that these changes will not interfere with any applicable requirement concerning attainment or any other applicable requirement of the CAA, and therefore satisfy section 110(l).

B. Analysis of Changes to Tennessee's Stage I Requirements

Tennessee's Stage I requirements are in TAPCR 1200–03–18–.24, and provide for the control of VOC emissions from filling stations of certain gasoline storage tanks in Blount, Carter, Cheatham, Davidson, Dickinson, Fayette, Hamilton, Hawkins, Haywood, Jefferson, Knox, Loudon, Marion, Meigs, Montgomery, Putnam, Robertson, Rutherford, Sullivan, Sumner, Tipton, Unicoi, Union, Washington, Williamson, and Wilson Counties. EPA promulgated similar requirements for Stage I vapor recovery at 40 CFR part 63, subpart CCCCCC. To eliminate overlap of State and Federal requirements, Tennessee proposes to adopt by reference 40 CFR part 63, subpart CCCCCC and remove the Stage I SIP requirements of TAPCR 1200–03–18–.24. Tennessee provided a section 110(l) demonstration that includes a comparison demonstrating the equivalence of State and Federal Stage I requirements, *i.e.,* showing that the State requirements will be as stringent as or more stringent than the comparable Federal requirements. Tennessee's submittal proposes to lower the applicability threshold of the Federal requirements to apply to smaller facilities based on monthly throughput, rather than the equivalent Federal requirements for the subject counties listed above. Thus the State rule (1200–03–18–.24(1)) is more stringent than the Federal Rule.

EPA has preliminarily determined that these changes to Tennessee's Stage I requirements will not interfere with any applicable requirement concerning attainment or any other applicable requirement of the CAA, and therefore satisfy section 110(l), because they remove obsolete language due, in part, to superseding Federal requirements in 40 CFR part 63, subpart CCCCCC.

V. 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 TDEC Regulation TAPCR 1200–03–18–.24, Gasoline Dispensing Facilities. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 4 office (see the **ADDRESSES** section of this preamble for more information).

VI. Proposed Action

EPA is proposing to approve Tennessee's February 8, 2016, draft SIP revision that changes Tennessee Gasoline Dispensing Facilities, Stage I and II Vapor Recovery, TAPCR rule 1200–03–18–.24. to: (1) Allow for the removal of the Stage II requirement and the orderly decommissioning of Stage II equipment; and (2) incorporate by reference Federal rule 40 CFR part 63, subpart CCCCCC, and remove certain non-state-specific requirements for the Stage I. EPA is proposing this approval because the Agency has made the preliminary determination that Tennessee's February 8, 2016, draft SIP revision related to the State's Stage I and II rule is consistent with the CAA and with EPA's regulations and guidance.

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.

matter (NAAQS) formation, studies have indicated that, in the southeast, emissions of direct $PM_{2.5}$ and the precursor sulfur oxides are more significant to ambient summertime $PM_{2.5}$ concentrations than emissions of nitrogen oxides and anthropogenic VOC. *See, e.g., Quantifying the sources of ozone, fine particulate matter, and regional haze in the Southeastern United States,* Journal of Environmental Engineering (June 24, 2009), available at: *https://www.deepdyve.com/lp/elsevier/quantifying-the-sources-of-ozone-fine-particulate-matter-and-regional-yYzp0F1KBu.*

[13] The emissions-reduction disbenefit associated with continued implementation of Stage II requirements is due to the incompatibility of some Stage II and ORVR systems. Compatibility problems can result in an increase in emissions from the underground storage tank (UST) vent pipe and other system fugitive emissions related to the refueling of ORVR vehicles with some types of vacuum assist-type Stage II systems. This occurs during refueling an ORVR vehicle when the vacuum assist system draws fresh air into the UST rather than an air vapor mixture from the vehicle fuel tank. Vapor flow from the vehicle fuel tank is blocked by the liquid seal in the fill pipe which forms at a level deeper in the fill pipe than can be reached by the end of the nozzle spout. The fresh air drawn into the UST enhances gasoline evaporation in the UST which increases pressure in the UST. Unless it is lost as a fugitive emission, any tank pressure in excess of the rating of the pressure/vacuum valve is vented to the atmosphere over the course of a day. *See* EPA, Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures, EPA–457/B–12–001 (Aug. 7, 2012), available at: *https://www.epa.gov/ozone-pollution/ozone-stage-two-vapor-recovery-rule-and-guidance.* Thus, as ORVR technology is phased in, the amount of emission control that is gained through Stage II systems decreases.

See 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 proposed action merely proposes to approve 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 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).

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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 19, 2106.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–12805 Filed 5–31–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160225143–6143–01]

RIN 0648–BF61

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Regulatory Amendment 25

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Regulatory Amendment 25 for the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region (Regulatory Amendment 25) as prepared and submitted by the South Atlantic Fishery Management Council (Council). If implemented, this proposed rule would revise the commercial and recreational annual catch limits (ACLs), the commercial trip limit, and the recreational bag limit for blueline tilefish. Additionally, this proposed rule would revise the black sea bass recreational bag limit and the the commercial and recreational fishing years for yellowtail snapper. The purpose of this proposed rule for blueline tilefish is to increase the optimum yield (OY) and ACLs based on a revised acceptable biological catch (ABC) recommendation from the Council's Scientific and Statistical Committee (SSC). The purpose of this proposed rule is also to achieve OY for black sea bass and adjust the fishing year for yellowtail snapper to better protect the species while allowing for economic benefits to fishers.

DATES: Written comments must be received on or before June 16, 2016.

ADDRESSES: You may submit comments on the proposed rule, identified by ''NOAA–NMFS–2016–0042'' by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0042,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Rick DeVictor, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in required fields if you wish to remain anonymous).

Electronic copies of Regulatory Amendment 25, which includes an environmental assessment, a Regulatory Flexibility Act analysis, regulatory impact review, and fishery impact statement, may be obtained from *www.regulations.gov* or the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/sg/2015/reg_am25/index.html.*

FOR FURTHER INFORMATION CONTACT: Rick DeVictor, NMFS, SERO, telephone: 727–551–5720 or email: *rick.devictor@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic Region is managed under the FMP and includes blueline tilefish, black sea bass, and yellowtail snapper. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, OY from federally managed fish stocks. These

mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, while also protecting marine ecosystems.

Stock Status

In 2013, the Southeast Data, Assessment and Review (SEDAR) assessment (SEDAR 32) for blueline tilefish found the stock to be undergoing overfishing, based on data through 2011. In 2015, the Council specified a blueline tilefish ACL in Amendment 32 to the FMP, based on the results of SEDAR 32 and an ABC recommendation from the Council's SSC, and on March 30, 2015, NMFS issued a final rule to implement Amendment 32 (80 FR 16583). In Regulatory Amendment 25, the Council is revising the blueline tilefish ACL based on a new ABC recommendation from the Council's SSC, and an increase in the buffer between ABC and ACL to account for management uncertainty.

In 2013, the SEDAR 25 Update determined that the black sea bass stock in the South Atlantic is neither overfished nor undergoing overfishing, and that the stock is rebuilt. The final rule to implement Regulatory Amendment 19 established increases in the total ACL and commercial and recreational ACLs for black sea bass (78 FR 58249, September 23, 2013).

The state of Florida completed a stock assessment for yellowtail snapper in May 2012. The assessment determined that the stock, in the South Atlantic and Gulf of Mexico waters (state and Federal waters) combined, is neither overfished nor undergoing overfishing. The final rule to implement Regulatory Amendment 15 to the FMP implemented the current ACLs for this stock in the South Atlantic (78 FR 49183, August 13, 2013).

Management Measures Contained in This Proposed Rule

This proposed rule would revise the commercial and recreational ACLs, commercial trip limit, and recreational bag limit for blueline tilefish; revise the recreational bag limit for black sea bass; and revise the fishing year for the yellowtail snapper commercial and recreational sectors. All ABC and ACL weights in this proposed rule are expressed in round weight.

Blueline Tilefish ACLs

This proposed rule would revise the commercial and recreational ACLs for blueline tilefish. The current commercial ACLs are 26,766 lb (12,141 kg) for 2016, 35,785 lb (16,232 kg) for 2017, and 44,048 lb (19,980 kg) for 2018, and subsequent fishing years. The current recreational ACLs are 26,691 lb (12,107 kg) for 2016, 35,685 lb (16,186 kg) for 2017, and 43,925 lb (19,924 kg) for 2018, and subsequent fishing years. These ACLs were implemented through Amendment 32 to the FMP (80 FR 16583, March 30, 2015). This proposed rule would increase both the commercial and recreational ACLs for blueline tilefish in the South Atlantic. The commercial ACL would be set at 87,521 lb (39,699 kg) and the recreational ACL would be set at 87,277 lb (39,588 kg).

In Regulatory Amendment 25, the Council is revising the blueline tilefish ACL based on a new ABC recommendation from the Council's SSC. Following the SEDAR 32 assessment, the SSC provided an ABC recommendation to the Council based on the ABC projections developed after SEDAR 32. In September 2015, the SSC raised concerns about the utility of projections from SEDAR 32 in specifying the ABC and concluded that the ABC projections do not represent the best scientific information available and are not adequate to support blueline tilefish fishing level recommendations for either current or future years. Based on that determination, the SSC revised their blueline tilefish ABC recommendation to set the ABC at the equilibrium yield at 75 percent of the fishing mortality that produces the maximum sustainable yield (224,100 lb (101,650 kg)). The Council accepted the SSC's recommendations and determined that this revised ABC is sufficient to prevent the overfishing of blueline tilefish.

The Council is also revising the ACL to increase the buffer between the ABC and ACL from 2 percent to 22 percent. The increase in the buffer is to account for management uncertainty, such as increased landings north of the Council's area of jurisdiction. In Amendment 32 to the FMP, the Council set the total ACL (combined commercial and recreational ACL) for the South Atlantic at 98 percent of the recommended ABC for the entire Atlantic region to account for management uncertainty, since the stock assessment was coast-wide and the Council was aware that some landings of blueline tilefish occurred north of North Carolina. In Regulatory Amendment 25, the Council has determined to set the total ACL at 78 percent of the ABC. This decision is based on a comparison of the landings between the South Atlantic and Greater Atlantic Regions (Maine through Virginia) which indicate that 22 percent of the landings from 2011–2014 are from the Greater Atlantic Region.

Blueline Tilefish Commercial Trip Limit

The current commercial trip limit for blueline tilefish is 100 lb (45 kg), gutted weight; 112 lb (51 kg), round weight, and was implemented in Amendment 32. The Council selected that trip limit as a way to slow the commercial harvest of blueline tilefish, potentially lengthen the commercial fishing season, and reduce the risk of the commercial ACL being exceeded. This proposed rule would increase the blueline tilefish commercial trip limit to 300 lb (136 kg) gutted weight; 336 lb (152 kg), round weight. The Council decided that an appropriate response to the increase in ABC and proposed increase in total ACL is to increase the commercial trip limit. The increase in the commercial trip limit would reduce adverse socioeconomic effects to commercial fishermen. In addition, the increase in the commercial trip limit is not expected to result in an in-season closure of blueline tilefish.

Blueline Tilefish and Black Sea Bass Recreational Bag Limits

This proposed rule would revise the recreational bag limits for both blueline tilefish and black sea bass. The current blueline tilefish bag limit is one fish per vessel per day for the months of May through August and is part of the aggregate bag limit for grouper and tilefish. There is no recreational retention of blueline tilefish during the rest of the fishing year. This bag limit was implemented in Amendment 32 to the FMP. In conjunction with the proposed increase in the recreational ACL in Regulatory Amendment 25, this proposed rule would increase the recreational bag limit to three fish per person per day for the months of May through August and remain as part of the aggregate bag limit for grouper and tilefish. There would continue to be no recreational retention of blueline tilefish during the months of January through April and September through December, each year.

The current bag limit for black sea bass in 5 fish per person per day and was implemented through the final rule for Regulatory Amendment 9 to the FMP (76 FR 34892, June 15, 2011). The proposed rule would increase the recreational bag limit for black sea bass to 7 fish per person per day. The Council decided to increase the bag limit to help achieve OY, since the recreational ACL has not been met in recent years. Additionally, increasing the bag limit to 7 fish is not expected to result in exceeding the recreational

ACL or requiring an in-season closure of the recreational sector.

Yellowtail Snapper Fishing Year

The current fishing fishing year for the yellowtail snapper commercial and recreational sectors in the South Atlantic is January 1 through December 31. The in-season accountability measure for the commercial sector is to close yellowtail snapper when the commercial ACL is met or projected to be met. Recently, commercial harvest of yellowtail snapper in the South Atlantic waters was closed from October 31, 2015, through December 31, 2015, because the commercial ACL was met (80 FR 65970, October 28, 2015).

This proposed rule would revise the fishing year for both the commercial and recreational sectors to be August 1 through July 31, each year. Changing the start of the fishing year to August 1 would benefit both sectors because it would ensure that harvest is open during the winter months when yellowtail snapper obtain a higher price per pound commercially and during peak tourist season in south Florida, where the majority of yellowtail snapper harvest takes place. Additionally, if an in-season closure for the commercial sector were to occur as a result of the ACL being met, it is likely that such a closure would occur later in the fishing year. With a fishing year start date of August 1, then it is more likely that any such closure would coincide with the yellowtail snapper peak spawning period of May through June, thereby possibly providing some additional biological benefits to the stock.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Regulatory Amendment 25, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

No duplicative, overlapping, or conflicting Federal rules have been identified.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows.

The proposed rule would directly apply to anglers that harvest blueline tilefish, black sea bass, and yellowtail snapper in the South Atlantic exclusive economic zone (EEZ). Anglers are not considered small entities as that term is defined in 5 U.S.C. 601(6), whether fishing from for-hire fishing (charter vessel or headboat), private or leased vessels. Consequently, any impacts of the proposed rule on anglers are not considered in this analysis.

The proposed rule would directly apply to finfish commercial fishing businesses that harvest blueline tilefish and yellowtail snapper in the South Atlantic EEZ. An annual average of 123 vessels harvested blueline tilefish and an annual average of 256 vessels harvested yellowtail snapper in the South Atlantic EEZ from 2010 through 2014.

The Small Business Administration established size criteria for all major industry sectors in the U.S., including finfish fishing. A business involved in finfish fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of $20.5 million (NAICS code 114111) for all of its affiliated operations worldwide. The average annual dockside revenue of a vessel that lands blueline tilefish is estimated to be $74,907 (2014 dollars), and the average annual dockside revenue of a vessel that lands yellowtail snapper is estimated to be $39,300 (2014 dollars). NMFS estimates that the 123 vessels that harvest blueline tilefish and 256 vessels that harvest yellowtail snapper are operated by 107 and 223 businesses, respectively, and NMFS concludes that all of these businesses are small.

The proposed rule would increase the commercial ACL of blueline tilefish, which would allow for increases in average annual landings of up to 48,582 lb (22,036 kg) and average annual dockside revenues of up to $107,366 (2014 dollars). Those increases divided across the 107 small businesses that harvest blueline tilefish would yield an average annual benefit from increased dockside revenue of $1,003 per business.

The proposed rule would increase the commercial trip limit for blueline tilefish from 100 lb (45.4 kg) to 300 lb (136 kg), gutted weight. Prior to 2015, there was no commercial trip limit and from 2010 through 2014, an annual average of 82 vessels operated by an estimated 71 small businesses landed less than 100 lb (45 kg) per trip and an annual average of 41 vessels operated by an estimated 36 small businesses landed more than 100 lb (45 kg) per trip. The trip limit increase is expected to benefit the 36 small businesses that had landings greater than 100 lb (45 kg), and their combined annual dockside revenues are expected to increase from $66,200 to $78,489 (2014 dollars). The increases in annual dockside revenues would not be equal. Eleven of the 36 small businesses would have an average annual increase from $7 to $729, six would have an average annual increase from $736 to $1,458, and 19 would have an average annual increase of $3,249.

The proposed rule would revise the commercial fishing year for yellowtail snapper from January 1 through December 31 to August 1 through July 31. From 2012 through 2014, the commercial fishing year remained open for all 12 months; however, in 2015, the commercial season closed in October when landings reached the commercial ACL. This analysis presumes the 2015 rate of commercial landings is indicative of future annual landings and, therefore, concludes that future 12-month seasons will close by the end of the 10th month. The proposed action to revise the commercial fishing year would change the two months when the season is expected to be closed: From November and December to June and July. From 2010 to 2014, dockside prices of yellowtail snapper were, on average, lowest from May through July and higher in November and December. That suggests that the proposed rule could benefit the 223 small businesses that harvest yellowtail snapper because the 2 months of the season that are expected to be closed (June and July) would have lower dockside prices than November and December.

The proposed rule would also adjust the recreational bag limit for blueline tilefish, increase the recreational bag limit for black sea bass, and modify the recreational fishing year for yellowtail snapper. Those actions are not relevant to this analysis because they directly affect anglers and anglers are not small entities as explained earlier. Because this proposed rule would not have a significant direct adverse economic effect on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Black sea bass, Blueline tilefish, Commercial, Fisheries, Fishing, Recreational, South Atlantic, Yellowtail snapper.

Dated: May 19, 2016.

Samuel D. Rauch III,

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

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

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

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

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

■ 2. In § 622.7, add paragraph (f) to read as follows:

§ 622.7 Fishing years.

* * * * *

(f) South Atlantic yellowtail snapper—August 1 through July 31 .

■ 3. In § 622.187:

■ a. Revise paragraph (b)(2)(iii);

■ b. Remove and reserve paragraph (b)(2)(iv); and

■ c. Revise paragraph (b)(7).

The revisions read as follows:

§ 622.187 Bag and possession limits.

* * * * *

(b) * * *

(2) * * *

(iii) No more than one fish may be a golden tilefish; and

* * * * *

(7) Black sea bass—7.

* * * * *

■ 4. In § 622.191, revise paragraph (a)(10) to read as follows:

§ 622.191 Commercial trip limits.

* * * * *

(a) * * *

(10) *Blueline tilefish.* Until the ACL specified in § 622.193(z)(1)(i) is reached or projected to be reached, 300 lb (136 kg), gutted weight; 336 lb (152 kg), round weight. See § 622.193(z)(1)(i) for the limitations regarding blueline tilefish after the commercial ACL is reached.

* * * * *

■ 5. In § 622.193, revise paragraph (z) to read as follows:

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

* * * * *

(z) *Blueline tilefish*—(1) *Commercial sector.* (i) If commercial landings for blueline tilefish, as estimated by the SRD, reach or are projected to reach the commercial ACL of 87,521 lb (39,699 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of blueline tilefish is prohibited and harvest or possession of blueline tilefish in or from the South Atlantic EEZ is limited to the bag and possession limits. These bag and possession limits apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters.

(ii) If commercial landings exceed the ACL, and the combined commercial and recreational ACL (total ACL) specified in paragraph (z)(3) of this section, is exceeded, and blueline tilefish is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial ACL for that following year by the amount of the commercial ACL overage in the prior fishing year.

(2) *Recreational sector.* (i) If recreational landings for blueline tilefish, as estimated by the SRD, are projected to reach the recreational ACL of 87,277 lb (39,588 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year, unless the RA determines that no closure is necessary based on the best scientific information available. On and after the effective date of such a notification, the bag and possession limits are zero.

(ii) If recreational landings for blueline tilefish, exceed the applicable recreational ACL, and the combined commercial and recreational ACL (total ACL) specified in paragraph (z)(3) of this section is exceeded, and blueline tilefish is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, to reduce the length of the recreational fishing season in the following fishing year to ensure recreational landings do not exceed the recreational ACL the following fishing year. When NMFS reduces the length of the following recreational fishing season and closes the recreational sector, the following closure provisions apply: The bag and possession limits for blueline tilefish in or from the South Atlantic EEZ are zero. Additionally, the recreational ACL will be reduced by the amount of the recreational ACL overage in the prior fishing year. The fishing season and recreational ACL will not be reduced if the RA determines, using the best scientific information available, that no reduction is necessary.

(3) The combined commercial and recreational sector ACL (total ACL) is 174,798 lb (79,287 kg), round weight.

[FR Doc. 2016–12846 Filed 5–31–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 140905757–6404–01]

RIN 0648–BE42

Fisheries off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Commercial Sablefish Fishing Regulations and Electronic Fish Tickets

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise fishery monitoring and equipment requirements for all commercial groundfish fisheries, including a requirement for submitting electronic fish tickets in the limited entry fixed gear fisheries and open access fisheries. This proposed rule would revise administrative procedures for limited entry permits, providing greater flexibility and efficiencies for limited entry groundfish fishery participants. This proposed rule also would require vessels registered to Vessel Monitoring Systems (VMS) to make an initial VMS declaration. This proposed rule also would make administrative changes and clarifying edits to improve consistency of the regulations with past Pacific Fishery Management Council (Council) actions and with the Pacific Coast Groundfish Fishery Management Plan (FMP). This action is needed to improve monitoring and administration of the limited entry sablefish primary fishery and address unforeseen issues arising out of the evolution of commercial sablefish fisheries and subsequent regulations.

DATES: Comments on this proposed rule must be received by July 1, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2016–0032, by any of the following methods:

• *Electronic Submissions:* Submit all electronic public comments via the

Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0032,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; Attn: Gretchen Hanshew.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to William W. Stelle Jr., Regional Administrator, West Coast Region NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070 and to OMB by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

Electronic copies of the environmental assessment (EA) for this action may be obtained from *http://www.regulations.gov* or from West Coast Region's Groundfish Web site: *http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html.*

FOR FURTHER INFORMATION CONTACT: Gretchen Hanshew, 206–526–6147, *gretchen.hanshew@noaa.gov*

SUPPLEMENTARY INFORMATION:

Purpose of Proposed Rule and Summary of Major Actions

Purpose of the Regulatory Action

The purpose of this proposed rule is to improve the timeliness and accuracy of sablefish catch reporting in the limited entry fixed gear fisheries and open access fisheries, to provide more flexibility and efficiencies for harvesters in the Shorebased Individual Fishing Quota (IFQ) Program and limited entry fixed gear fisheries, and to implement several administrative and clarifying changes to monitoring and permitting provisions of regulations for all of the limited entry and open access commercial groundfish fisheries on the West Coast.

Major Actions

This proposed rule contains eight major actions, along with related minor clarifications and non-substantive changes. The first action is a new requirement for electronic fish tickets to be submitted for all commercial landings of sablefish delivered to Washington, Oregon and California fish buyers. The second action would provide qualified vessel owners an opportunity to apply for an exemption to the ownership limitation of three permits in the limited entry sablefish primary fishery. The third action would allow a single vessel to be simultaneously (jointly) registered to multiple limited entry permits, one of which may have a trawl gear endorsement. The fourth action prohibits vessels that have been granted an at-sea processing exemption for sablefish in the limited entry fixed gear fishery from processing sablefish at sea when that vessel is participating in the Shorebased IFQ Program. The fifth action would clarify that, consistent with FMP Amendment 6, sablefish catch in incidental open access fisheries is counted against the open access allocation, and is not deducted from the commercial harvest guideline. The sixth action would require any vessel that has a VMS registered with NMFS Office of Law Enforcement (OLE) to make a declaration with OLE. The seventh action would update and simplify equipment requirements for electronic fish tickets. The eighth action makes clear that prohibitions governing groundfish species taken in the limited entry fixed gear fishery should not prohibit taking more than the allowable quota, but rather, should prohibit taking and retaining. In addition, the action includes housekeeping changes that are intended to better align the regulations with defined terms, and to provide clarity and consistency between paragraphs.

Background

Authorities

The groundfish fisheries in the exclusive economic zone (EEZ) off the west coast of the United States are managed under the FMP. The FMP was prepared by the Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) as amended by the Consolidated Appropriations Act of 2004 (Pub. L. 108–199, section 801). Regulations implementing provisions of the FMP are located at 50 CFR part 660, subparts C through G.

Commercial Sablefish Fisheries

This proposed rule includes several actions that would revise regulations for commercial fisheries that harvest sablefish. Proposed regulatory changes would apply to the Shorebased IFQ Program, the limited entry fixed gear fishery, which includes the limited entry sablefish primary fishery and the daily trip limit (DTL) fishery, and the open access fishery.

The Shorebased IFQ Program off the west coast operates from the northern border between the United States and Canada to Morro Bay, California. Each vessel that participates in this sector must have a federal limited entry groundfish permit with a trawl endorsement. Active management of the sector began in the early 1980's with the establishment of harvest guidelines and trip limits for several species, including sablefish. Sablefish is managed as an IFQ species in the Shorebased IFQ Program, and may be harvested by vessels registered to a trawl-endorsed limited entry permit. Vessels may fish their IFQ with trawl gear, or may fish with fixed gear under the program's gear switching provisions. Few changes to the Shorebased IFQ Program regulations are proposed through this rulemaking.

A federal limited entry groundfish permit is also required to participate in the limited entry fixed gear fishery. All limited entry fixed gear permits have at least one gear endorsement for longline gear and/or pot/trap gear. Permits may have multiple gear endorsements. In addition, limited entry fixed gear permits may have an endorsement to fish sablefish in the sablefish primary fishery.

Each sablefish-endorsed permit is associated with an annual share of the sablefish allocation to the limited entry fixed gear fishery. Sablefish-endorsed permits are assigned to Tier 1, 2, or 3. Each Tier 1 permit receives 1.4 percent, each Tier 2 permit receives 0.64 percent and each Tier 3 permit receives 0.36 percent of the sablefish allocation. Each year, these shares are translated into cumulative limits (in pounds), or tier limits, which can be caught anytime during the sablefish primary season.

Regulations allow for up to three sablefish-endorsed permits to be stacked on a single vessel. Permit stacking was implemented through FMP Amendment 14 in 2002 to increase the economic efficiency of the fleet and promote fleet capacity reduction. Stacking more than one sablefish-endorsed permit on a vessel allows the vessel to land sablefish up to the sum of the associated tier limits. However, permit stacking does not increase cumulative limits for any

other species; cumulative limits for non-sablefish species apply on a per-vessel basis.

Fishing in the sablefish primary season takes place over a seven-month period from April 1 to October 31. Vessels may land their tier limits at any time during the seven-month season. However, once the primary season opens, all sablefish landed by a vessel fishing in the limited entry fixed gear fishery and registered to a sablefish-endorsed permit is counted toward attainment of its tier limit(s). Vessels registered to a sablefish-endorsed permit can fish in the limited entry fixed gear DTL fishery (*e.g.* under weekly and bi-monthly trip limits) from January 1 through March 31 and after the primary fishery. The sablefish primary fishery for a vessel closes once their tier limit(s) is caught or when the primary season closes October 31.

Groundfish may be taken and retained by vessels that are not registered to limited entry permits. These vessels are considered to be fishing in the open access fishery. Some vessels fishing in the open access fishery may be targeting groundfish species (*e.g.* open access sablefish DTL fishery). Other vessels may be targeting other species and retaining incidentally caught groundfish. Because there is no federal license limitation program for the open access fishery, the total number of participants in the open access fishery varies widely from year to year. Open access vessels can use a variety of fixed gears, including hook-and-line or pot/trap gear, longline, fishing pole, and vertical longline. Vessels that participate in the open access fishery and use non-groundfish trawl (*e.g.* shrimp trawl) gear may also retain groundfish species in limited amounts.

Need for These Actions

Since FMP Amendments 6 and 14, the Council has recommended and NMFS has implemented over a dozen rulemakings and several FMP amendments directly and indirectly affecting commercial fisheries that harvest sablefish. These actions often did not revise all federal groundfish regulations, but were sector or fishery specific, species specific, or related to setting harvest levels or routine management measures for ongoing fisheries. Changes to regulations, evolution of both state and federal recordkeeping and reporting requirements, and unforeseen complications for vessels that participate in other fisheries in addition to the groundfish fishery, created a need for a variety of comprehensive updates, changes, and clarifications to federal groundfish regulations. The proposed action implements several changes that the Council recommended at different times and for a variety of reasons. The proposed action also includes several regulatory changes that are consistent with past Council recommendations and that add clarity and consistency both within the regulations and between the regulations and the FMP.

1. Electronic Fish Ticket Requirement for Sablefish Landings

General

NMFS is proposing a federal electronic fish ticket submittal requirement for all commercial groundfish landings that include sablefish. An electronic fish ticket is a web-based form used to send groundfish landing data to the Pacific States Marine Fisheries Commission (PSMFC). Electronic fish tickets are used to collect information similar to the information required in state fish receiving tickets or landing receipts (henceforth referred to as paper tickets), but do not replace or change any state requirements. This requirement would improve timeliness and accuracy of catch data for monitoring harvest relative to applicable tier limits in the limited entry fixed gear sablefish fishery and trip limits in the limited entry fixed gear and open access DTL fisheries.

Once submitted, electronic fish tickets would immediately become part of a centralized database administered by the PSMFC, and landing data becomes available instantly to authorized users. Also, new electronic fish ticket requirements would include mandatory reporting of limited entry permit numbers for all limited entry fixed gear landings, allowing harvest of tier limits to be distinguishable on a per-permit basis. Depending on the state requirements, paper tickets may be mailed by fish dealers to the state agencies, transcribed into a database, reviewed and then submitted to the PSMFC for sector-specific catch summary reports. Limited entry permit numbers are not required to be reported on the paper tickets, so a variety of catch accounting business rules are followed. In some cases, it can take months for paper ticket harvest data to become available.

Since the start of the Shorebased IFQ Program in 2011, electronic fish tickets have been required for landing IFQ species. Electronic fish tickets have allowed vessel owners/operators, buyers and dealers, and fishery managers timely access to catch information for IFQ species. Many of the amendments in this proposed rule expand the required use of electronic fish tickets to the limited entry fixed gear and open access fisheries and are similar to those currently in place for the Shorebased IFQ Program. Electronic fish ticket requirements for the Shorebased IFQ Program are described in detail in proposed rules (75 FR 32994, June 10, 2010; 75 FR 53380, August 31, 2010) and in final rules (75 FR 60868, October 1, 2010; 75 FR 78344, December 15, 2010) for that program.

New Requirements for Limited Entry Fixed Gear and Open Access Fisheries

In September 2013, the Council initiated the sablefish permit stacking program review, which included consideration of improvements to catch accounting against the tier limits associated with limited entry fixed gear sablefish permits. At its June 2014 meeting, the Council recommended that limited entry fixed gear sablefish permit numbers be required on fish tickets in order to improve catch accounting against sablefish primary fishery tier limits. In addition, the Council also recommended that an electronic fish ticket be required by federal regulation for all commercial sablefish deliveries, including sablefish landings in both the limited entry fixed gear and open access fisheries. The purpose of these new requirements would be to improve the accuracy and timeliness of commercial groundfish landings data for all groundfish species, particularly sablefish. This proposed rule would require electronic fish tickets, with limited entry permit numbers recorded for limited entry fixed gear landings, to be submitted for groundfish deliveries that include any amount of sablefish. Per the Council's recommendation, the requirement to submit electronic fish tickets for sablefish landings would apply to first receivers of fish from limited entry fixed gear and open access vessels.

As in the Shorebased IFQ Program, this proposed rule makes the first receiver the person responsible for submitting the electronic fish ticket for a groundfish landing that includes sablefish. A first receiver is the person who receives, purchases, or takes custody, control, or possession of catch onshore directly from a vessel. The Shorebased IFQ Program uses the term ''IFQ first receiver,'' and IFQ landings can only occur at IFQ first receivers that have been certified by NMFS with an IFQ first receiver site license. This proposed rule uses the more broadly defined term ''first receiver,'' referring to any person, fish buyer or dealer that is receiving, purchasing, taking custody, control, or possession of a groundfish

landing, and would not require first receivers to have a first receiver site license unless they also receive IFQ landings.

The proposed rule would require first receivers to maintain hardware, software, and internet service such that electronic fish tickets can be submitted in a timely fashion via web-based forms. These equipment requirements for submitting groundfish electronic fish tickets are described in the preamble below, under the heading, ''7. Equipment Requirements for Electronic Fish Tickets.''

The proposed rule uses terms that have specific meanings when used in other regulatory provisions governing electronic fish tickets. ''Recorded'' refers to any form of documentation of information that will later be required for submittal of the electronic fish ticket. ''Submitted'' refers to the act of sending the completed, final electronic fish ticket form via the web-based platform. When a ticket has been submitted, it cannot be withdrawn, but it can be revised, as needed. The proposed rule defines a ''sablefish landing'' as an offload that includes any amount of sablefish harvested in either the limited entry fixed gear or open access fishery.

The proposed rule includes electronic fish ticket requirements in order to facilitate complete, accurate and timely reporting. The proposed rule would prohibit transporting any groundfish from a sablefish landing away from the point of landing before the information that is required on the electronic fish ticket is recorded, and would prohibit processing, selling, or discarding any groundfish received from a sablefish landing that has not been accounted for on an electronic fish ticket. In addition, the electronic fish ticket must include a vessel identification number and a single limited entry permit number that the catch will be attributed to. Although the landing of sablefish is what would trigger the requirement to submit an electronic fish ticket, all groundfish landed, including sablefish and non-sablefish groundfish species, must be recorded on an electronic fish ticket.

The proposed rule includes recordkeeping and reporting requirements for participants and first receivers in the limited entry fixed gear fishery (new language in 50 CFR 660.213) and in the open access fishery (new language in 50 CFR 660.313). The participants and first receivers must submit accurate information, must not submit false information, and must retain and make available any reporting records.

Information reported on an electronic fish ticket as envisioned in this proposed rule would be similar to that recorded on state-mandated paper fish ticket. However, these new requirements for first receivers of sablefish caught in limited entry fixed gear and open access fisheries are not intended to supersede or change any state requirements relative to recording, submitting or retaining paper fish tickets. Similar to current requirements for IFQ first receivers, this proposed rule includes a requirement that first receivers record the limited entry permit number if the vessel is landing sablefish in the limited entry fixed gear sablefish primary fishery or the limited entry fixed gear DTL fishery.

With the new electronic fish tickets required in the proposed rule, vessel operators would have more timely and accurate landing information available to them by accessing electronic fish ticket data via their first receiver. First receivers would be able to view summaries of electronic fish ticket data that they have submitted for a vessel and provide those summaries to the vessel operator or other authorized personnel. Under this proposed rule, first receivers would be obligated, per proposed regulations at 50 CFR 660.213, to obtain the signature of the vessel operator or owner on board when recording and submitting electronic fish ticket information and they are required to make that information available per proposed regulations at 50 CFR 660.212(d).

First receivers would have the ability to provide the vessel operator (or other authorized personnel) a summary of sablefish landings to date either on a vessel-specific basis or on a limited entry permit-specific basis. This same information is available to users with confidentiality agreements on file with PSFMC (*e.g.* OLE and fishery managers). Confidential electronic fish ticket data would not be publically available.

Discussion of additional, applicable requirements for information to be supplied in electronic fish tickets and confidentiality requirements for electronic fish ticket data is also included under the following heading, ''*New Requirements for the Limited Entry Fixed Gear Sablefish Primary Fishery.*''

New Requirements for the Limited Entry Fixed Gear Sablefish Primary Fishery

A vessel may stack up to three limited entry fixed gear sablefish permits. Each permit has an associated annual sablefish quota, or tier limit that may be harvested during the limited entry fixed gear sablefish primary fishery, which lasts from April 1 through October 31, or when an individual vessel's tier limit(s) is (are) harvested.

The Council recommended electronic fish tickets for non-IFQ fisheries, in part, to improve catch monitoring of sablefish landed and counted against tier limits, and to make this catch information available to vessel operators, law enforcement, and fishery managers. As previously explained, electronic fish tickets would require reporting the limited entry permit number that authorizes the sablefish landing. For vessels fishing in the sablefish primary fishery, the limited entry permit number of only one sablefish-endorsed permit would be reported per ticket, even if the vessel has multiple sablefish-endorsed permits registered to it. Rather than relying solely on their own recordkeeping, or incomplete/delayed paper ticket summaries, as under current fish ticket systems, vessel operators would have immediate access to accurate, summarized landings data. This would improve confidence in the accuracy of annual landings estimates and ensure that vessel owners, first receivers, OLE, and fishery managers all have access to the same summarized harvest data. The electronic fish tickets would allow immediate availability of accurate summary data that can be organized to show total landings of sablefish to date against the annual tier limit(s) associated with that vessel. Timely and accurate data provided by electronic fish tickets would allow fishers to appropriately craft their fishing strategies, provide timely alerts that allow law enforcement officials to investigate potential tier limit overages, and give fishery managers the ability to track and react to the current catch of sablefish relative to annual fishery allocations. Thus, this proposed rule's provision requiring electronic fish tickets for the sablefish primary fishery would directly improve catch accounting against tier limits, and would make that information available to industry, enforcement and fishery managers in a timely manner.

The Council discussed the possibility of using the vessel accounts system in place for the Shorebased IFQ Program as a model for creating accounts for vessels fishing in the sablefish primary fishery. However, the Council did not include a vessel or permit account system as part of its proposed action. Vessels fishing in the limited entry fixed gear sablefish primary fishery are only monitoring one species and two sources of quota ''currency:'' the annual tier limit associated with the limited entry sablefish permits registered to the

vessel, and debits against that tier limit from proposed electronic fish tickets. This monitoring is not as complex as what is required for the Shorebased IFQ Program. Based on this, vessels fishing in the limited entry fixed gear sablefish primary fishery would not have vessel accounts as vessels fishing in the Shorebased IFQ Program do. Instead, vessels would estimate their tier limit balances with information coming directly from the electronic fish ticket system, provided to them by first receivers. This process is anticipated to meet the catch accounting needs of industry, and to meet the monitoring and catch accounting needs of the Council, fishery managers, and enforcement.

Current regulations and catch accounting procedures do not allow vessel operators to choose which sablefish permit's tier limit to which their catch is applied. Under the provisions of this proposed rule, electronic fish tickets would allow vessel operators to assign portions of their sablefish landing among the sablefish permits registered to their vessel, as desired. To achieve this, multiple electronic fish tickets would be submitted for a single sablefish landing. When a vessel registered to multiple sablefish endorsed permits makes a sablefish landing, all catch must be recorded and submitted on electronic fish tickets, as described above, under the heading, ''*New Requirements for Limited Entry Fixed Gear and Open Access Fisheries.*''

In this proposed rule, a landing of sablefish caught in the limited entry fixed gear sablefish primary fishery may be reported across multiple electronic fish tickets, with one of the limited entry sablefish permit numbers reported on each ticket. Following is an example of two available options in the case of a vessel, which is registered to two sablefish endorsed permits (Permits 1 and Permit 2) and which makes a sablefish landing of 4,500 pounds:

Option A: The vessel operator may choose to attribute all of those pounds to Permit 1 by recording that permit number on one electronic fish ticket, resulting in a single electronic fish ticket counting 4,500 pounds towards the annual tier limit associated with Permit 1. *Option B:* The vessel operator may choose to apportion the sablefish landed between two permits, as long as the annual tier limits are not exceeded. Using two fish tickets, the first electronic fish ticket could record 3,000 pounds to Permit 1 and the 3,000 pounds would count toward the annual tier limit associated with Permit 1, while the second electronic fish ticket could record 1,500 pounds to Permit 2 and the 1,500 pounds would count towards the annual tier limit associated with Permit 2.

Regardless of the number of electronic tickets submitted, the sum total of annual sablefish landings must not to exceed the annual tier limits associated with the limited entry permits registered to that vessel, as currently established in regulations. It would be a violation of the provisions of this proposed rule to submit an electronic fish ticket for a sablefish landing in the sablefish primary fishery without recording the sablefish-endorsed limited entry permit number.

The improvements to catch monitoring associated with this proposed rule's electronic fish ticket requirement would allow the removal of the current 24-hour rule of separation of primary and DTL landings. (The regulatory text of this proposed rule removes this current requirement at 50 CFR 660.232(a)(3) and revises text for that section.) A vessel would be allowed to apportion a landing against the remainder of its tiers (thereby closing the sablefish primary fishery for that vessel, per 50 CFR 660.231(b)), and the rest of the sablefish landed may be submitted on a separate electronic fish ticket and would count against applicable limited entry fixed gear DTL trip limits. This allows vessels to count sablefish landed in excess of their tier limits as DTL landings. Thus, this proposed rule would alter the process for concluding a vessel's primary season and transitioning to the DTL fishery. This would allow vessels to harvest the entirety of their tier limits, but would not allow for a double-dipping effect, as the vessel would still be subject to the same sablefish DTL cumulative limits as they would have been under the 24-hour separation of primary and DTL landings. In addition, the proposed rule would also replace the current 300-pound threshold, beyond which the Pacific Fisheries Information Network (PacFIN) considered any additional sablefish landed as counting against applicable DTL limits. That threshold effectively stranded up to 300 pounds of unharvested sablefish in the vessel's transition from primary to DTL sablefish fisheries.

The proposed reporting requirements for electronic fish tickets would include a signature from the owner on board of either a printed copy of the electronic fish ticket or the dock tickets for any landing of sablefish in the limited entry fixed gear sablefish primary fishery, unless exempted from owner-on-board requirements (50 CFR 660.231(b)(4)).

2. Exemption to Limited Entry Sablefish Permit Ownership Limitation

Current regulations (50 CFR 660.25(b)(3)(iv)(C)) state that no individual person, partnership, or corporation in combination may have ownership interest in or hold more than three permits with sablefish endorsements either simultaneously or cumulatively over the primary season (hereby referred to as ''ownership limitation''). This ownership limitation was intended to prevent concentration of harvest privileges. However, this restriction has led to unforeseen complications because many persons, partnerships and corporations have harvest privileges in both the Alaska IFQ sablefish fishery and the Pacific coast sablefish fishery.

The Alaska sablefish IFQ fishery regulations require that a sablefish quota owner must have at least part ownership in the vessel that will fish their quota. Some of these vessels also participate in the limited entry fixed gear sablefish fishery off the Pacific coast. In such situations, any sablefish permit registered to that vessel would count toward the three-permit ownership limitation of the person, corporation, or partnership with part ownership of the vessel.

In September 2013, the Council initiated the sablefish permit stacking program review, which included consideration of the current three-permit ownership limitation (also referred to by the Council as an own/hold rule or own/hold control limit) and explored a regulatory amendment to provide relief to industry members who were limited because of participation in the Alaska sablefish IFQ fishery. At its June 2014 meeting, the Council recommended a process by which vessel owners who meet certain qualifying criteria may petition NMFS for a limited exemption to the ownership limitation.

The Council recommended this exemption to allow owners of a vessel registered to limited entry fixed gear sablefish permits, who are also part-owners of a vessel fishing sablefish IFQ in Alaska, to seek an ownership limitation exemption. The exemption, if granted, would mean that limited entry sablefish permits registered to a vessel (in which they have an ownership interest) would not count toward their ownership limit of three permits.

In this action, NMFS proposes new language at 50 CFR 660.25(b)(3)(iv)(D) to provide for such a process for issuance of an exemption to the ownership limitation. The proposed language includes qualifying criteria, the application process, and a description of the circumstances under which the exemption would become null and void. The application process would include submission of a new form, which would be developed by NMFS and would

collect the ownership interest information needed to confirm that the vessel owner meets the exemption criteria. This form would collect vessel ownership interest information, broken down into percentages, and would be similar to the form used in the Shorebased IFQ Program. NMFS would use the information from the form submitted by the applicant to make an initial administrative determination (IAD) on the merits of the application. Applicants would follow the permit appeals process under existing regulations at 50 CFR 660.25(g) regarding appeal of the IAD, if needed.

Following the suggestion of a June 2014 NMFS Report (Agenda Item F.6.b, NMFS Report 2; *http://www.pcouncil.org/wp-content/uploads/F6b_NMFS_Rpt2_JUNE2014BB.pdf*), the Council recommended that the qualifying criteria include a requirement that the vessel owner must own limited entry sablefish permit(s). However, upon further exploration, NMFS found that some of the potential beneficiaries of this ownership limitation exemption do not own limited entry sablefish permits, but accrue counts against the ownership limitation only by owning a vessel to which limited entry sablefish permits are registered (*i.e.* they are vessel owners, not permit owners). Under the qualifying criteria initially discussed by NMFS and the Council in June 2014, those individuals would not qualify for the ownership limitation exemption.

Based on the overall context of the Council recommendations for an ownership limitation exemption, NMFS concludes that the Council meant for this exemption to apply to any vessel owner that has been negatively affected by ownership limitation provisions because of their interest in the Alaska sablefish IFQ fishery, even if a vessel owner did not have an ownership interest in a permit. Therefore, at § 660.25(b)(3)(iv)(C)(*1*) regarding qualifying criteria, this proposed rule does not include the phrase ''ownership interest in a sablefish-endorsed limited entry permit.'' This proposed rule would allow a vessel owner who meets all other criteria, but does not own or have ownership interest in a sablefish-endorsed permit, to qualify for the ownership limitation exemption. NMFS is seeking public comment from affected industry on whether or not the final rule should include the phrase, ''ownership interest in a sablefish-endorsed limited entry permit,'' in the qualifying criteria language.

NMFS is also seeking comment from the affected industry on whether to expand the qualifying criteria to include the Pacific halibut IFQ in Alaska. It is possible that, due to similar owner-on-board requirements, participation in the Pacific halibut IFQ fishery in Alaska may also prompt the need for a sablefish ownership limitation exemption.

The proposed rule would allow the owner of a vessel registered to a sablefish endorsed limited entry permit (*i.e.* vessel owner) to apply for an exemption to the three-permit ownership limitation at any time. NMFS would issue an IAD within 60 days of receipt of a complete application. Under this proposed process, NMFS suggests that the application for an ownership limitation exemption be made by February 1, so that an IAD may be reached before the start of the primary sablefish season on April 1. The reason for this is that the ownership limitation exemption would not waive the cumulative ownership limitation. This is because if a vessel owner were to start the primary sablefish season on April 1 at or above the three-permit limit, an exemption granted later in the season would not exempt the owner's prior history.

The Council recommended that ''the exemption would remain in place so long as there are no changes to vessel ownership.'' In order to reduce the administrative burden for NMFS and vessel owners, the Council did not recommend an annual renewal of the exemption. Instead, the Council recommended that a change in vessel ownership would require action. However, NMFS notes that vessel ownership is only one of the components of the qualifying criteria that the Council recommended. Therefore, at § 660.25(b)(3)(iv)(D)(*3*), the proposed rule states that once a vessel owner has been granted an exemption from the ownership limitation, that exemption would remain in place so long as the vessel owner that was granted the exemption continues to meet the qualifying criteria. Should the vessel owner's circumstances change such that they no longer meet the qualifying criteria, the exemption would automatically become null and void thirty days after the change in circumstances. Consistent with other exemptions issued by NMFS, if NMFS at any time finds the vessel owner no longer meets the qualifying criteria, NMFS will notify the vessel owner that they are not compliant with the ownership limitation restriction. The vessel owner may re-apply for an ownership limitation exemption at any time if they meet the qualifying criteria. NMFS is seeking public comment from affected industry regarding proposed regulations for invalidation of the exemption at § 660.25(b)(3)(iv)(D)(*3*).

The Council also recommended a limitation on the number of exemptions that may be issued to a vessel owner in order to maintain ownership limitations for individuals that own many vessels. As recommended by the Council, NMFS is proposing that the exemption would allow a vessel owner to seek an exemption for sablefish permits registered on up to two vessels.

3. Joint Registration

Originally, the license limitation program (LLP), implemented through Amendment 6 to the FMP (see the EA under **ADDRESSES** for more information on the LLP), allowed vessels to register both a trawl and fixed gear (longline and fishpot) endorsed permit at the same time. Subsequently, regulations were modified and no longer allow vessels to register multiple limited entry permits unless the permits are sablefish-endorsed and stacked for use in the limited entry fixed gear sablefish primary fishery. This restriction was put in place to keep trawl and fixed gear fisheries temporally separated to meet enforcement and monitoring needs. In 2004, a vessel monitoring program was implemented that allowed vessels to identify which fishery they were participating in through a declaration system. As part of FMP Amendment 20 trailing actions, in April 2012 the Council recommended that vessels registered to a limited entry trawl permit be allowed to simultaneously register to a limited entry fixed gear permit, also called ''joint registration.'' In this proposed rule, NMFS proposes to allow joint registration while clarifying how fishery-specific regulations would still apply to vessels that are jointly registered.

Joint registration would allow vessels that are jointly registered to fish in the Shorebased IFQ Program and the limited entry fixed gear fishery with simply a change in VMS declaration. Existing VMS and declaration systems meet monitoring and enforcement needs under the joint registration language of this proposed rule.

Joint registration would be permitted in one of two configurations:

(1) Configuration A: One trawl permit and one, two, or three sablefish endorsed permits.

(2) Configuration B: One trawl permit and one limited entry fixed gear permit.

Configuration A would continue to allow stacking of limited entry fixed gear sablefish permits, but would also allow a trawl endorsed permit to be jointly registered to the same vessel simultaneously. Under this

configuration, a vessel would be able to fish in the Shorebased IFQ Program, the limited entry fixed gear fishery, and the limited entry fixed gear sablefish primary fishery without having to transfer any of its limited entry permits. Configuration B would allow a single trawl permit and a single limited entry fixed gear permit to be jointly registered to the same vessel simultaneously. Under this configuration, a vessel would be able to fish in the Shorebased IFQ Program and the limited entry fixed gear fishery without having to transfer a limited entry permit. Under this proposed rule, registering permits to a single vessel, simultaneously in either one of the configurations shown above, would be considered ''joint registration.''

Joint registration is separate and distinct from sablefish-endorsed permit stacking. A certain, specific set of regulations apply to the vessel that has stacked sablefish permits and is fishing in the sablefish primary fishery. In contrast, joint registration alone is not associated with a specific set of regulations or a single fishery. Joint registration would allow a vessel to switch between limited entry fishery sectors (*e.g.* IFQ and limited entry fixed gear) with a change in VMS declaration. Joint registration is not a fishery. The fishing regulations that would apply to the jointly registered vessel depends on which fishery that vessel declared into. This rulemaking proposes specific language pertaining to the permitting actions, rules and restrictions of joint registration at 50 CFR 660.25(b)(4)(iv).

Some additional restrictions would apply if a vessel participates in multiple limited entry fisheries in the fishing year. These situations and the applicable restrictions would be described in crossover provisions at § 660.60(h)(7). For example, if a vessel participates in both the Shorebased IFQ Program and the limited entry fixed gear fishery during a two-month cumulative limit period, then the smallest trip limit for non-IFQ species applies. Jointly registered vessels that want to fish in the open access fishery would have to comply with crossover provisions that apply to both trawl permits and limited entry fixed gear permits.

At the November 2011 Council meeting the Enforcement Consultants (EC) discussed the increased importance of the declarations system, and the EC strongly encouraged industry leaders to impress upon their membership the importance of maintaining a proper declaration that accurately reflects their fishing activity. Accuracy in the declaration process is both required by law and vital to the analysis of fishing effort by resource managers. Implementation of joint registration makes a small change to the VMS declaration requirements at § 660.13(d)(5)(ii). Current VMS declaration regulations only require a new declaration report when a vessel would use a different gear type than the gear most recently declared. However, since a jointly registered vessel may use non-trawl gear to fish in both the Shorebased IFQ Program and the limited entry fixed gear fishery, clarifying regulations are added to require a new declaration if the vessel will fish in a fishery other than the fishery most recently declared. This edit is intended to explicitly require declarations be made when a jointly registered vessel switches between the Shorebased IFQ Program and the limited entry fixed gear fishery, regardless of the gear type used when participating in that fishery. While the current list of vessel declarations are generally gear- and fishery-specific, this new requirement at § 660.13(d)(6)(ii) makes it clear that a change in declaration must be filed to legally switch between fisheries. Joint registration would not preclude declaring more than one gear type, if allowed under current regulations at § 660.13(d)(6)(iv).

This proposed rule clarifies the definition for ''base permit'' at § 660.11 such that the use of a base permit only applies for sablefish endorsed permits. This does not change how the base permit concept has been applied to vessels registered to multiple limited entry sablefish permits. When a trawl endorsed permit and one or more sablefish endorsed permits are jointly registered, trawl endorsed permits must meet the current vessel length endorsement requirements at § 660.25(b)(3)(iii)(B). The concept of a base permit only applies to stacked sablefish endorsed permits.

Cumulative limits (*e.g.* daily, weekly, bi-monthly limits, etc.) continue to apply to the vessel, regardless of the number of permits registered to that vessel. Registering a vessel to more than one limited entry permit under joint registration does not entitle the vessel to more than one cumulative limit. Joint registration would not allow a vessel to register multiple limited entry fixed gear permits (not sablefish endorsed) along with the trawl endorsed permit.

Registering a vessel to a limited entry permit with a specific endorsement often triggers certain requirements in the groundfish regulations. Joint registration is not intended to change fishing operations of groundfish fisheries or change requirements that are applicable to vessels because of the type of the endorsement(s) on the limited entry permit to which they are registered, unless otherwise described above.

4. Restrictions on At-Sea Processing of Sablefish

Processing of groundfish at-sea is prohibited for vessels fishing in the Shorebased IFQ Program or limited entry fixed gear fishery, unless exempted from that prohibition. One such exemption applies to certain vessels fishing in the limited entry fixed gear sablefish primary fishery. Those exempted vessels may freeze sablefish at-sea during the limited entry fixed gear sablefish primary fishery.

When trawl rationalization was implemented in 2011, the Council recommended that at-sea processing of groundfish in the Shorebased IFQ Program be prohibited, with limited exemptions. Regulations at § 660.112 (b)(1)(xii) prohibited at-sea processing of groundfish, and also listed the exemptions that had been granted to date, including the exemption to the prohibition of at-sea processing in the sablefish primary fishery. As written, those regulations grant vessels with an exemption to the prohibition of at-sea processing in the sablefish primary fishery an exemption from the at-sea processing prohibition when fishing in the Shorebased IFQ Program. However, NMFS interpreted regulations at § 660.25(b)(6)(i) to only allow the sablefish at-sea processing exemption when the vessel is registered to a sablefish-endorsed limited entry permit.

Under current regulations, a vessel may not register a trawl-endorsed permit and a sablefish endorsed permit at the same time, so they cannot take advantage of the exemption at § 660.112(b)(1)(xii)(B). Therefore, the exemption at § 660.112(b)(1)(xii)(B) cannot currently be used by vessels participating in the Shorebased IFQ Program; qualifying vessels that may freeze sablefish at-sea in the sablefish primary fishery are not allowed to freeze sablefish at-sea when fishing in the Shorebased IFQ Program. However, under this rule's proposed joint registration language, a vessel would be able to register to a trawl endorsed and a sablefish endorsed limited entry permit simultaneously. If the exemption at § 660.112(b)(1)(xii)(B) is not removed, joint registration could allow vessels with an exemption from the at-sea processing prohibition for the sablefish primary fishery to also process sablefish at sea in the Shorebased IFQ Program.

At its April 2012 meeting, the Council recommended prohibiting the freezing

of sablefish at-sea when caught in the Shorebased IFQ Program, regardless of whether the vessel has an exemption for the limited entry fixed gear fishery. The Council recommends this change to regulations to prevent the single vessel that holds a sablefish at-sea processing exemption to process sablefish at-sea in the Shorebased IFQ Program, a fishery in which it had no prior history. NMFS is therefore proposing to remove the exemption to the prohibition of at-sea processing (at § 660.112(b)(1)(xii)(B)) that extended the limited entry fixed gear exemption in § 660.25(b)(6)(i) to vessels fishing sablefish in the Shorebased IFQ Program. Also, in light of joint registration, a clarifying sentence would be added to § 660.25(b)(6)(i), stating that the at-sea processing exemption only applies to at-sea processing of sablefish caught in the limited entry fixed gear sablefish primary fishery.

During development of these proposed regulations, NMFS noted that a similar situation as the one described above may occur when a vessel exempted from at-sea processing prohibitions of non-whiting groundfish in the Shorebased IFQ Program could utilize that exemption when fishing in non-IFQ fisheries. NMFS interprets the regulations to mean that the vessel must be registered to a limited entry trawl permit to qualify for this exemption. With joint registration, it may need to be clarified that the exemption only applies to processing non-whiting groundfish caught in the Shorebased IFQ Program. NMFS is seeking public comment on whether a clarifying sentence could be added to § 660.25(b)(6)(ii), stating that the at-sea processing exemption described there only applies to at-sea processing of non-whiting groundfish caught in the Shorebased IFQ Program.

5. Sablefish Allocations North of 36° N. lat.

The allocation structure for sablefish north of 36° N. lat. was established in FMP Amendment 6. In April 2009, the Council recommended final preferred intersector allocations for groundfish species under Amendment 21. The Council and NMFS recommended that no change be made to the Amendment 6 allocation structure for sablefish. However, FMP Amendment 21 and its implementing regulations slightly changed the process for allocating sablefish north of 36° N. lat. (75 FR 60868, October 1, 2010). In this action, NMFS is proposing regulations to align sablefish north of 36° N. lat. allocations with the Amendment 6 allocation structure, as recommended by the Council in 2009.

Under FMP Amendment 6, harvest in the incidental open access fishery was deducted from the open access allocation after the limited entry/open access allocation occurred. Amendment 21 changed that process and deducts sablefish for the incidental open access fishery before the limited entry/open access allocation is made, similar to how the tribal fishery and scientific research deductions were made for other species. While this is consistent with how other groundfish species were treated under Amendment 21, it was inconsistent with Amendment 6 and the Council's intent. As clarified by the Council with Amendment 21–1, it was not the Council's intent to have Amendment 21 supersede the Amendment 6 allocation structure for sablefish north of 36° N. lat. In 2014, the Council revised figure 6–1 of the FMP to make it consistent with Amendment 6 and the Council's intent.

However, at that time, regulations at § 660.55(h) were mistakenly left unrevised. In this action, NMFS proposes revising the text description of the sablefish north of 36° N. lat. allocation structure to reflect the Council's intent to maintain the Amendment 6 allocation structure and to bring the regulations at § 660.55(h) into consistency with the FMP. Proposed regulatory changes at § 660.55(h)(2) would deduct the metric tonnage for scientific research and recreational fisheries before the limited entry/open access split, but would no longer deduct the metric tonnage for the incidental open access fisheries during this step. Proposed regulations would deduct the metric tonnage for incidental open access fisheries from the open access allocation after the limited entry/open access split.

6. VMS Declarations for Vessels Registered to a VMS Unit

In 2004, the Council and NMFS implemented a vessel monitoring program. Since 2004, all commercial fishing vessels that take and retain groundfish in federal water, or transit through federal water with groundfish on board are required to have a working VMS. The VMS, along with a system of fishing declaration reporting requirements, allows for monitoring and enforcement of areas closed to fishing. With this program, NMFS type-approved hardware and software, or ''units,'' were installed on vessels in order to meet these new program requirements for the groundfish fishery. A variety of units were available for purchase, and vessel owners/operators could seek reimbursement for the cost of the units. When a VMS unit is installed on a vessel, it is registered with NMFS OLE and catalogued. There are a number of VMS units that have registered with OLE but have never made a fishing declaration, as required by regulations at § 660.13(d).

At its June 2013 meeting, based on advice from their EC, the Council recommended that a declaration report be required for all vessels registered to a VMS unit, and that a declaration of ''other'' may be appropriate if the activity they will be doing is not fishing (*e.g.* serving as a chartered vessel conducting scientific research). Therefore, in this action, NMFS is proposing regulation changes at § 660.13(d) that would require all vessels registered to a VMS unit to submit a declaration report. Obtaining a declaration report from these vessels will give OLE the information necessary to monitor the activities of these vessels relative to the applicable regulations.

Proposed regulations require any vessel operator upon registration of a VMS unit with NMFS OLE to make a declaration report regardless of fishing activity. This requirement would also apply to vessels that have already registered a VMS unit with NMFS OLE, but have not made a declaration report. OLE may contact a vessel operator and request that a declaration report be made. In such a circumstance, the proposed regulations would obligate the vessel operator to make a declaration report.

Also, consistent with the Council's June 2013 recommendations, NMFS proposes revising the declaration of ''other gear'' at § 660.13(d)(5)(iv)(A)(*24*) to ''other'' to encompass a vessel's on the water activities that may not be fishing (*e.g.* scientific research activities). Vessels registered to a VMS unit would be required to make a declaration, regardless of fishing activities. Under proposed regulations, NMFS anticipates they may make a declaration of ''other'' if they are not fishing.

NMFS also proposes that OLE will default a vessel's declaration to ''other'' if they are unable to contact the vessel operator with whom the VMS unit is associated. As required by current regulations, the vessel operator must update the declaration when they meet the requirements to do so.

7. Equipment Requirements for Electronic Fish Tickets

Under current regulations at § 660.15(d), submission of electronic fish tickets must be done on personal computers with software that meets

specific NMFS requirements. The data is entered into the computer system. Then the information is transmitted in batches to PSMFC. The only step in the process that requires an internet connection is when data sets are transmitted to PSMFC.

A new interface has been developed that uses the internet for both entry and submission of electronic fish ticket data. The new, web-based interface no longer requires the person submitting the electronic fish ticket to do so from a computer equipped with specific, NMFS-approved software. Instead, the only requirement for the web-based interface would be a hardware device (computer, tablet, smartphone, etc.) with a web browser or other software (*e.g.* application) and an internet connection.

Consistent with the Council's June 2014 recommendations to expand the required use of electronic fish tickets to the limited entry fixed gear and open access fisheries, NMFS is proposing updates to equipment requirements pertaining to electronic fish tickets.

Current electronic fish ticket users (*e.g.* IFQ first receivers) are already using this web-based interface, and those first receivers affected by the new requirements would be using the web-based interface. The changes proposed to regulations at § 660.15(d) would reflect the move to a web-based electronic fish ticket for all first receivers, those that are receiving IFQ landings and those that would be receiving sablefish landings in limited entry fixed gear and open access fisheries under proposed electronic fish ticket regulations. Note that an internet connection would now be necessary for all steps in submission of an electronic fish ticket, from creating the new ticket through submission. To reflect these changes, the definition of ''electronic fish ticket'' at § 660.11 would also be revised to reflect the web-based form that would be used to send electronic fish ticket information to the PSMFC.

8. Prohibitions Regarding ''Take and Retain''

When the Council and NMFS implemented Amendment 14 to the groundfish FMP, which established the sablefish primary fishery, regulations needed to clarify that vessels were still only allowed a single cumulative limit of sablefish when fishing outside of the primary sablefish season (66 FR 30869, June 8, 2001). Regulations were promulgated that prohibited taking more than a single cumulative trip limit. NMFS is proposing replacing ''taking, retaining'' with ''taking and retaining,'' consistent with the Council's recommendations under Amendment 14.

There is a difference between ''taking'' fish and ''taking and retaining'' fish during fishing activities. ''Take'' is defined in MSA regulations at § 600.10 as any activity that results in killing fish or bringing live fish on board. ''Retain'' is also defined at § 600.10 and means to fail to return fish to the sea after a reasonable opportunity to sort the catch. In commercial groundfish fisheries, ''trip limits'' (defined at § 660.11) are used to specify the maximum amount of a fish species or species group that may legally be taken and retained, possessed, or landed (per vessel, per time period, etc.).

Amendment 14 promulgated regulations that prohibited vessels from taking more than a single trip limit in the limited entry fixed gear DTL fishery (at § 660.323, which was later redesignated as § 660.212). The preamble to Amendment 14 explained that adding this prohibition was intended to make it clear that, even though the DTL fishery and the primary fishery could both occur during the same time period (*e.g.* April 1 through October 31), vessels in the DTL fishery would be restricted by applicable trip limits.

Current regulations at §§ 660.12 and 660.212 prohibit any vessel from taking more than a single cumulative trip limit, unless they are fishing in the sablefish primary fishery. The exception is consistent with regulations at § 660.231 that describe how, when a vessel is fishing on stacked sablefish endorsed permits, it can take more than one cumulative limit of sablefish because they are fishing on more than one tier limit. However, the prohibition, as written, needs to be revised. Vessels in commercial groundfish fisheries, except the sablefish primary fishery, should not be prohibited from ''taking'' more than a single cumulative trip limit. For those fisheries, a prohibition on ''taking and retaining'' more than a single cumulative trip limit is more appropriate, and ''take, retain'' is replaced with ''take and retain.''

This change is appropriate for three reasons. First, in a mixed stock fishery, it is impracticable to eliminate ''take'' of a single species or species group while still allowing access to species or species groups that can sustain higher harvest levels. Second, a prohibition of ''take and retain'' is more enforceable. When boarding a vessel, enforcement agents will not always be able to measure the total amount of fish taken, as some could have been discarded. However, it is possible to quantify the number of fish on board the vessel in order to evaluate if more fish than the applicable trip limit have been ''taken and retained.'' Third, it was not the intent of FMP Amendment 14, or any subsequent promulgation of ''take, retain,'' prohibitions, to prohibit ''taking'' more than a single trip limit of a groundfish species or species group.

It is for these reasons that groundfish trip limits apply when a species or species group is ''taken *and retained.''* To better align prohibitions for enforcing trip limits with the definition of ''trip limit,'' to improve enforceability of trip limit prohibitions, and to bring consistency to regulations that apply to commercial groundfish fisheries, prohibitions at §§ 660.12(a)(6), 660.212(a)(2), and 660.212(d)(1) and (2) are proposed to be revised from ''take, retain'' to ''take and retain.''

9. Related Minor Clarifications and Non-Substantive Changes

There are several legacy regulations that describe methodologies used for decisions and exemptions regarding limited entry permit endorsements (at § 660.25(b)(3)) and at-sea processing exemptions (at § 660.25(b)(6)) that have expired. Therefore, NMFS is proposing to remove them. Paragraph § 660.25(b)(3)(iv)(B) describes a one-time process for the issuance of sablefish endorsements and tier assignments. That process concluded in 1998. Proposed revisions to paragraphs § 660.25(b)(6)(i) and (ii) introductory text would make it clear that the at-sea processing exemptions described there were extended to industry on a one-time basis and can no longer be sought. The sablefish at-sea processing exemption could not be issued after 2006 and the non-whiting groundfish at-sea processing exemptions could not be issued after 2012. In addition to these revisions described above, additional expired regulations at § 660.25(b)(6)(ii)(A) through (C) would be removed because they no longer describe current regulatory activities and are not relevant to ongoing administrative or fishing practices.

Regulations at § 660.55(f) describe catch accounting methodologies for groundfish species. Paragraph § 660.55(f)(1) describes how catch accounting is done for species with trawl/nontrawl allocations. One of the cross-references in § 660.55(f) refers to catch accounting in limited entry and open access fisheries, or nontrawl fisheries. The cross-reference refers to § 660.55(f)(2), however that paragraph describes catch accounting procedures for Pacific whiting. The cross-reference should refer to § 660.55(f)(1)(ii), where catch accounting for nontrawl fisheries

is described. Therefore, this rule proposes to revise the cross reference at § 660.55(f) from ''§ 660.55(f)(2)'' to ''§ 660.55(f)(1)(ii).''

In this action, edits are made to regulations at § 660.60(h)(7)(i) and (ii)(A) to clarify that trip limit crossover provisions do not apply to IFQ species for vessels declared into the Shorebased IFQ Program. Those species are managed with IFQ, and therefore trip limit crossover provisions in these paragraphs do not apply.

To improve consistency, this action would also make clarifying edits to regulations at § 660.60(h)(7)(ii)(B)(*1*) and (*2*) to replace the word ''participate'' with the defined term ''fish'' and to remove redundant text by changing ''. . . in the open access fishery, described at part 660, subpart F, with open access gear . . .'' to ''. . . with open access gear . . .'' Open access gear, as defined at § 660.11, can only be used in the open access fishery. It is redundant to refer to both the open access fishery and open access gear.

The trawl fishery prohibitions at § 660.112(a)(3)(i) make it illegal to intentionally submit false information. By definition, a false statement is an untrue statement knowingly made with the intent to mislead, therefore the term ''intentionally'' in the existing prohibition is unnecessary. This proposed rule revises the prohibition by deleting the word ''intentionally.'' This language is intended to work coincident with regulations that require submission of final and accurate information on electronic fish tickets, and with electronic fish ticket regulations that require errors to data, when found, to be corrected via a revision to the electronic fish ticket.

Regulations for revising electronic fish ticket submissions, at § 660.113(b)(4)(iii), would be modified to clarify that the only way to fix an error in an electronic fish ticket submission is to resubmit a revised electronic fish ticket. In other words, if an error is found in an electronic fish ticket submission, it cannot be remedied by submitting any other record besides an electronic fish ticket. Proposed regulations at § 660.113(b)(4)(iii) change ''may be revised'' via electronic fish ticket to ''must be revised'' via electronic fish ticket.

A clarifying edit is made in paragraph § 660.113 (a)(2) to use the defined term ''date of landing'' consistently throughout the recordkeeping and reporting regulations.

Current regulations at § 660.231 apply to vessels participating in the limited entry fixed gear sablefish primary fishery. However, many of the regulations that apply to limited entry fixed gear fishing also apply to vessels fishing in the limited entry fixed gear sablefish primary fishery. In this action, clarifying edits would be made to paragraph § 660.231(a) to make this clear. Section 660.231 provides additional details regarding management and prosecution of the limited entry fixed gear sablefish primary fishery, and is intended to be taken in the larger context of regulations that apply to limited entry fixed gear fisheries (limited entry fixed gear fisheries during and outside of the sablefish primary season).

Throughout these proposed revisions to regulations, cross-references would be updated to maintain accuracy given the proposed, substantive changes described in the sections above. Additionally, references to the NMFS ''Northwest'' Region would be changed to NMFS ''West Coast'' Region to reflect an organizational change that occurred in October 2013. References to ''halibut'' would be revised to refer to ''Pacific halibut'' to distinguish it from California halibut. Minor, non-substantive edits would also be made to remove duplicative text or change typographic or grammatical errors.

All of the proposed changes to regulations described in this section are not intended to change the meaning of existing regulations, but rather are intended to reduce duplication, simplify, correct cross-references and make other minor, related changes to bring consistency within groundfish regulations.

Classification

NMFS has made a preliminary determination that the proposed action is consistent with groundfish FMP, the MSA, and other applicable law. There are no relevant federal rules that may duplicate, overlap, or conflict with this action. In making its final determination, NMFS will take into account the complete record, including the data, views, and comments received during the comment period. An environmental assessment (EA) was prepared for this action. The EA includes socio-economic information that was used to prepare the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA). The EA is available for public comment (See **ADDRESSES**) and is available on line at *www.westcoast.fisheries.noaa.gov/publications/nepa/groundfish/groundfish_nepa_documents.html.*

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 603 *et seq.,* requires government agencies to assess the effects that regulatory alternatives would have on small entities, including small businesses, and to determine ways to minimize those effects. When an agency proposes regulations, the RFA requires the agency to prepare and make available for public comment an IRFA, unless the agency can certify that the proposed action would not have a significant economic impact on a substantial number of small entities. The IRFA describes the impact on small businesses, non-profit enterprises, local governments, and other small entities, and is intended to aid the agency in considering all reasonable regulatory alternatives that would minimize the economic impact on affected small entities. After the public comment period, the agency prepares a Final Regulatory Flexibility Analysis (FRFA) that takes into consideration any new information or public comments. A summary of the IRFA for this action is provided below. The reasons why action by the agency is being considered, the objectives and legal basis for this rule are described in previous sections of the preamble, and the reporting and recordkeeping requirements are described in the next section.

Following are descriptions of small entities, as defined by the RFA and the Small Business Administration (SBA).

Small businesses. SBA has established guidelines on size criteria for all major industry sectors in the United States, including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts, not in excess of $20.5 million for all its affiliated operations worldwide (See 79 FR 33647, effective July 14, 2014). For marinas and charter/party boats, a small business now defined as one with annual receipts, not in excess of $7.5 million. For related fish processing businesses, a small business is one that employs 750 or fewer persons.

Small organizations. The RFA defines small organizations as any nonprofit enterprise that is independently owned and operated and is not dominant in its field.

An estimated 99 entities are potentially impacted by this rule, including 77 receivers and up to 22 vessels/permit-holding entities. All of these entities are considered small

according to the SBA guidelines stated above. This rule is not anticipated to have a substantial or significant economic impact on small entities, or to place small entities at a disadvantage to large entities. Nonetheless, NMFS has prepared an IRFA (available as part of the EA described above), which is summarized below. Through the rulemaking process associated with this action, we are requesting comments on this conclusion.

Description of Small Entities Affected by Proposed Rule Provisions on Electronic Fish Tickets. An estimated 77 first receivers across the primary and DTL fisheries will be impacted by the electronic fish ticket requirement. These 77 first receivers account for approximately 34 percent of sablefish landings in these fisheries. An additional 23 sablefish first receivers are also IFQ first receivers and already use electronic fish tickets to record shorebased IFQ landings. The 77 first receivers across the primary and DTL fisheries who do not already use electronic fish tickets would be most affected by the action alternatives. Without having employment information for these businesses, NMFS is considering all 77 first receivers to be small entities under the SBA guidelines described above.

Description of Small Entities Affected by Proposed Rule Provisions on Ownership Limitation (i.e. Own/Hold Control Limit). This provision is likely to benefit a few individuals who own multiple vessels that operate in both the West Coast sablefish primary fishery and the Alaska sablefish IFQ fishery, and were grandfathered into the Alaska IFQ program. As relatively few businesses meet the SBA criteria for small enterprises, this provision of the proposed rule is not expected to impact a substantial number of small entities. At most, the 13 vessels that hold permits to fish in both the Alaska IFQ program and the West Coast sablefish primary fishery would qualify for the exemption.

Description of Small Entities Affected by Proposed Rule Provisions on Joint Registration. Since 2011, a total of 20 vessels have been registered to both trawl and fixed gear permits in a single year. Of these, 16 vessels would qualify as a small business under the SBA criteria described above. The permits associated with large entities were participating in a temporary research program. These 16 vessels are likely to benefit from the flexibility offered by joint registration. In 2015, the last year with complete data, nine vessels registered to both trawl and fixed gear permits within the year, and all of these reported being small businesses. These nine vessels are the most likely to realize immediate benefits from the updated rule.

Alternatives for Electronic Fish Tickets. NMFS considered four alternatives, including No Action, for electronic fish tickets. The No Action alternative (Alternative 1) would maintain current reporting state fish ticket reporting systems. Each of Alternatives 2 through 4 would implement a federal requirement that first receivers of non-trawl commercial sablefish landings to U.S. West Coast ports record landings on an electronic fish ticket. The action alternatives differ from each other only in the fleets that they address. Alternative 2 would affect participants in the limited entry fixed gear sablefish primary fishery only. Alternative 3 would expand upon Alternative 2 to add participants in the limited entry fixed gear DTL fishery. Lastly, Alternative 4 would expand upon Alternative 3 to add participants in the open access DTL sablefish fishery. All alternative actions except for Alternative 1 (No Action) will result in some expenses as a result of new reporting requirements. NMFS assumed that all of the affected small businesses already have access to a technically suitable computer to submit the electronic fish tickets. However, if a business did not currently own a computer, it would incur additional costs for the initial investment in a computer and for a small monthly fee for an Internet connection. This requirement will likely result in increased administrative expenses with a longer submission time in those instances where first receivers must submit both State and Federal fish tickets. First receivers in the trawl program reported an hourly wage of $33.68 for non-production employees in 2012 (Economic Data Collection Program First Receiver and Shorebased Processor Report, 2009–2012). Assuming non-IFQ receivers pay a similar wage to non-production employees, and using the burden-hour estimate included in the *Paperwork Reduction Act* section below, Alternative 2 is estimated to result in an additional annual expense of about $2,500 for all processors combined, Alternative 3 would cost $10,000 in total, and Alternative 4 (preferred alternative) would cost the sector $20,000 or about an additional $4 per fish ticket.

Alternatives for Ownership Limitation (i.e. Own/Hold Control Limit). NMFS considered three alternatives, including No Action (Alternative 1), with regards to ownership limitation changes. Alternatives 2a and 2b would result in a permit only being counted against the ownership limitation if a certain percentage of the vessel registered to that permit was owned. The two sub-alternatives vary by percentage of ownership: 20 percent and 30 percent for Alternatives 2a and 2b, respectively. Alternative 3 would result in permits counting as they do under No Action unless an exemption was applied for and granted by NMFS. There may be an opportunity for larger operations that were constrained by the three-permit limit to consolidate more harvest privileges by either acquiring Pacific coast limited entry fixed gear permits or by hiring out to west coast and Alaska participants to harvest Alaska IFQ. The degree of the current constraint, and consequently the opportunity provided by the alternative actions, is modest for the fleet as a whole, but this benefit may be important to some individuals.

Alternatives for Joint Registration. NMFS considered three alternatives, including No Action (Alternative 1), relative to joint registration. Alternative 2 would allow a single trawl permit and up to three limited entry fixed gear permits to be registered to a vessel simultaneously. Alternative 3 would allow the same permit registration options as Alternative 2, but would have additional requirements relative to declarations and at-sea processing. In 2014, the last year for which economic data are available, the average net revenue per day was $4,815 for the eight vessels fishing with fixed gear in the trawl fishery that were also registered to a fixed-gear endorsed permit that year. The average net revenue per day in the fixed gear-endorsed fishery was $4,686 (per data provided by the Economic Data Collection Program on March 23, 2016). Vessels had lower variable costs per day while participating in the fixed gear fishery compared with the trawl fishery.

Vessels that either own or lease both fixed gear and trawl permits may realize increased operational efficiency with joint registration, particularly with respect to the 100% observer coverage required when fishing under the trawl permit. Participants have indicated that they would take advantage of the alternative fishing opportunities afforded by this provision when scheduling trips on occasions that observers are unavailable for fishing under their trawl permit. If an observer wasn't available or had to cancel, the vessel could choose the alternative of declaring into the fixed gear endorsed fishery, and would not need to forgo the trip. Joint registration would additionally provide a minor

administrative convenience to the vessels that own or have multi-year leased permits. These operators, who currently must complete and submit multiple transfer forms throughout the year (typically three), would no longer be required to submit any paperwork related to permit transfers.

Rejected Sub-Options for Alternatives 2 through 4 for Electronic Fish Tickets. While discussing the options for electronic fish tickets, the Council considered a sub-option for each of the action alternatives (Alternatives 2 through 4). Under the sub-option, sablefish deliveries would be recorded on state paper fish tickets, rather than on federal electronic fish tickets. NMFS would implement a federal requirement that sablefish landings, and the federal groundfish permit number associated with the landings, be recorded on state paper fish tickets. Although this sub-option would cause the least disruption to the existing landings process, adding new requirements to the state paper fish ticket system would fail to address the purpose and need for this action. This slight alteration in the process would not improve the timeliness of catch accounting or enforcement capabilities in the fishery.

Adding new requirements to the state paper fish ticket system would also cause several logistical challenges in managing the sablefish fishery: (1) Sablefish landings data would not be uploaded into the Pacific Fisheries Information Network (PacFIN) database at a faster than current rate, (2) there would continue to be a lag time of several months between when the landings occur and when the data are available, and (3) further augmenting paper fish ticket recording requirements would be disruptive to state data collection and management practices. Therefore, this sub-option has been considered, but rejected from further analysis.

In addition, the action alternatives originally included language regarding how the catch data recorded on the electronic tickets would be used, specifically stating, ''That tier permits be loaded into the IFQ Vessel Account System with deductions made as appropriate when a tier delivery is made and recorded on the E Fish Ticket.'' The Council determined that this language was overly restrictive, and that it was premature to discuss implementations issues such as the details of how the data would be processed and made available to end users. Therefore, the use of this language in the action alternatives has been considered, but rejected from further analysis.

Rejected Sub-Options for Alternatives 2 through 4 for Ownership Limitation (i.e. Own/Hold Control Limit). The Council also discussed other action alternatives to address issues regarding the own/hold control rule. The first action alternative that was considered but rejected would have maintained a three permit limit for the own/hold control rule. However, control would be calculated on percentage ownership of permits and vessels. Total ownership (including for first and second generation owners) would be limited to a total of 300 percent. The intent of this action alternative would have been to limit the total ownership to three permits, which is the same as the No Action alternative.

The Council also considered increasing the own/hold control limit to six permits. Any percentage ownership would have counted as one permit. The Council also looked at leaving the own/hold control limit at three, but capping the number of tier permits an entity may register to a vessel at three permits, and capping the number of limited entry fixed gear tier vessels an entity can own at three. These changes would have effectively increased the maximum own/hold control limit to 12 permits, because an entity could own three permits and have partial or total ownership of three vessels, each of which are registered to three different permits owned by others. Finally, the Council considered an action alternative that would leave the own/hold control limit at three permits, but with the calculation based only on ownership of permits. Holding or leasing a permit or ownership in the vessel would not have counted toward the three permit limit. A person could have owned three permits and held any number of additional permits by registering the vessel(s) they own to permits owned or leased by other persons.

The Council considered but rejected these action alternatives for the own/hold control rule from further analysis, because the Council found that these alternatives were administratively burdensome to implement and track. The Council found that some of these alternatives weakened the own/hold control limit beyond what was needed to address the purpose and need. If implemented, these alternatives could undermine the purpose of having own/hold control limits in place, namely to maintain the owner operator nature of the fleet.

Rejected Sub-Options for Alternatives 2 through 4 for Joint Registration. Another alternative that was considered to address the issues with joint registration was to increase the number of transfers allowed per year. Currently, vessels are only allowed to transfer permits once per year. This alternative would increase a vessel's flexibility to move between the LE trawl and fixed gear fishery, and it would also allow more flexibility for vessels to move between the LE and OA fisheries, reducing the wall between these sectors. However, such a provision would increase administrative costs and provide less flexibility for the fleet than offered by the other action alternatives, because the cap on the number of transfers allowed per year would remain in place. Therefore, this alternative was considered but rejected from further analysis.

Impacts to Small Businesses from Actions 4–9. Except for electronic fish tickets, own/hold control limit and joint registration, the actions described above in sections 4–9 of this proposed rule are largely administrative and, if adopted, would not impact any of the small entities identified as potentially being affected by the first three major actions in this proposed rule. Changes associated with actions 4–9 would make small modifications and clarifications to existing requirements, maintain existing requirements in light of changes related to joint registration, and simplify equipment requirements. Thus, these measures would not have a significant economic impact on a substantial number of the small entities described in this document.

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for under the following control numbers:

OMB Control Number 0648–XXX. Electronic Fish Tickets

Public reporting burden is estimated to average 10 minutes per response (landing) for first receivers in Washington and California, and two minutes per response (landing) for first receivers in Oregon. The total annual burden estimate for all first receivers in Washington is 87 hours, in California is 543 hours, and in Oregon is 36 hours. Public reporting burden includes the time for reviewing instructions, accessing the web-based platform, gathering the data needed, and completing and reviewing the collection of information.

OMB Control Number 0648–XXX. Ownership Limitation Exemption

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to West Coast Region at the **ADDRESSES** above, and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: May 25, 2016.

Samuel D. Rauch III,

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

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

PART 660—FISHERIES OFF WEST COAST STATES

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

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

■ 2. In § 660.11:

■ a. Revise the definitions for ''Base permit'' and ''Electronic fish ticket'';

■ b. Add in alphabetical order the definition for ''Joint registration'';

■ c. Remove the definition for ''Stacking''; and

■ b. Add in alphabetical order the definition for ''Stacking or stacked''

The revisions and additions read as follows:

§ 660.11 General definitions.

* * * * *

Base permit means a sablefish-endorsed limited entry permit described at § 660.25(b)(3)(i), subpart C, registered for use with a vessel that meets the permit length endorsement requirements appropriate to that vessel, as described at § 660.25(b)(3)(iii), subpart C.

* * * * *

Electronic fish ticket means a web-based form that is used to send landing data to the Pacific States Marine Fisheries Commission. Electronic fish tickets are used to collect information similar to the information required in state fish receiving tickets or landing receipts, but do not replace or change any state requirements.

* * * * *

Joint registration or jointly registered means simultaneously registering both trawl-endorsed and longline or trap/pot-endorsed limited entry permits for use with a single vessel in one of the configurations described at § 660.25(b)(4)(iv).

* * * * *

Stacking or stacked means registering more than one sablefish-endorsed limited entry permit for use with a single vessel (See § 660.25(b)(4)(iii), subpart C).

* * * * *

■ 3. In § 660.12, revise paragraph (a)(6) to read as follows:

§ 660.12 General groundfish prohibitions.

* * * * *

(a) * * *

(6) Take and retain, possess, or land more than a single cumulative limit of a particular species, per vessel, per applicable cumulative limit period, except for sablefish taken in the primary limited entry, fixed gear sablefish season from a vessel authorized to fish in that season, as described at § 660.231, subpart E.

* * * * *

■ 4. In § 660.13, revise paragraph (d) introductory text, and paragraphs (d)(5)(ii) and (iii), and (d)(5)(iv)(A)(*24*) to read as follows:

§ 660.13 Recordkeeping and reporting.

* * * * *

(d) *Declaration reporting requirements*—When the operator of a vessel registers a VMS unit with NMFS OLE, the vessel operator must provide NMFS with a declaration report as specified at paragraph (d)(5)(iv) of this section. The operator of any vessel that has already registered a VMS unit with NMFS OLE but has not yet made a declaration, as specified at paragraph (d)(5)(iv) of this section, must provide NMFS with a declaration report upon request from NMFS OLE.

(5) * * *

(ii) A declaration report will be valid until another declaration report revising the existing gear or fishery declaration is received by NMFS OLE. The vessel operator must send a new declaration report before leaving port on a trip that meets one of the following criteria:

(A) A gear type that is different from the gear type most recently declared for the vessel will be used, or

(B) A vessel will fish in a fishery other than the fishery most recently declared.

(iii) During the period of time that a vessel has a valid declaration report on file with NMFS OLE, it cannot fish with a gear other than a gear type declared by the vessel or fish in a fishery other than the fishery most recently declared.

(iv) * * *

(A) * * *

(*24*) Other, or

* * * * *

■ 5. In § 660.15, revise paragraphs (a) and (d) to read as follows:

§ 660.15 Equipment requirements.

(a) *Applicability.* This section contains the equipment and operational requirements for scales used to weigh catch at sea, scales used to weigh catch at IFQ first receivers, hardware and software for electronic fish tickets, and computer hardware for electronic logbook software. Unless otherwise specified by regulation, the operator or manager must retain, for 3 years, a copy of all records described in this section and make the records available upon request to NMFS staff or an authorized officer.

* * * * *

(d) *Electronic fish tickets.* First receivers are required to meet the hardware and software requirements below.

(1) *Hardware and software requirements.* A personal computer system, tablet, mobile device, or other device that has software (*e.g.* web browser) capable of submitting information over the Internet, such that submission to Pacific States Marine Fisheries Commission can be executed effectively.

(2) *Internet access.* The first receiver is responsible for maintaining Internet access sufficient to access the web-based interface and submit completed electronic fish ticket forms.

(3) *Maintenance.* The first receiver is responsible for ensuring that all hardware and software required under this subsection are fully operational and functional whenever they receive,

purchase, or take custody, control, or possession of groundfish species for which an electronic fish ticket is required. ''Functional'' means that the software requirements and minimum hardware requirements described at paragraphs (d)(1) and (2) of this section are met and submission to Pacific States Marine Fisheries Commission can be executed effectively by the equipment.

(4) *Improving data quality.* Vessel owners and operators, first receivers, or shoreside processor owners, or managers may contact NMFS to request assistance in improving data quality and resolving issues. Requests may be submitted to: Attn: Electronic Fish Ticket Monitoring, National Marine Fisheries Service, West Coast Region, Sustainable Fisheries Division, 7600 Sand Point Way, NE., Seattle, WA 98115.

■ 6. In § 660.25:
■ a. Revise paragraph (b)(1)(v);
■ b. Remove paragraph (b)(3)(iv)(B);
■ c. Redesignate paragraph (b)(3)(iv)(C) as (b)(3)(iv)(B);
■ d. Revise newly redesignated paragraphs (b)(3)(iv)(B)(*3*) and (*4*);
■ e. Add a new paragraph (b)(3)(iv)(C);
■ f. Revise paragraphs (b)(3)(v), (b)(4) introductory text, (b)(4)(i)(D), and (b)(4)(iii);
■ g. Redesignate paragraphs (b)(4)(iv) through (b)(4)(ix) as (b)(4)(v) through (b)(4)(x);
■ h. Add a new paragraph (b)(4)(iv);
■ i. Revise newly redesignated paragraphs (b)(4)(v)(A) and (B), (b)(4)(vi)(A) and (B), and (b)(4)(vii)(A); and
■ j. Revise paragraph (b)(6).

The revisions and additions read as follows:

§ 660.25 Permits.

* * * * *

(b) * * *

(1) * * *

(v) *Initial administrative determination (IAD).* SFD will make a determination regarding permit endorsements, renewal, replacement, change in permit ownership and change in vessel registration. SFD will notify the permit owner in writing with an explanation of any determination to deny a permit endorsement, renewal, replacement, change in permit ownership or change in vessel registration. The SFD will decline to act on an application for permit endorsement, renewal, replacement, or change in registration of a limited entry permit if the permit is subject to sanction provisions of the Magnuson-Stevens Act at 16 U.S.C. 1858(a) and implementing regulations at 15 CFR part 904, subpart D, apply.

* * * * *

(3) * * *

(iv) * * *

(B) * * *

(*3*) A partnership or corporation will lose the exemptions provided in paragraphs (b)(3)(iv)(B)(*1*) and (*2*) of this section on the effective date of any change in the corporation or partnership from that which existed on November 1, 2000. A ''change'' in the partnership or corporation is defined at § 660.11. A change in the partnership or corporation must be reported to SFD within 15 calendar days of the addition of a new shareholder or partner.

(*4*) Any partnership or corporation with any ownership interest in a limited entry permit with a sablefish endorsement or in the vessel registered to the permit shall document the extent of that ownership interest with NMFS via the Identification of Ownership Interest Form sent to the permit owner through the annual permit renewal process and whenever a change in permit owner, vessel owner, and/or vessel registration occurs as described at paragraph (b)(4)(v) and (vi) of this section. NMFS will not renew a sablefish-endorsed limited entry permit through the annual renewal process described at paragraph (b)(4)(i) of this section, or approve a change in permit owner, vessel owner, and/or vessel registration unless the Identification of Ownership Interest Form has been completed. Further, if NMFS discovers through review of the Identification of Ownership Interest Form that an individual person, partnership, or corporation owns or holds more than 3 permits and is not authorized to do so under paragraph (b)(3)(iv)(B)(*2*) of this section, the individual person, partnership or corporation will be notified and the permits owned or held by that individual person, partnership, or corporation will be void and reissued with the vessel status as ''unidentified'' until the permit owner owns and/or holds a quantity of permits appropriate to the restrictions and requirements described in paragraph (b)(3)(iv)(B)(*2*) of this section. If NMFS discovers through review of the Identification of Ownership Interest Form that a partnership or corporation has had a change in membership since November 1, 2000, as described in paragraph (b)(3)(iv)(B)(*3*) of this section, the partnership or corporation will be notified, NMFS will void any existing permits, and reissue any permits owned and/or held by that partnership or corporation in ''unidentified'' status with respect to vessel registration until the partnership or corporation is able to register ownership of those permits to persons authorized under this section to own sablefish-endorsed limited entry permits.

* * * * *

(C) *Ownership limitation exemption.* As described in (b)(3)(iv)(B) of this section, no individual person, partnership, or corporation in combination may own and/or hold more than three sablefish-endorsed permits. A vessel owner that meets the qualifying criteria described in paragraph (b)(3)(iv)(C)(*1*) of this section may request an exemption from the ownership limitation.

(*1*) *Qualifying criteria.* The three qualifying criteria for an ownership limitation exemption are: the vessel owner currently has no more than 20 percent ownership interest in a vessel registered to the sablefish endorsed permit, the vessel owner currently has ownership interest in Alaska sablefish individual fishing quota, and the vessel has fished in the past 12-month period in both the West Coast groundfish limited entry fixed gear fishery and the Sablefish IFQ Program in Alaska. The best evidence of a vessel owner having met these qualifying criteria will be state fish tickets or landings receipts from the West Coast states and Alaska. The qualifying vessel owner may seek an ownership limitation exemption for sablefish endorsed permits registered to no more than two vessels.

(*2*) *Application and issuance process for an ownership limitation exemption.* The SFD will make the qualifying criteria and application instructions available online at *www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html.* A vessel owner who believes that they may qualify for the ownership limitation exemption must submit evidence with their application showing how their vessel has met the qualifying criteria described at paragraph (b)(3)(iv)(C)(*1*) of this section. The vessel owner must also submit a Sablefish Permit Ownership Limitation Exemption Identification of Ownership Interest form that includes disclosure of percentage of ownership in the vessel and disclosure of individual shareholders in any entity. Paragraph (i) of this section sets out the relevant evidentiary standards and burden of proof. Applications may be submitted at any time to NMFS at: NMFS West Coast Region, Sustainable Fisheries Division, ATTN: Fisheries Permit Office—Sablefish Ownership Limitation Exemption, 7600 Sand Point Way NE., Seattle, WA 98115. After receipt of a complete application, the SFD will issue an IAD in writing to the applicant determining whether the applicant

qualifies for the exemption. If an applicant chooses to file an appeal of the IAD, the applicant must follow the appeals process outlined at paragraph (g) of this section and, for the timing of the appeals, at paragraph (g)(4)(ii) of this section.

(*3*) *Exemption status.* If at any time a change occurs relative to the qualifying criteria described at paragraph (b)(3)(iv)(C)(*1*), the vessel owner to whom the ownership limitation exemption applies must notify NMFS within 30 calendar days. If such changes mean the vessel owner no longer meets the qualifying criteria, the ownership limitation exemption becomes automatically null and void 30 calendar days after the date the vessel owner no longer meets the qualifying criteria. At any time, NMFS may request that the vessel owner submit a new exemption application. If NMFS at any time finds the vessel owner no longer meets the qualifying criteria described at paragraph (b)(3)(iv)(C)(*1*) of this section NMFS will issue an IAD, which may be appealed, as described at paragraph (g) of this section.

(*v*) *MS/CV endorsement.* An MS/CV endorsement on a trawl limited entry permit conveys a conditional privilege that allows a vessel registered to it to fish in either the coop or non-coop fishery in the MS Coop Program described at § 660.150, subpart D. The provisions for the MS/CV-endorsed limited entry permit, including eligibility, renewal, change of permit ownership, vessel registration, combinations, accumulation limits, fees, and appeals are described at § 660.150. Each MS/CV endorsement has an associated catch history assignment (CHA) that is permanently linked as originally issued by NMFS and which cannot be divided or registered separately to another limited entry trawl permit. Regulations detailing this process and MS/CV-endorsed permit combinations are outlined in § 660.150(g)(2), subpart D.

* * * * *

(4) *Limited entry permit actions*—renewal, combination, stacking, joint registration, change of permit owner or vessel owner, and change in vessel registration—

(i) * * *

(D) Limited entry permits with sablefish endorsements, as described at paragraph (b)(3)(iv) of this section, will not be renewed until SFD has received complete documentation of permit ownership as required under paragraph (b)(3)(iv)(B)(*4*) of this section.

* * * * *

(iii) *Stacking limited entry permits.* ''Stacking'' limited entry permits, as defined at § 660.11, refers to the practice of registering more than one sablefish-endorsed permit for use with a single vessel. Only limited entry permits with sablefish endorsements may be stacked. Up to 3 limited entry permits with sablefish endorsements may be registered for use with a single vessel during the primary sablefish season described at § 660.231, subpart E. Privileges, responsibilities, and restrictions associated with stacking permits to fish in the sablefish primary fishery are described at § 660.231, subpart E and at paragraph (b)(3)(iv) of this section.

(iv) *Joint registration of limited entry permits*—(A) *General.* ''Joint registration'' of limited entry permits, as defined at § 660.11, is the practice of simultaneously registering both trawl-endorsed and longline or trap/pot-endorsed limited entry permits for use with a single vessel.

(B) *Restrictions.* Subject to vessel size endorsements in paragraph (b)(3)(iii), any limited entry permit with a trawl endorsement and any limited entry permit with a longline or trap/pot endorsement may be jointly registered for use with a single vessel but only in one of the following configurations:

(*1*) a single trawl-endorsed limited entry permit and one, two or three sablefish-endorsed fixed gear (longline and/or fishpot endorsed) limited entry permits; or

(*2*) a single trawl-endorsed limited entry permit and one longline-endorsed limited entry permit for use with a single vessel.

(v) * * *

(A) *General.* Change in permit owner and/or vessel owner applications must be submitted to NMFS with the appropriate documentation described at paragraphs (b)(4)(viii) and (ix) of this section. The permit owner may convey the limited entry permit to a different person. The new permit owner will not be authorized to use the permit until the change in permit owner has been registered with and approved by NMFS. NMFS will not approve a change in permit owner for a limited entry permit with a sablefish endorsement that does not meet the ownership requirements for such permit described at paragraph (b)(3)(iv)(B) of this section. NMFS will not approve a change in permit owner for a limited entry permit with an MS/CV endorsement or an MS permit that does not meet the ownership requirements for such permit described at § 660.150(g)(3), and § 660.150(f)(3), respectively. NMFS considers the following as a change in permit owner that would require registering with and approval by NMFS, including but not limited to: Selling the permit to another individual or entity; adding an individual or entity to the legal name on the permit; or removing an individual or entity from the legal name on the permit. A change in vessel owner includes any changes to the name(s) of any or all vessel owners, as registered with USCG or a state. The new owner(s) of a vessel registered to a limited entry permit must report any change in vessel ownership to NMFS within 30 calendar days after such change has been registered with the USCG or a state licensing agency.

(B) *Effective date.* The change in permit ownership or change in the vessel holding the permit will be effective on the day the change is approved by NMFS, unless there is a concurrent change in the vessel registered to the permit. Requirements for changing the vessel registered to the permit are described at paragraph (b)(4)(vi) of this section.

* * * * *

(vi) * * *

(A) *General.* A permit may not be used with any vessel other than the vessel registered to that permit. For purposes of this section, a permit change in vessel registration occurs when, through SFD, a permit owner registers a limited entry permit for use with a new vessel. Permit change in vessel registration applications must be submitted to SFD with the appropriate documentation described at paragraph (b)(4)(viii) of this section. Upon receipt of a complete application, and following review and approval of the application, the SFD will reissue the permit registered to the new vessel. Applications to change vessel registration on limited entry permits with sablefish endorsements will not be approved until SFD has received complete documentation of permit ownership as described at paragraph (b)(3)(iv)(B)(*4*) and as required under paragraph (b)(4)(viii) of this section. Applications to change vessel registration on limited entry permits with trawl endorsements or MS permits will not be approved until SFD has received complete EDC forms as required under § 660.114, subpart D.

(B) *Application.* Change in vessel registration applications must be submitted to NMFS with the appropriate documentation described at paragraphs (b)(4)(viii) and (ix) of this section. At a minimum, a permit owner seeking to change vessel registration of a limited entry permit shall submit to NMFS a signed application form and

his/her current limited entry permit before the first day of the cumulative limit period in which they wish to fish. If a permit owner provides a signed application and current limited entry permit after the first day of a cumulative limit period, the permit will not be effective until the succeeding cumulative limit period. NMFS will not approve a change in vessel registration until it receives a complete application, the existing permit, a current copy of the USCG 1270, and other required documentation.

* * * * *

(vii) * * *

(A) *General.* A permit owner may designate the vessel registration for a permit as ''unidentified,'' meaning that no vessel has been identified as registered for use with that permit. No vessel is authorized to use a permit with the vessel registration designated as ''unidentified.'' A vessel owner who removes a permit from his vessel and registers that permit as ''unidentified'' is not exempt from VMS requirements at § 660.14, unless specifically authorized by that section. When a permit owner requests that the permit's vessel registration be designated as ''unidentified,'' the transaction is not considered a change in vessel registration for purposes of this section. Any subsequent request by a permit owner to change from the ''unidentified'' status of the permit in order to register the permit with a specific vessel will be considered a change in vessel registration and subject to the restriction on frequency and timing of changes in vessel registration.

* * * * *

(6) *At-sea processing exemptions*—(i) *Sablefish at-sea processing exemption.* No new applications for sablefish at-sea processing exemptions will be accepted. As specified at § 660.212(d)(3), subpart E, vessels are prohibited from processing sablefish at sea that were caught in the sablefish primary fishery without a sablefish at-sea processing exemption. Any sablefish at-sea processing exemptions were issued to a particular vessel and that permit and vessel owner who requested the exemption. The exemption is not part of the limited entry permit. The exemption cannot be registered with any other vessel, vessel owner, or permit owner for any reason. The exemption only applies to at-sea processing of sablefish caught in the sablefish primary fishery. The sablefish at-sea processing exemption will expire upon registration of the vessel to a new owner or if the vessel is totally lost, as defined at § 660.11.

(ii) *Non-whiting at-sea processing exemption.* No new applications for non-whiting at-sea processing exemptions will be accepted. As specified at § 660.112(b)(1)(xii), subpart D, vessels are prohibited from processing non-whiting groundfish at sea that were caught in the Shorebased IFQ Program without a non-whiting at-sea processing exemption. Any non-whiting at-sea processing exemptions were issued to a particular vessel and that permit and/or vessel owner who requested the exemption. The exemption is not part of the limited entry permit. The exemption is not transferable to any other vessel, vessel owner, or permit owner for any reason. The exemption only applies to at-sea processing of non-whiting groundfish caught in the Shorebased IFQ Program. The non-whiting at-sea processing exemption will expire upon registration of the vessel to a new owner or if the vessel is totally lost, as defined at § 660.11.

* * * * *

■ 7. In § 660.55, revise paragraph (f) introductory text and paragraphs (h)(1) and (2) to read as follows:

§ 660.55 Allocations.

* * * * *

(f) *Catch accounting.* Catch accounting refers to how the catch in a fishery is monitored against the allocations described in this section. For species with trawl/nontrawl allocations, catch of those species are counted against the trawl/nontrawl allocations as explained in paragraph (f)(1) of this section. For species with limited entry/open access allocations in a given biennial cycle, catch of those species are counted against the limited entry/open access allocations as explained in paragraph (f)(1)(ii) of this section.

* * * * *

(h) * * *

(1) *Tribal/nontribal allocation.* The sablefish allocation to Pacific coast treaty Indian tribes is identified at § 660.50(f)(2). The remainder is available to the nontribal fishery (limited entry, open access (directed and incidental), and research).

(2) *Between the limited entry and open access fisheries.* The allocation of sablefish after tribal deductions is further reduced by the estimated total mortality of sablefish in research and recreational fisheries; the remaining yield (commercial harvest guideline) is divided between open access and limited entry fisheries. The limited entry fishery allocation is 90.6 percent of the commercial harvest guideline. The open access allocation is 9.4 percent of the commercial harvest guideline and includes incidental catch in non-groundfish fisheries, or incidental open access.

* * * * *

■ 8. In § 660.60:

■ a. Revise paragraphs (h)(7) introductory text, (h)(7)(i) introductory text, (h)(7)(ii)(A), (h)(7)(ii)(B)(*1*) introductory text, and (h)(7)(ii)(B)(*2*); and

■ b. Add paragraphs (h)(7)(ii)(B)(*3*) and (h)(7)(iii).

The revisions and additions read as follows:

§ 660.60 Specifications and management measures.

* * * * *

(h) * * *

* * * * *

(7) *Crossover provisions.* Crossover provisions apply to three activities: Fishing on different sides of a management line, or fishing in both the limited entry and open access fisheries, or fishing in both the Shorebased IFQ Program and the limited entry fixed gear fishery. NMFS uses different types of management areas for West Coast groundfish management, such as the north-south management areas as defined in § 660.11. Within a management area, a large ocean area with northern and southern boundary lines, trip limits, seasons, and conservation areas follow a single theme. Within each management area, there may be one or more conservation areas, defined at § 660.11 and §§ 660.70 through 660.74. The provisions within this paragraph apply to vessels fishing in different management areas. Crossover provisions also apply to vessels that fish in both the limited entry and open access fisheries, or that use open access non-trawl gear while registered to limited entry fixed gear permits. Crossover provisions also apply to vessels that are jointly registered, as defined at § 660.11, fishing in both the Shorebased IFQ Program and the limited entry fixed gear fishery during the same cumulative limit period. Fishery specific crossover provisions can be found in subparts D through F of this part.

(i) *Fishing in management areas with different trip limits.* Trip limits for a species or a species group may differ in different management areas along the coast. The following crossover provisions apply to vessels fishing in different geographical areas that have different cumulative or ''per trip'' trip limits for the same species or species group, with the following exceptions. Such crossover provisions do not apply to: IFQ species (defined at § 660.140(c),

subpart D) for vessels that are declared into the Shorebased IFQ Program (see § 660.13(d)(5)(iv)(A), for valid Shorebased IFQ Program declarations); species that are subject only to daily trip limits; or to trip limits for black rockfish off Washington, as described at § 660.230(e) and § 660.330(e).

* * * * *

(ii) * * *

(A) *Fishing in limited entry and open access fisheries with different trip limits.* Open access trip limits apply to any fishing conducted with open access gear, even if the vessel has a valid limited entry permit with an endorsement for another type of gear. Except such provisions do not apply to IFQ species (defined at § 660.140(c), subpart D) for vessels that are declared into the Shorebased IFQ Program (see § 660.13(d)(5)(iv)(A) for valid Shorebased IFQ Program declarations). A vessel that fishes in both the open access and limited entry fisheries is not entitled to two separate trip limits for the same species. If a vessel has a limited entry permit registered to it at any time during the trip limit period and uses open access gear, but the open access limit is smaller than the limited entry limit, the open access limit may not be exceeded and counts toward the limited entry limit. If a vessel has a limited entry permit registered to it at any time during the trip limit period and uses open access gear, but the open access limit is larger than the limited entry limit, the smaller limited entry limit applies, even if taken entirely with open access gear.

(B) * * *

(*1*) *Vessel registered to a limited entry trawl permit.* To fish with open access gear, defined at § 660.11, a vessel registered to a limited entry trawl permit must make the appropriate fishery declaration, as specified at § 660.14(d)(5)(iv)(A). In addition, a vessel registered to a limit entry trawl permit must remove the permit from their vessel, as specified at § 660.25(b)(4)(vi), unless the vessel will be fishing in the open access fishery under one of the following declarations specified at § 660.13(d):

* * * * *

(*2*) *Vessel registered to a limited entry fixed gear permit(s).* To fish with open access gear, defined at § 660.11, subpart C, a vessel registered to a limit entry fixed gear permit must make the appropriate open access declaration, as specified at § 660.14(d)(5)(iv)(A). Vessels registered to a sablefish-endorsed permit(s) fishing in the sablefish primary season (described at § 660.231, subpart E) may only fish with the gear(s) endorsed on their sablefish-endorsed permit(s) against those limits.

(*3*) *Vessel jointly registered to more than one limited entry permit.* Vessels jointly registered (under the provisions at § 660.25(b)(4)(iv)(B)) may fish with open access gear (defined at § 660.11) if they meet the requirements of both paragraphs (h)(7)(ii)(B)(*1*) and (*2*) of this section.

(iii) *Fishing in both the Shorebased IFQ Program and the limited entry fixed gear fishery for vessels that are jointly registered.*

(A) *Fishing in the Shorebased IFQ Program and limited entry fixed gear fishery with different trip limits.* If a vessel fishes in both the Shorebased IFQ Program and the limited entry fixed gear fishery during a cumulative limit period, they are subject to the most restrictive trip limits for non-IFQ species.

(B) *Fishing in the Shorebased IFQ Program and the limited entry fixed gear sablefish primary fishery with different trip limits.* If a vessel is jointly registered and one or more of the limited entry permits is sablefish endorsed, any sablefish landings made by a vessel declared into the limited entry fixed gear fishery after the start of the sablefish primary fishery count towards the tier limit(s), per regulations at § 660.232(a)(2), subpart E. Any sablefish landings made by a vessel declared into the Shorebased IFQ Program must be covered by quota pounds, per regulations at § 660.112(b), subpart D, and will not count towards the tier limit(s).

■ 9. In § 660.112:

■ a. Revise paragraphs (a)(3)(i) and (ii);

■ b. Remove paragraph (b)(1)(xii)(B); and

■ c. Redesignate paragraph (b)(1)(xii)(C) as (b)(1)(xii)(B).

The revision reads as follows:

§ 660.112 Trawl fishery—prohibitions.

* * * * *

(a) * * *

(3) * * *

(i) Fail to comply with all recordkeeping and reporting requirements at § 660.13, subpart C; including failure to submit information, or submission of inaccurate or false information on any report required at § 660.13(d), subpart C, and § 660.113:

(ii) Falsify or fail to make and/or file, retain or make available any and all reports of groundfish landings, containing all data, and in the exact manner, required by the regulation at § 660.13, subpart C, or § 660.113.

* * * * *

■ 10. In § 660.113:

■ a. Revise paragraphs (a)(2), (b)(4)(ii)(A);

■ b. Remove paragraphs (b)(4)(ii)(B) and (C) and redesignate paragraphs (b)(4)(ii)(D) through (F) as (b)(4)(ii)(B) through (D);

■ c. Revise newly redesignated paragraphs (b)(4)(ii)(C)(*5*) introductory text and (b)(4)(ii)(C)(*6*); and

■ d.) Revise paragraphs (b)(4)(iii) and (b)(4)(v).

The revisions read as follows:

§ 660.113 Trawl fishery—recordkeeping and reporting.

* * * * *

(a) * * *

(2) All records used in the preparation of records or reports specified in this section or corrections to these reports must be maintained for a period of not less than three years after the date of landing and must be immediately available upon request for inspection by NMFS or authorized officers or others as specifically authorized by NMFS. Records used in the preparation of required reports specified in this section or corrections to these reports that are required to be kept include, but are not limited to, any written, recorded, graphic, electronic, or digital materials as well as other information stored in or accessible through a computer or other information retrieval system; worksheets; weight slips; preliminary, interim, and final tally sheets; receipts; checks; ledgers; notebooks; diaries; spreadsheets; diagrams; graphs; charts; tapes; disks; or computer printouts. All relevant records used in the preparation of electronic fish ticket reports or corrections to these reports, including dock tickets, must be maintained for a period of not less than three years after the date of landing and must be immediately available upon request for inspection by NMFS or authorized officers or others as specifically authorized by NMFS.

(b) * * *

(4) * * *

(ii) * * *

(A) Include, as part of each electronic fish ticket submission, the actual scale weight for each groundfish species as specified by requirements at § 660.15(c), and the vessel identification number. Use, and maintain in good working order, hardware, software, and internet access as specified at § 660.15(d).

* * * * *

(C) * * *

(*5*) Prior to submittal, three copies of the printed, signed, electronic fish ticket must be produced by the IFQ first receiver and a copy provided to each of the following:

* * * * *

(*6*) After review and signature, the electronic fish ticket must be submitted within 24 hours of the completion of the offload, as specified in paragraph (b)(4)(ii)(B) of this section.

* * * * *

(iii) *Revising a submission.* In the event that a data error is found, electronic fish ticket submissions must be revised by resubmitting the revised form electronically. Electronic fish tickets are to be used for the submission of final data. Preliminary data, including estimates of fish weights or species composition, shall not be submitted on electronic fish tickets.

* * * * *

(v) *Reporting requirements when a temporary waiver has been granted.* IFQ First receivers that have been granted a temporary waiver from the requirement to submit electronic fish tickets must submit on paper the same data as is required on electronic fish tickets within 24 hours of the date received during the period that the waiver is in effect. Paper fish tickets must be sent by facsimile to NMFS, West Coast Region, Sustainable Fisheries Division, 206–526–6736 or by delivering it in person to 7600 Sand Point Way, NE., Seattle, WA 98115. The requirements for submissions of paper tickets in this paragraph are separate from, and in addition to existing state requirements for landing receipts or fish receiving tickets.

* * * * *

§ 660.114 [Amended]

■ 11. Amend § 660.114(b) by removing the words ''§ 660.25(b)(4)(v)'' wherever they appear and adding the words ''§ 660.25(b)(4)(vi).''

■ 12. In § 660.211, add the definition of ''sablefish landing'' is in alphabetical order to read as follows:

§ 660.211 Fixed gear fishery—definitions.

* * * * *

Sablefish landing means a landing that includes any amount of sablefish harvested in the limited entry fixed gear fishery.

* * * * *

■ 13. In § 660.212:

■ a. Revise paragraph (a)(2);

■ b. Add paragraphs (a)(3) through (6);

■ c. Revise paragraphs (b), and (d)(1) and (2).

The revisions and additions read as follows:

§ 660.212 Fixed gear fishery—prohibitions.

* * * * *

(a) * * *

(2) Take and retain, possess, or land more than a single cumulative limit of a particular species, per vessel, per applicable cumulative limit period, except for sablefish taken in the limited entry fixed gear sablefish primary season from a vessel authorized to fish in that season, as described at § 660.231 and except for IFQ species taken in the Shorebased IFQ Program from a vessel authorized under gear switching provisions as described at § 660.140(k).

(3) Transport catch that includes any amount of sablefish away from the point of landing before that catch has been sorted and weighed by federal groundfish species or species group, and recorded for submission on an electronic fish ticket under § 660.213(e). (If fish will be transported to a different location for processing, all sorting and weighing to federal groundfish species groups must occur before transporting the catch away from the point of landing).

(4) Mix catch from more than one sablefish landing prior to the catch being sorted and weighed for reporting on an electronic fish ticket under § 660.213(e).

(5) Process, sell, or discard any groundfish received from a sablefish landing that has not been accounted for on an electronic fish ticket under § 660.213(e).

(6) Upon commencing an offload of a sablefish landing at a landing site, fail to offload all groundfish on board the vessel at that landing site.

(b) *Recordkeeping and reporting.* (1) Fail to comply with all recordkeeping and reporting requirements at § 660.13, subpart C; including failure to submit information, or submission of inaccurate or false information on any report required at § 660.13(d), subpart C, and § 660.213.

(2) Falsify or fail to make and/or file, retain or make available any and all reports of groundfish landings that include sablefish, containing all data, and in the exact manner, required by the regulation at § 660.13, subpart C, or § 660.213.

* * * * *

(d) *Sablefish fisheries.* (1) Take and retain, possess or land sablefish under the tier limits provided for the limited entry, fixed gear sablefish primary season, described in § 660.231(b)(3), from a vessel that is not registered to a limited entry permit with a sablefish endorsement.

(2) Take and retain, possess or land sablefish in the sablefish primary season, described at § 660.231(b), unless the owner of the limited entry permit registered for use with that vessel and authorizing the vessel to fish in the sablefish primary season is on board that vessel. Exceptions to this prohibition are provided at § 660.231(b)(4)(i) and (ii).

* * * * *

■ 14. In § 660.213, revise paragraph (d)(1) and add paragraph (e) to read as follows:

§ 660.213 Fixed gear fishery—recordkeeping and reporting.

* * * * *

(d) * * *

(1) Any person landing groundfish must retain on board the vessel from which groundfish are landed, and provide to an authorized officer upon request, copies of any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable state law throughout the cumulative limit period during which a landing occurred and for 15 days thereafter. All relevant records used in the preparation of electronic fish ticket reports or corrections to these reports, including dock tickets, must be maintained for a period of not less than three years after the date of landing and must be immediately available upon request for inspection by NMFS or authorized officers or others as specifically authorized by NMFS.

* * * * *

(e) *Electronic fish ticket.* The first receiver, as defined at § 660.11, subpart C, of a sablefish landing from a limited entry fixed gear vessel is responsible for compliance with all reporting requirements described in this paragraph. When used in this paragraph, submit means to transmit final electronic fish ticket information via web-based form or, if a waiver is granted, by paper form. When used in this paragraph, record means the action of documenting electronic fish ticket information in any written format.

(1) *Required information.* All first receivers must provide the following types of information: Date of landing, vessel that made the landing, vessel identification number, limited entry permit number(s), name of the vessel operator, gear type used, receiver, actual weights of species landed listed by species or species group including species with no value, condition landed, number of salmon by species, number of Pacific halibut, ex-vessel value of the landing by species, fish caught inside/outside 3 miles or both, and any other information deemed necessary by the Regional Administrator (or designee) as specified on the appropriate electronic fish ticket form.

(2) *Submissions.* The first receiver must:

(i) Include, as part of each electronic fish ticket submission, the actual scale

weight for each groundfish species as specified by requirements at § 660.15(c), the vessel identification number, and the limited entry permit number. Use and maintain, for the purposes of submitting electronic fish tickets, equipment as specified at § 660.15(d).

(ii) Submit a completed electronic fish ticket(s) for every landing that includes sablefish no later than 24 hours after the date of landing, unless a waiver of this requirement has been granted under provisions specified at paragraph (e)(4) of this section.

(iii) Submit separate electronic fish tickets for sablefish landings in the limited entry fixed gear sablefish primary fishery where the sablefish will be counted against more than one of the stacked permits, or against a tier limit(s) and the cumulative trip limit in the DTL fishery. For vessels with stacked limited entry sablefish permits, defined at § 660.12, a landing may be divided and reported on separate electronic fish tickets for the purposes of apportioning the sablefish landings amongst the remaining tier limits associated with each of the stacked permits. Per regulations at § 660.232(a)(2) a vessel may land the remainder of its tier limit(s) and also land against the applicable DTL limits in the same landing; in that instance multiple fish tickets must be used to apportion sablefish landed against the tier(s) from the sablefish landed against cumulative trip limits of the DTL fishery. If multiple electronic fish tickets are recorded and submitted for a single sablefish landing, each electronic fish ticket must meet the process and submittal requirements specified in paragraphs (e)(iv) and (v) of this section in addition to the following requirements:

(A) The sum total of all groundfish, including sablefish, from the landing must be submitted via electronic fish ticket(s).

(B) The limited entry fixed gear sablefish permit number unto which the portion of the sablefish landing will be attributed to must be recorded on each electronic fish ticket or dock ticket. Only one permit number may be recorded on a ticket.

(C) The owner-on board, unless exempted under regulations at § 660.231(a)(4), must review and sign documentation of the landing, as described in (e)(2)(iv) and (v) of this section.

(iv) If electronic fish tickets will be submitted prior to processing or transport, follow these process and submittal requirements:

(A) After completing the landing, the electronic fish ticket information must be recorded immediately.

(B) Prior to submittal of the electronic fish ticket, the information recorded for the electronic fish ticket must be reviewed by the vessel operator who delivered the fish, and the port sampler if one is present. If required by regulations at § 660.231(a)(4), the owner-on-board must also review the information recorded on the electronic fish ticket prior to submittal.

(C) After review, the receiver and the vessel operator must sign a printed hard copy of the electronic fish ticket or, if the landing occurs outside of business hours, the original dock ticket. If required by regulations at § 660.231(a)(4), the owner-on-board must also sign a printed copy of the electronic fish ticket or, if the landing occurs outside of business hours, the original dock ticket.

(D) Prior to submittal, three copies of the signed electronic fish ticket must be produced by the receiver and a copy provided to each of the following:

(*1*) The vessel operator and/or the owner-on-board;

(*2*) The state of origin if required by state regulations; and

(*3*) The first receiver.

(E) After review and signature, the electronic fish ticket must be submitted within 24 hours after the date of landing, as specified in paragraph (e)(2)(ii) of this section.

(v) If electronic fish tickets will be submitted after transport, follow these process and submittal requirements:

(A) The vessel name, limited entry permit number, and the electronic fish ticket number must be recorded on each dock ticket related to that landing.

(B) Upon completion of the dock ticket, but prior to transfer of the landing to another location, the dock ticket information that will be used to complete the electronic fish ticket must be reviewed by the vessel operator who delivered the fish. If the electronic fish ticket will report landings of sablefish in the sablefish primary fishery, the owner-on-board, unless exempted under regulations at § 660.231(a)(4), must review the information recorded on the dock ticket prior to transfer of the landing to another location.

(C) After review, the first receiver and the vessel operator must sign the original copy of each dock ticket related to that landing. If a dock ticket includes landings of sablefish in the sablefish primary fishery, the owner-on-board, unless exempted under regulations at § 660.231(a)(4), must sign the original copy of that dock ticket.

(D) Prior to submittal of the electronic fish ticket, three copies of the signed dock ticket must be produced by the first receiver and a copy provided to each of the following:

(*1*) The vessel operator and/or the owner-on-board;

(*2*) The state of origin if required by state regulations; and

(*3*) The first receiver.

(E) Based on the information contained in the signed dock ticket, the electronic fish ticket must be completed and submitted within 24 hours of the completion of the landing, as specified in paragraph (e)(2)(ii) of this section.

(F) Three copies of the electronic fish ticket must be produced by the first receiver and a copy provided to each of the following:

(*1*) The vessel operator and/or the owner-on-board;

(*2*) The state of origin if required by state regulations; and

(*3*) The first receiver.

(3) *Revising a submission.* In the event that a data error is found, electronic fish ticket submissions must be revised by resubmitting the revised form electronically. Electronic fish tickets are to be used for the submission of final data. Preliminary data, including estimates of fish weights or species composition, shall not be submitted on electronic fish tickets.

(4) *Waivers for submission.* On a case-by-case basis, a temporary written waiver of the requirement to submit electronic fish tickets may be granted by the Assistant Regional Administrator or designee if he/she determines that circumstances beyond the control of a receiver would result in inadequate data submissions using the electronic fish ticket system. The duration of the waiver will be determined on a case-by-case basis.

(5) *Reporting requirements when a temporary waiver has been granted.* Receivers that have been granted a temporary waiver from the requirement to submit electronic fish tickets must submit on paper the same data as is required on electronic fish tickets within 24 hours of the date received during the period that the waiver is in effect. Paper fish tickets must be sent by facsimile to NMFS, West Coast Region, Sustainable Fisheries Division, 206–526–6736 or by delivering it in person to 7600 Sand Point Way, NE., Seattle, WA 98115. The requirements for submissions of paper tickets in this paragraph are separate from, and in addition to existing state requirements for landing receipts or fish receiving tickets.

■ 15. In § 660.231, revise paragraphs (a), (b)(1), (b)(2), (b)(3), and (b)(4) introductory text to read as follows:

§ 660.231 Limited entry fixed gear sablefish primary fishery.

* * * * *

(a) *Sablefish endorsement.* In addition to requirements pertaining to fishing in the limited entry fixed gear fishery (described in subparts C and E), a vessel may not fish in the sablefish primary season for the limited entry fixed gear fishery, unless at least one limited entry permit with both a gear endorsement for longline or trap (or pot) gear and a sablefish endorsement is registered for use with that vessel. Permits with sablefish endorsements are assigned to one of three tiers, as described at § 660.25(b)(3)(iv), subpart C.

(b) * * *

(1) *Season dates.* North of 36° N. lat., the sablefish primary season for the limited entry, fixed gear, sablefish-endorsed vessels begins at 12 noon local time on April 1 and closes at 12 noon local time on October 31, or closes for an individual vessel owner when the tier limit for the sablefish endorsed permit(s) registered to the vessel has been reached, whichever is earlier, unless otherwise announced by the Regional Administrator through the routine management measures process described at § 660.60(c).

(2) *Gear type.* During the primary season, when fishing against primary season cumulative limits, each vessel authorized to fish in that season under paragraph (a) of this section may fish for sablefish with any of the gear types, except trawl gear, endorsed on at least one of the sablefish endorsed permits registered for use with that vessel.

(3) *Cumulative limits.* (i) A vessel fishing in the primary season will be constrained by the sablefish cumulative limit associated with each of the sablefish endorsed permits registered for use with that vessel. During the primary season, each vessel authorized to fish in that season under paragraph (a) of this section may take, retain, possess, and land sablefish, up to the cumulative limits for each of the sablefish endorsed permits registered for use with that vessel. If a vessel is stacking permits, that vessel may land up to the total of all cumulative limits announced in this paragraph for the tiers for those permits, except as limited by paragraph (b)(3)(ii) of this section. Up to 3 sablefish endorsed permits may be stacked for use with a single vessel during the primary season; thus, a single vessel may not take and retain, possess or land more than 3 primary season sablefish cumulative limits in any one year. Per regulations at § 660.12(a)(6), subpart C, all other groundfish landings are subject to per vessel trip limits. In 2015, the following annual limits are in effect: Tier 1 at 41,175 (18,677 kg), Tier 2 at 18,716 lb (8,489 kg), and Tier 3 at 10,695 lb (4,851 kg). For 2016 and beyond, the following annual limits are in effect: Tier 1 at 45,053 lb (20,436 kg), Tier 2 at 20,479 lb (9,289 kg), and Tier 3 at 11,702 lb (5,308 kg).

(ii) If a sablefish endorsed permit is registered to more than one vessel during the primary season in a single year, the second vessel may only take the portion of the cumulative limit for that permit that has not been harvested by the first vessel to which the permit was registered. The combined primary season sablefish landings for all vessels registered to that permit may not exceed the cumulative limit for the tier associated with that permit.

(iii) A cumulative trip limit is the maximum amount of sablefish that may be taken and retained, possessed, or landed per vessel in a specified period of time, with no limit on the number of landings or trips.

(iv) *Incidental Pacific halibut retention north of Pt. Chehalis, WA (46°53.30′ N. lat.).* From April 1 through October 31, vessels authorized to participate in the sablefish primary fishery, licensed by the International Pacific Halibut Commission for commercial fishing in Area 2A (waters off Washington, Oregon, California), and fishing with longline gear north of Pt. Chehalis, WA (46°53.30′ N. lat.) may possess and land up to the following cumulative limits: 110 lb (50 kg) dressed weight of Pacific halibut for every 1,000 pounds (454 kg) dressed weight of sablefish landed and up to 2 additional Pacific halibut in excess of the 110-pounds-per-1,000-pound ratio per landing. ''Dressed'' Pacific halibut in this area means halibut landed eviscerated with their heads on. Pacific halibut taken and retained in the sablefish primary fishery north of Pt. Chehalis may only be landed north of Pt. Chehalis and may not be possessed or landed south of Pt. Chehalis.

(4) *Owner-on-board requirement.* Any person who owns or has ownership interest in a limited entry permit with a sablefish endorsement, as described at § 660.25(b)(3), subpart C, must be on board the vessel registered for use with that permit at any time that the vessel has sablefish on board the vessel that count toward that permit's cumulative sablefish landing limit. This person must carry government issued photo identification while aboard the vessel. This person must review and sign a printed copy of the electronic fish ticket(s) or dock ticket, as described at § 660.213(d), unless this person qualified for the owner-on-board exemption. A permit owner is qualified for the owner-on-board exemption and not obligated to be on board the vessel registered for use with the sablefish-endorsed limited entry permit during the sablefish primary season if:

* * * * *

■ 16. Section 660.232 is revised to read as follows:

§ 660.232 Limited entry daily trip limit (DTL) fishery for sablefish.

(a) *Limited entry DTL fisheries both north and south of 36° N. lat.* (1) Before the start of the sablefish primary season, all sablefish landings made by a vessel declared into the limited entry fixed gear fishery and authorized by § 660.231(a) to fish in the sablefish primary season will be subject to the restrictions and limits of the limited entry DTL fishery for sablefish specified in this section and which is governed by routine management measures imposed under § 660.60(c), subpart C.

(2) Following the start of the primary season, all sablefish landings made by a vessel declared into the limited entry fixed gear fishery and authorized by § 660.231(a) to fish in the primary season will count against the primary season cumulative limit(s) associated with the sablefish-endorsed permit(s) registered for use with that vessel. A vessel that is eligible to fish in the sablefish primary season may fish in the DTL fishery for sablefish once that vessels' primary season sablefish limit(s) have been landed, or after the close of the primary season, whichever occurs earlier (as described at § 660.231(b)(1)). If the vessel continues to fish in the limited entry fixed gear fishery for any part of the remaining fishing year, any subsequent sablefish landings by that vessel will be subject to the restrictions and limits of the limited entry DTL fishery for sablefish.

(3) Vessels registered for use with a limited entry fixed gear permit that does not have a sablefish endorsement may fish in the limited entry DTL fishery, consistent with regulations at § 660.230, for as long as that fishery is open during the fishing year, subject to routine management measures imposed under § 660.60(c), subpart C. DTL limits for the limited entry fishery north and south of 36° N. lat. are provided in Tables 2 (North) and 2 (South) of this subpart.

(b) A vessel that is jointly registered, and has participated or will participate in both the limited entry fixed gear fishery and the Shorebased IFQ Program during the fishing year, is subject to crossover provisions described at § 660.60(h)(7), subpart C.

■ 17. In § 660.311, add the definition of ''sablefish landing'' in alphabetical order to read as follows:

§ 660.311 Open access fishery—definitions.

* * * * *

Sablefish landing means a landing that includes any amount of sablefish harvested in the open access fishery.

* * * * *

■ 18. In § 660.312:

■ a. Revise paragraphs (a)(3) through (6);

■ b. Redesignate paragraphs (b) and (c) as (c) and (d), respectively; and

■ c. Add a new paragraph (b).

The revisions and additions read as follows:

§ 660.312 Open access fishery—prohibitions.

* * * * *

(a) * * *

(3) Transport catch that includes any amount of sablefish away from the point of landing before that catch has been sorted and weighed by federal groundfish species or species group, and recorded for submission on an electronic fish ticket under § 660.313(f). (If fish will be transported to a different location for processing, all sorting and weighing to federal groundfish species groups must occur before transporting the catch away from the point of landing).

(4) Mix catch from more than one sablefish landing prior to the catch being sorted and weighed for reporting on an electronic fish ticket under § 660.313(f).

(5) Process, sell, or discard any groundfish received from a sablefish landing that has not been accounted for on an electronic fish ticket under § 660.313(f).

(6) Upon commencing an offload of a sablefish landing at a landing site, fail to offload all groundfish on board the vessel at that landing site.

(b) *Recordkeeping and reporting.* (1) Fail to comply with all recordkeeping and reporting requirements at § 660.13, subpart C, including failure to submit information, or submission of inaccurate or false information on any report required at § 660.13(d), subpart C, and § 660.313.

(2) Falsify or fail to make and/or file, retain or make available any and all reports of groundfish landings that include sablefish, containing all data, and in the exact manner, required by the regulation at § 660.13, subpart C, or § 660.313.

* * * * *

■ 19. Section 660.313 is revised to read as follows:

§ 660.313 Open access fishery—recordkeeping and reporting.

(a) *General.* General reporting requirements specified at § 660.13(a) through (c), subpart C, apply to the open access fishery.

(b) *Declaration reports for vessels using nontrawl gear.* Declaration reporting requirements for open access vessels using nontrawl gear (all types of open access gear other than non-groundfish trawl gear) are specified at § 660.13(d), subpart C.

(c) *Declaration reports for vessels using non-groundfish trawl gear.* Declaration reporting requirements for open access vessels using non-groundfish trawl gear are specified at § 660.13(d), subpart C.

(d) *VMS requirements for open access fishery vessels.* VMS requirements for open access fishery vessels are specified at § 660.14, subpart C.

(e) *Retention of records.* Any person landing groundfish must retain on board the vessel from which groundfish is landed, and provide to an authorized officer upon request, copies of any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable state law throughout the cumulative limit period during which a landing occurred and for 15 days thereafter. All relevant records used in the preparation of electronic fish ticket reports or corrections to these reports, including dock tickets, must be maintained for a period of not less than three years after the date of landing and must be immediately available upon request for inspection by NMFS or authorized officers or others as specifically authorized by NMFS.

(f) *Electronic fish ticket.* The first receiver, as defined at § 660.11, subpart C, of a sablefish landing from an open access vessel is responsible for compliance with all reporting requirements described in this paragraph. When used in this paragraph, submit means to transmit final electronic fish ticket information via web-based form or, if a waiver is granted, by paper form. When used in this paragraph, record means the action of documenting electronic fish ticket information in any written format.

(1) *Required information.* All first receivers must provide the following types of information: Date of landing, vessel that made the landing, vessel identification number, name of the vessel operator, gear type used, receiver, actual weights of species landed listed by species or species group including species with no value, condition landed, number of salmon by species, number of Pacific halibut, ex-vessel value of the landing by species, fish caught inside/outside 3 miles or both, and any other information deemed necessary by the Regional Administrator (or designee) as specified on the appropriate electronic fish ticket form.

(2) *Submissions.* The first receiver must:

(i) Include, as part of each electronic fish ticket submission, the actual scale weight for each groundfish species as specified by requirements at § 660.15(c) and the vessel identification number. Use and maintain, for the purposes of submitting electronic fish tickets, equipment as specified at § 660.15(d).

(ii) Submit a completed electronic fish ticket for every landing that includes sablefish no later than 24 hours after the date of landing, unless a waiver of this requirement has been granted under provisions specified at paragraph (f)(4) of this section.

(iii) If electronic fish tickets will be submitted prior to processing or transport, follow these process and submittal requirements:

(A) After completing the landing, the electronic fish ticket information must be recorded immediately.

(B) Prior to submittal of the electronic fish ticket, the information recorded for the electronic fish ticket must be reviewed by the vessel operator who delivered the fish, and the port sampler if one is present.

(C) After review, the receiver and the vessel operator must sign a printed hard copy of the electronic fish ticket or, if the landing occurs outside of business hours, the original dock ticket.

(D) Prior to submittal, three copies of the signed electronic fish ticket must be produced by the receiver and a copy provided to each of the following:

(*1*) The vessel operator;

(*2*) The state of origin if required by state regulations; and

(*3*) The first receiver.

(E) After review and signature, the electronic fish ticket must be submitted within 24 hours after the date of landing, as specified in paragraph (f)(2)(ii) of this section.

(iv) If electronic fish tickets will be submitted after transport, follow these process and submittal requirements:

(A) The vessel name and the electronic fish ticket number must be recorded on each dock ticket related to that landing.

(C) Upon completion of the dock ticket, but prior to transfer of the offload to another location, the dock ticket information that will be used to complete the electronic fish ticket must be reviewed by the vessel operator who delivered the fish.

(D) After review, the first receiver and the vessel operator must sign the original copy of each dock ticket related to that landing.

(E) Prior to submittal of the electronic fish ticket, three copies of the signed

dock ticket must be produced by the first receiver and a copy provided to each of the following:

(*1*) The vessel operator;

(*2*) The state of origin if required by state regulations; and

(*3*) The first receiver.

(F) Based on the information contained in the signed dock ticket, the electronic fish ticket must be completed and submitted within 24 hours of the date of landing, as specified in paragraph (f)(2)(ii) of this section.

(G) Three copies of the electronic fish ticket must be produced by the first receiver and a copy provided to each of the following:

(*1*) The vessel operator;

(*2*) The state of origin if required by state regulations; and

(*3*) The first receiver.

(3) *Revising a submission.* In the event that a data error is found, electronic fish ticket submissions must be revised by resubmitting the revised form electronically. Electronic fish tickets are to be used for the submission of final data. Preliminary data, including estimates of fish weights or species composition, shall not be submitted on electronic fish tickets.

(4) *Waivers for submission.* On a case-by-case basis, a temporary written waiver of the requirement to submit electronic fish tickets may be granted by the Assistant Regional Administrator or designee if he/she determines that circumstances beyond the control of a receiver would result in inadequate data submissions using the electronic fish ticket system. The duration of the waiver will be determined on a case-by-case basis.

(5) *Reporting requirements when a temporary waiver has been granted.* Receivers that have been granted a temporary waiver from the requirement to submit electronic fish tickets must submit on paper the same data as is required on electronic fish tickets within 24 hours of the date of landing during the period that the waiver is in effect. Paper fish tickets must be sent by facsimile to NMFS, West Coast Region, Sustainable Fisheries Division, 206–526–6736 or by delivering it in person to 7600 Sand Point Way NE., Seattle, WA 98115. The requirements for submissions of paper tickets in this paragraph are separate from, and in addition to existing state requirements for landing receipts or fish receiving tickets.

[FR Doc. 2016–12848 Filed 5–31–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 81, No. 105

Wednesday, June 1, 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

Forest Service

Information Collection; Role of Communities in Stewardship Contracting Projects

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with revision of a currently approved information collection, Role of Communities in Stewardship Contracting Projects.

DATES: Comments must be received in writing on or before August 1, 2016 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Director, Forest Management Staff, Mail Stop 1103, Forest Service, USDA, 201 14th Street SW., Washington DC 20024–1103.

Comments also may be submitted by email to: *InfoCollection0201@fs.fed.us.* Comments may also be submitted via the world wide web/Internet at *http://www.regulations.gov.*

The public may inspect comments received at the Office of the Director, Forest Management Staff, Third Floor NW., Yates Federal Building, 201 14th Street SW., Washington, DC during normal business hours. Visitors are encouraged to call ahead to 202–649–1725 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: David Lawrence, Forest Service, Forest Management Staff, 202–205–1269. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Role of Communities in Stewardship Contracting Projects.

OMB Number: 0596–0201.

Expiration Date of Approval: July 31, 2016.

Type of Request: Extension with Revision.

Abstract: The Forest Service is required to report to Congress annually on the role of local communities in the development of agreement or contract plans through stewardship contracting, per Section 8205 of Public Law 113–79, the Agricultural Act of 2014. To meet the requirement, the Forest Service conducts surveys to gather the necessary information. The survey provides information regarding the:

(a) Nature of the local community involved in developing agreement or contract plans,

(b) Nature of roles played by the entities involved in developing agreement or contract plans,

(c) Benefits to the community and agency by being involved in planning and development of contract plans, and

(d) Usefulness of stewardship contracting in helping meet the needs of local communities.

The Pinchot Institute for Conservation and its sub-contractors collect the information through an annual telephone survey. The survey asks Federal employees, employees of for-profit and not-for-profit institutions, employees of State and local agencies, and individual citizens who have been involved in stewardship contracting projects about their role in the development of agreement or contract plans.

The information collected through the survey is analyzed by the Pinchot Institute for Conservation and its sub-contractors and used to help develop the Forest Service report to Congress as required by Section 8205 of Public Law 113–79.

Without the information from this annual collection of data, the Forest Service will not be able to provide the required annual reports to Congress on the role of communities in development of agreement or contract plans under stewardship contracting.

Type of Respondents: Employees of for-profit and non-profit businesses and institutions, as well as individuals.

Estimated Annual Number of Respondents: 90.

Estimate of Burden per Response: 0.75 hours.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 68 Hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: May 25, 2016.

Brian Ferebee,

Associate Deputy Chief, National Forest Systems.

[FR Doc. 2016–12940 Filed 5–31–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Application for Permit for Use of Roads, Trails, or Areas Restricted by Regulation or Order

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments on the revision of a currently approved information collection, form FS–7700–40, Application for Permit, Non-Federal Commercial Use of Roads Restricted by Order. The revised information

collection is entitled, ''Application for a Permit for Use of Roads, Trails, or Areas Restricted by Regulation or Order.'' The Forest Service is also seeking renewal of an associated existing, form FS–7700–48, Permit for Use of Roads, Trails, or Areas Restricted by Regulation or Order, and renewal of an associated existing information collection, form FS–7700–41, Non-Federal Commercial Road Use Permit.

DATES: Comments must be received in writing by August 1, 2016 to be considered.

ADDRESSES: Comments concerning this notice should be addressed to USDA Forest Service, Director, Engineering Staff, RPC5, 201 14th Street SW., Mail Stop 1101, Washington, DC 20024–1101. Comments also may be submitted via facsimile to 703–605–1542 or by email to *jhumble@fs.fed.us.*

The public may inspect comments received at the Office of the Director of Engineering, USDA Forest Service, 201 14th Street SW., Mail Stop 1101, Washington, DC 20024–1101 during normal business hours. Visitors are encouraged to call ahead at 703–605–4962 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: J. Humble, Engineering Staff, 703–605–4612. Individuals who use telecommunication devices for the deaf may call the Federal Relay Service at 800 877–8339 twenty four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Application for Permit for Use of Roads, Trails, or Areas Restricted by Regulation or Order.

OMB Number: 0596–0016.

Expiration Date of Approval: July 31, 2016.

Type of Request: Revision of a currently approved information collection, approval of an associated new information collection, and renewal of an associated existing information collection. Current: Application for Permit, Non-Federal Commercial Use of Roads Restricted by Order.

Revised: Application for a Permit for Use of Roads, Trails, or Areas Restricted by Regulation or Order.

Abstract: Authority for permits for use of National Forest System (NFS) roads, NFS trails, and areas on NFS lands restricted by order or regulation derives from the National Forest Roads and Trails Act (16 U.S.C. 532–538). This statute authorizes the Secretary of Agriculture to promulgate regulations regarding use of NFS roads, NFS trails, and areas on NFS lands; establish procedures for sharing investments in NFS roads; and require commercial users to perform road maintenance commensurate with their use of NFS roads. Forest Service regulations implementing this authority are found in 36 CFR 212.5, 212.9, 212.51, 261.10, 261.12, 261.13, 261.54, and 261.55.

In particular, 36 CFR 212.5 and 212.9 authorize the Chief of the Forest Service to establish procedures for investment sharing and to require commercial users to perform maintenance commensurate with their road use. Section 261.10 contains a national prohibition against constructing or maintaining an NFS road or NFS trail without a written authorization. Section 212.12 contains a national prohibition against violating the load, weight, height, length, or width limitations of State law when using NFS roads without a written authorization. Section 212.13 contains a national prohibition against possessing or operating a motor vehicle on NFS roads, NFS trails, or areas on NFS lands that are not designated for motor vehicle use on a motor vehicle use map, unless the use is authorized by a written authorization. Section 261.54 authorizes issuance of an order prohibiting use of an NFS road in a manner prohibited by the order without a written authorization, including commercial hauling without a permit or written authorization when required by order. Section 261.55 authorizes issuance of an order prohibiting use of an NFS trail in a manner prohibited by the order without a written authorization.

Forest Service directives implementing the regulations are found in Forest Service Manual 2350, 7710, and 7730 and Forest Service Handbook 7709.59, chapter 20. These directives provide for the size and weight limits under State traffic law to apply on NFS roads and require the responsible official to designate NFS roads, NFS trails, and areas on NFS lands for motor vehicle use; enter into appropriate investment sharing arrangements, require commercial users of NFS roads to perform maintenance commensurate with their road use; and issue orders that implement the authority in 36 CFR261.54. The permits road users obtain contain appropriate requirements for implementation of applicable regulations and directives.

Form FS–7700–40, Application for Permit for Use of Roads, Trails, or Areas Restricted by Regulation or Order. This form will be used by individuals and entities that apply for a permit to use NFS roads, NFS trails, or areas on NFS lands that are subject to a restriction established by regulation or order. Examples of restrictions requiring permits are motor vehicle use on NFS roads and NFS trails that are not designated for that purpose; operating trucks that exceed size limits established by State traffic law on NFS roads; area closures during periods of high fire danger; and non-Federal commercial use of NFS roads.

The following information is collected: (1) The applicant's name, address, and telephone number; (2) identification of the NFS roads, NFS trails, and areas on NFS lands proposed for use (NFS roads and NFS trails are identified by Forest Service route number, and areas on NFS lands are identified using a map); (3) purpose of use; and (4) the proposed use schedule. The applicant is asked to provide explanatory information specific to the proposed use, including information on the types and size of vehicles, through attachments and remarks. There are standard attachments available for use when the application requests oversize vehicle use or commercial use of roads. The application is submitted to the Forest Supervisor or District Ranger responsible for the NFS roads, NFS trails, or areas on NFS lands for which a permit is requested.

When applications for commercial use of roads restricted by order are received, the information is used to identify maintenance commensurate with the applicant's road use. The information is also used to calculate the proportion of acquisition, construction, and maintenance costs associated with the NFS roads proposed for use that is assignable to the applicant for purposes of investment sharing. When requests are for oversize vehicle use, the information is used to evaluate the structural capacity of bridges and potential adverse effects on the safety of other traffic on the roads proposed for use. When the application requests use of NFS roads, NFS trails, or areas on NFS lands that are not designated for motor vehicle use or are restricted by order, the information is used to decide whether and, if appropriate, when the use should be permitted.

The identifying information collected on form FS–7700–40, Application for Permit for Use of Roads, Trails, or Areas Restricted by Regulation or Order, is used on form FS–7700–41, Non-Federal Commercial Road Use Permit, and form FS–7700–48, Permit for Use of Roads, Trails, or Areas Restricted by Regulation or Order, to identify the permit holder and the routes or areas requested for use. When form FS–7700–41 is issued, road maintenance requirements, road use schedules, and any necessary payments to be made in lieu of performance of maintenance developed

from the data submitted on or with form FS–7700–40 are included in form FS–7700–41. When form FS–7700–48 is issued, requirements resulting from data submitted with form FS–7700–40, such as requirements for signs and pilot cars when moving oversize vehicles, are included. A copy of form FS–7700–41 or form FS–7700–48 must be carried in the holder's motor vehicle during use of the NFS roads, NFS trails, or areas on NFS lands covered by the permit.

Forms FS–7700–41, Non-Federal Commercial Road Use Permit, and FS–7700–48, Permit for Use of Roads, Trails, or Areas Restricted by Regulation or Order. Form FS–7700–41, FS–7700–41, and FS–7700–48 have been approved by the Office of Management and Budget (OMB). The Forest Service is seeking renewal of this approval. No information beyond that collected on form FS–7700–40 will be collected on forms FS–7700–41 and FS–7700–48.

Estimate of Annual Burden: 15 minutes per application.

Type of Respondents: All those who need to use NFS roads, NFS trails, or areas on NFS lands that are restricted by regulation or order.

Estimated Annual Number of Respondents: 20,000.

Estimated Annual Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: 5,000 hours.

Public Comment: Public comment is invited on (1) whether this information collection is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the information collection, 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 information collection on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for OMB approval of the information collection.

Dated: May 25, 2016.

Brian Ferebee,

Associate Deputy Chief, National Forest Systems.

[FR Doc. 2016–12796 Filed 5–31–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comment; Objections to New Land Management Plans, Plan Amendments, and Plan Revisions

AGENCY: Forest Service, USDA.

ACTION: Notice, request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested people and organizations on the extension of a currently approved information collection, objections to new land management plans, plan amendments, and plan revisions.

DATES: Comments must be received in writing on or before August 1, 2016 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Forest Service, Assistant Director for Planning, Ecosystem Management Coordination, Mail Stop 1104, 1400 Independence Avenue SW., Washington, DC 20250–1104.

Comments also may be submitted via facsimile to (202) 205–1056 or by email to: *aegoode@fs.fed.us.*

The public may inspect comments received at the Ecosystem Management Coordination Office, 201 14th St. SW., Washington, DC, during normal business hours. Visitors are encouraged to call ahead to (202) 205–0895 to assist entry into the building.

FOR FURTHER INFORMATION CONTACT: Annie Eberhart Goode, Ecosystem Management Coordination, at (202) 205–1056 or email to: *aegoode@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Objection to new land management plans, plan amendments, and plan revisions.

OMB Number: 0596–0158.

Expiration Date of Approval: 07/31/2016.

Type of Request: Extension of a currently approved collection.

Abstract: The information that would be required by Title 36, Code of Federal Regulations, Part 219–Planning, Subpart A–National Forest System Land Management Planning (36 CFR part 219, subpart B), section 219.54 is the minimum information needed for a person to make a clear objection to a proposed land management plan, plan amendment, or plan revision. Under 36 CFR 219.54, a person must provide: name, mailing address, and telephone number or email address if available; signature; the name of the specific plan, amendment or revision that is the subject of the objection; and the name and title of the responsible official; a statement of the issues and/or the parts of the plan, plan amendment, or plan revision to which the objection applies; a concise statement explaining the objection and suggesting how the proposed plan decision may be improved. if applicable, the objector should identify how the objector believes that the plan, plan amendment, or plan revision is inconsistent with law, regulation, or policy; and a statement that demonstrates the link between prior substantive formal comments attributed to the objector and the content of the objection, unless the objection concerns an issue that arose after the opportunities for formal comment (§ 219.53(a)).

The reviewing officer must review the objection(s) and relevant information and then respond to the objector(s) in writing.

Estimate of Annual Burden: 10 hours to prepare the objection.

Type of Respondents: Interested and affected people, organizations, and governmental units who participate in the planning process: such as people who live in or near National Forest System (NFS) lands; local, State, and Tribal governments who have an interest in the plan; Federal agencies with an interest in the management of NFS lands and resources; not-for-profit organizations interested in NFS management, such as environmental groups, recreation groups, educational institutions; and commercial users of NFS land and resources.

Estimated Annual Number of Respondents: 50 a year.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 500 hours.

Comment is invited on: (1) Whether the right information is being requested, including whether the information will have practical value; (2) whether the instructions in 36 CFR 219.54 are clear; (3) whether the Forest Service estimate of the burden of the collection of

information is accurate, (10 hours); (4) ways to enhance the quality, usefulness, and clarity of the information to be collected; (5) ways to make the objections available to people, (6) ways to minimize the burden of the collection of information on people, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received on this notice, including names and addresses when given, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: May 25, 2016.

Brian Ferebee,

Associate Deputy Chief, National Forest Systems.

[FR Doc. 2016–12797 Filed 5–31–16; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Alaska State Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of public meeting.

DATES: Thursday, June 23, 2016.

Time: 12:00 p.m.–1:00 p.m. (Alaska Time).

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Alaska State Advisory Committee (Committee) to the Commission will be held at 12:00 p.m. (Alaska Time) Thursday, June 23, 2016 for the purpose of considering and voting upon a written draft proposal for the Alaska State Advisory Committee's new project for FY 2016 identifying possible barriers in the election process that may disparately impact Alaskan Natives and their right to vote, and the impact of recent settlements upon voting access for Alaskan Natives.

This meeting is available to the public through the following toll-free call-in number: Toll-Free Phone Number: 888–572–7034; when prompted, please provide conference ID number: 4694388.

Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number.

Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments within thirty (30) days of the meeting. The comments must be received in the Western Regional Office of the Commission by Friday, July 22, 2016. The address is Western Regional Office, U.S. Commission on Civil Rights, 300 N. Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Persons wishing to email their comments may do so by sending them to Angela French-Bell, Regional Director, Western Regional Office, at *abell@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *http://facadatabase.gov/committee/meetings.aspx?cid=234.* Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Western Regional Office at the above email or street address.

Agenda for June 23, 2016

I. Introductory Remarks

II. Discussion of Written Proposal

III. Vote on Written Proposal

IV. Discussion of Briefing Meeting

V. Public Comment

VI. Adjournment

This meeting is available to the public through the following toll-free call-in number: Toll-Free Phone Number: 888–572–7034; when prompted, please provide conference ID number: 4694388.

FOR FURTHER INFORMATION CONTACT: Angela French-Bell, DFO, at (213) 894–3437 or *abell@usccr.gov.*

Dated: May 26, 2016.

David Mussatt,

Chief, Regional Programs Coordination Unit.

[FR Doc. 2016–12810 Filed 5–31–16; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Arizona State Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of public meeting.

DATES: Wednesday, June 8, 2016.

Time: 11:30 a.m.–12:30 p.m. (Arizona Time).

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Arizona State Advisory Committee (Committee) to the Commission will be held at 11:30 a.m. (Arizona Time) Wednesday, June 8, 2016 for the purpose of discussing whether the Committee should hear additional testimony from community advocates before completing its report on police practices in minority communities. The Committee will also discuss and vote upon a report outline.

This meeting is available to the public through the following toll-free call-in number: Toll-Free Phone Number: 888–455–2263; when prompted, please provide conference ID number: 2891492.

Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number.

Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments within thirty (30) days of the meeting. The comments must be

received in the Western Regional Office of the Commission by Friday, July 8, 2016. The address is Western Regional Office, U.S. Commission on Civil Rights, 300 N. Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Persons wishing to email their comments may do so by sending them to Angela French-Bell, Regional Director, Western Regional Office, at *abell@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *http://facadatabase.gov/committee/meetings.aspx?cid=235.* Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Western Regional Office at the above email or street address.

Agenda for June 8, 2016

I. Introductory Remarks
II. Discussion of Additional Testimony
III. Discussion of Report Outline
IV. Vote on Report Outline
V. Public Comment
VI. Adjournment

Public Call Information

Dial: 888–455–2263
Conference ID: 2891492

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of planning to have a committee meeting to hear testimony prior to the end of fiscal year 2016. Given the exceptional urgency of the events, the agency and advisory committee deem it important for the advisory committee to meet on the date given.

FOR FURTHER INFORMATION CONTACT: Angela French-Bell, DFO, at (213) 894–3437 or *abell@usccr.gov.*

Dated May 26, 2016.

David Mussatt,

Chief, Regional Programs Coordination Unit.

6335–01–P

[FR Doc. 2016–12811 Filed 5–31–16; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Hawai'i State Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of Public Meeting.

DATES: Tuesday, June 14, 2016.

Time: 9:00 a.m.–10:00 a.m. (Hawaii Time).

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Hawai'i State Advisory Committee (Committee) to the Commission will be held at 9:00 p.m. (Hawaiian Time) Tuesday, June 14, 2016, for the purpose of considering and voting upon a new topic for the Hawai'i State Advisory Committee's new project for FY 2016. This meeting is available to the public through the following toll-free call-in number: 888–452–4023; when prompted, please provide conference ID number: 4285649.

Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number.

Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments. The comments must be received in the Western Regional Office of the Commission by Thursday, July 14, 2016. The address is Western Regional Office, U.S. Commission on Civil Rights, 300 N. Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Persons wishing to email their comments may do so by sending them to Angela French-Bell, Regional Director, Western Regional Office, at *abell@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *http://facadatabase.gov/committee/meetings.aspx?cid=244.* Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Western Regional Office at the above email or street address.

Agenda

I. Introductory Remarks
II. Discussion of New Projects
III. Vote on New Project Topic
IV. Public Comment
V. Adjournment

Public Call Information

Dial: 888–452–4023 Conference ID: 4285649.

FOR FURTHER INFORMATION CONTACT: Angela French-Bell, DFO, at (213) 894–3437 or *abell@usccr.gov.*

Dated: May 26, 2016.

David Mussatt,

Chief, Regional Programs Coordination Unit.

[FR Doc. 2016–12812 Filed 5–31–16; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

On behalf of the Committee for the Implementation of Textile Agreements (CITA), the Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration, Committee for the Implementation of Textile Agreements.

Title: Interim Procedures for Considering Requests under the Commercial Availability Provision of the United States—Peru Trade Promotion Agreement Implementation Act.

Form Number(s): N/A.

OMB Control Number: 0625–0265.

Type of Request: Regular submission.

Burden Hours: 89.

Number of Respondents: 16 (10 for Requests; 3 for Responses; 3 for Rebuttals).

Average Hours per Response: 8 hours per Request; 2 hours per Response; and 1 hour per Rebuttal.

Needs and Uses: The United States and Peru negotiated the U.S.-Peru Trade Promotion Agreement (the Agreement), which entered into force on February 1, 2009. Subject to the rules of origin in Annex 4.1 of the Agreement, pursuant

to the textile provisions of the Agreement, a fabric, yarn, or fiber produced in Peru or the United States and traded between the two countries is entitled to duty-free tariff treatment. Annex 3–B of the Agreement also lists specific fabrics, yarns, and fibers that the two countries agreed are not available in commercial quantities in a timely manner from producers in Peru or the United States. The items listed in Annex 3–B are commercially unavailable fabrics, yarns, and fibers. Articles containing these items are entitled to duty-free or preferential treatment despite containing inputs not produced in Peru or the United States.

The list of commercially unavailable fabrics, yarns, and fibers may be changed pursuant to the commercial availability provision in chapter 3, Article 3.3, Paragraphs 5–7 of the Agreement. Section 203(o) of the Act implements the commercial availability provision of the Agreement. Under this provision, interested entities from Peru or the United States have the right to request that a specific fabric, yarn, or fiber be added to, or removed from, the list of commercially unavailable fabrics, yarns, and fibers in Annex 3–B.

Section 203(o) of the Act provides that the President may modify the list of fabrics, yarns, and fibers in Annex 3–B by determining whether additional fabrics, yarns, or fibers are not available in commercial quantities in a timely manner in the United States or Peru, and that the President will issue procedures governing the submission of requests and providing an opportunity for interested entities to submit comments. The President delegated the responsibility for publishing the procedures and administering commercial availability requests to CITA, which issues procedures and acts on requests through the U.S. Department of Commerce, Office of Textiles and Apparel (OTEXA) (*See* Proclamation No. 8341, 74 FR 4105, Jan. 22, 2009). Interim procedures to implement these responsibilities were published in the **Federal Register** on August 14, 2009. (*See* Interim Procedures for Considering Requests Under the Commercial Availability Provision of the United States-Peru Trade Promotion Agreement Implementation Act and Estimate of Burden for Collection of Information, 74 FR 41111, Aug. 14, 2009) (Commercial Availability Procedures).

The intent of the Commercial Availability Procedures is to foster the use of U.S. and regional products by implementing procedures that allow products to be placed on or removed from a product list, on a timely basis, and in a manner that is consistent with normal business practice. The procedures are intended to facilitate the transmission of requests; allow the market to indicate the availability of the supply of products that are the subject of requests; make available promptly, to interested entities and the public, information regarding the requests for products and offers received for those products; ensure wide participation by interested entities and parties; allow for careful review and consideration of information provided to substantiate requests and responses; and provide timely public dissemination of information used by CITA in making commercial availability determinations.

CITA must collect certain information about fabric, yarn, or fiber technical specifications and the production capabilities of Peruvian and U.S. textile producers to determine whether certain fabrics, yarns, or fibers are available in commercial quantities in a timely manner in the United States or Peru, subject to section 203(o) of the Act.

Affected Public: Business or other for-profit.

Frequency: Varies.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Wendy Liberante, (202) 395–3647.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to OIRA *Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: May 26, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–12851 Filed 5–31–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating the five-year review (''Sunset Review'') of the antidumping and countervailing duty (''AD/CVD'') order(s) listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same order(s).

DATES: *Effective Date:* June 1, 2016.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating Sunset Reviews of the following antidumping and countervailing duty order(s):

DOC Case No.	ITC Case No.	Country	Product	Department contact
A–475–703	731–TA–385	Italy	Granular Polytetrafluorethylene Resin (4th Review).	David Goldberger (202) 482–4136.
A–570–827	731–TA–669	PRC	Cased Pencils (4th Review)	David Goldberger (202) 482–4136.

DOC Case No.	ITC Case No.	Country	Product	Department contact
A–570–826 ...	731–TA–663	PRC	Paper Clips (4th Review)	Matthew Renkey (202) 482–2312.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Web site at the following address: *http://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''), can be found at 19 CFR 351.303.[1]

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[2] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in these segments.[3] The formats for the revised certifications are provided at the end of the *Final Rule.* The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

On April 10, 2013, the Department modified two regulations related to AD/CVD proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301).[4] Parties are advised to review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in these segments. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied. Parties are also advised to review the final rule concerning the extension of time limits for submissions in AD/CVD proceedings, available at *http://enforcement.trade.gov/frn/2013/1309frn/2013-22853.txt,* prior to submitting factual information in these segments.[5]

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d)). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (''APO'') to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.[6]

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews. Consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: May 24, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–12905 Filed 5–31–16; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* section 782(b) of the Act.

[3] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (''*Final Rule*'') (amending 19 CFR 351.303(g)).

[4] *See Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013).

[5] *See Extension of Time Limits,* 78 FR 57790 (September 20, 2013).

[6] *See* 19 CFR 351.218(d)(1)(iii).

DEPARTMENT OF COMMERCE

International Trade Administration

Meeting of the United States Manufacturing Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The United States Manufacturing Council (Council) will hold an open meeting via teleconference on Wednesday, June 15, 2016. The Council was established in April 2004 to advise the Secretary of Commerce on matters relating to the U.S. manufacturing industry. The purpose of the meeting is for Council members to review and deliberate on a proposed

recommendation by the Trade, Tax Policy, and Export Growth Subcommittee focused on trade enforcement policies and China Bilateral Investment Treaty. The final agenda will be posted on the Department of Commerce Web site for the Council at *http://www.trade.gov/manufacturingcouncil/,* at least one week in advance of the meeting.

DATES: Wednesday, June 15, 12:00 p.m.–1:00 p.m. The deadline for members of the public to register, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5 p.m. EDT on June 8, 2016.

ADDRESSES: The meeting will be held by conference call. The call-in number and passcode will be provided by email to registrants. Requests to register (including to speak or for auxiliary aids) and any written comments should be submitted to: U.S. Manufacturing Council, U.S. Department of Commerce, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230; email: *archana.sahgal@trade.gov.* Members of the public are encouraged to submit registration requests and written comments via email to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Archana Sahgal, U.S. Manufacturing Council, Room 4043, 1401 Constitution Avenue NW., Washington, DC, 20230, telephone: 202–482–4501, email: *archana.sahgal@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Council advises the Secretary of Commerce on matters relating to the U.S. manufacturing industry.

Public Participation: The meeting will be open to the public and will be accessible to people with disabilities. All guests are required to register in advance by the deadline identified under the **DATES** caption. Requests for auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted, but may be impossible to fill. There will be fifteen (15) minutes allotted for oral comments from members of the public joining the call. To accommodate as many speakers as possible, the time for public comments may be limited to three (3) minutes per person. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name and address of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared remarks by 5:00 p.m. EDT on June 8, 2016, for inclusion in the meeting records and for circulation to the members of the U.S. Manufacturing Council.

In addition, any member of the public may submit pertinent written comments concerning the Council's affairs at any time before or after the meeting. Comments may be submitted to Archana Sahgal at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5:00 p.m. EDT on June 8, 2016, to ensure transmission to the Council prior to the meeting. Comments received after that date and time will be distributed to the members but may not be considered on the call. Copies of Council meeting minutes will be available within 90 days of the meeting.

Dated: May 25, 2016.

Archana Sahgal,

Executive Secretary, U.S. Manufacturing Council.

[FR Doc. 2016–12843 Filed 5–31–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 160429381–6381–01]

National Cybersecurity Center of Excellence Data Integrity Building Block

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) invites organizations to provide products and technical expertise to support and demonstrate security platforms for the Data Integrity Building Block. This notice is the initial step for the National Cybersecurity Center of Excellence (NCCoE) in collaborating with technology companies to address cybersecurity challenges identified under the Data Integrity Building Block. Participation in the Data Integrity Building Block is open to all interested organizations.

DATES: Interested parties must contact NIST to request a letter of interest template to be completed and submitted to NIST. Letters of interest will be accepted on a first come, first served basis. Collaborative activities will commence as soon as enough completed and signed letters of interest have been returned to address all the necessary components and capabilities, but no earlier than July 1, 2016. When the Data Integrity Building Block has been completed, NIST will post a notice on the NCCoE Data Integrity Building Block Web site at *https://nccoe.nist.gov/projects/building_blocks/data_integrity* announcing the completion of the Data Integrity Building Block and informing the public that it will no longer accept letters of interest for this Data Integrity Building Block.

ADDRESSES: The NCCoE is located at 9700 Great Seneca Highway, Rockville, MD 20850. Letters of interest must be submitted to *di-nccoe@nist.gov* or via hardcopy to National Institute of Standards and Technology, NCCoE; 9700 Great Seneca Highway, Rockville, MD 20850. Organizations whose letters of interest are accepted in accordance with the process set forth in the **SUPPLEMENTARY INFORMATION** section of this notice will be asked to sign a Cooperative Research and Development Agreement (CRADA) with NIST. A CRADA template can be found at: *https://nccoe.nist.gov/library/nccoe-consortium-crada-example.*

FOR FURTHER INFORMATION CONTACT: Don Tobin via email to *donald.tobin@nist.gov,* by telephone 301–975–0239, or by mail to National Institute of Standards and Technology, NCCoE; 9700 Great Seneca Highway, Rockville, MD 20850. Additional details about the Data Integrity Building Block are available at *https://nccoe.nist.gov/projects/building_blocks/data_integrity.*

SUPPLEMENTARY INFORMATION:

Background

The NCCoE, part of NIST, is a public-private collaboration for accelerating the widespread adoption of integrated cybersecurity tools and technologies. The NCCoE brings together experts from industry, government, and academia under one roof to develop practical, interoperable cybersecurity approaches that address the real-world needs of complex Information Technology (IT) systems. By accelerating dissemination and use of these integrated tools and technologies for protecting IT assets, the NCCoE will enhance trust in U.S. IT communications, data, and storage systems; reduce risk for companies and individuals using IT systems; and encourage development of innovative, job-creating cybersecurity products and services.

Process

NIST is soliciting responses from all sources of relevant security capabilities (see below) to enter into a Cooperative Research and Development Agreement (CRADA) to provide products and technical expertise to support and demonstrate security platforms for the Data Integrity Building Block. The full Data Integrity Building Block can be viewed at: *https://nccoe.nist.gov/projects/building_blocks/data_integrity.*

Interested parties should contact NIST using the information provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. NIST will then provide each interested party with a letter of interest template, which the party must complete, certify that it is accurate, and submit to NIST. NIST will contact interested parties if there are questions regarding the responsiveness of the letters of interest to the Data Integrity Building Block objective or requirements identified below. NIST will select participants who have submitted complete letters of interest on a first come, first served basis within each category of product components or capabilities listed below up to the number of participants in each category necessary to carry out this Data Integrity Building Block. However, there may be continuing opportunity to participate even after initial activity commences. Selected participants will be required to enter into a consortium CRADA with NIST (for reference, see **ADDRESSES** section above). NIST published a notice in the **Federal Register** on October 19, 2012 (77 FR 64314) inviting U.S. companies to enter into National Cybersecurity Excellence Partnerships (NCEPs) in furtherance of the NCCoE. For this demonstration project, NCEP partners will not be given priority for participation.

Data Integrity Building Block Objective

The goal of this project is to mitigate the impacts of data corruption when recovering systems from backup storage. The solution will provide guidance for incorporating post-attack data corruption detection and recovery strategies into a corporate IT architecture. The project will explore methods to address the integrity of commodity components (operating systems, applications, and software configurations), custom applications, and data (database and files) and provide corruption indicators and activity logs to the security analysts to identify the malicious activity. It will produce an architecture that includes components that will integrate notification of data corruption events coupled with approaches to automate recovery from such events.

A detailed description of the Data Integrity Building Block is available at: *https://nccoe.nist.gov/projects/building_blocks/data_integrity.*

Requirements

Each responding organization's letter of interest should identify which security platform component(s) or capability(ies) it is offering. Letters of interest should not include company proprietary information, and all components and capabilities must be commercially available. Components are listed in the High-level Architecture section of the Data Integrity Building Block (for reference, please see the link in the PROCESS section above) and include, but are not limited to:

- File integrity monitors
- File versioning systems
- File integrity testing capabilities
- User activity monitoring tools
- Configuration management systems
- Database rollback tools
- Virtual machine integrity/snapshots/versioning capabilities
- Versioning file systems
- Journaling file systems

Each responding organization's letter of interest should identify how their products address one or more of the following desired solution characteristics in the High Level Architecture section of the Data Integrity Building Block (for reference, please see the link in the PROCESS section above):

- Automated data corruption testing
- Automated data corruption detection
- Automated data corruption event logging
- Secure data integrity monitoring and alerting information (checksums, off-site, hard-copy)
- Automated detection and reporting of all file modifications/creations/deletions
- Automated detection and reporting of all database modifications/creations/deletions
- Automated correlation of file changes and users
- Automated user activity recording
- Automated anomalous user activity detection
- Automated configuration management monitoring

Responding organizations need to understand and, in their letters of interest, commit to provide:

1. Access for all participants' project teams to component interfaces and the organization's experts necessary to make functional connections among security platform components

2. Support for development and demonstration of the Data Integrity Building Block in NCCoE facilities which will be conducted in a manner consistent with Federal requirements (*e.g.,* FIPS 200, FIPS 201, SP 800–53, and SP 800–63)

Additional details about the Data Integrity Building Block are available at: *https://nccoe.nist.gov/projects/building_blocks/data_integrity.*

NIST cannot guarantee that all of the products proposed by respondents will be used in the demonstration. Each prospective participant will be expected to work collaboratively with NIST staff and other project participants under the terms of the consortium CRADA in the development of the Data Integrity Building Block. Prospective participants' contribution to the collaborative effort will include assistance in establishing the necessary interface functionality, connection and set-up capabilities and procedures, demonstration harnesses, environmental and safety conditions for use, integrated platform user instructions, and demonstration plans and scripts necessary to demonstrate the desired capabilities. Each participant will train NIST personnel, as necessary, to operate its product in capability demonstrations. Following successful demonstrations, NIST will publish a description of the security platform and its performance characteristics sufficient to permit other organizations to develop and deploy security platforms that meet the security objectives of the Data Integrity Building Block. These descriptions will be public information.

Under the terms of the consortium CRADA, NIST will support development of interfaces among participants' products by providing IT infrastructure, laboratory facilities, office facilities, collaboration facilities, and staff support to component composition, security platform documentation, and demonstration activities.

The dates of the demonstration of the Data Integrity Building Block capability will be announced on the NCCoE Web site at least two weeks in advance at *http://nccoe.nist.gov/.* The expected outcome of the demonstration is to improve data integrity within the enterprise. Participating organizations will gain from the knowledge that their products are interoperable with other participants' offerings.

For additional information on the NCCoE governance, business processes, and NCCoE operational structure, visit

the NCCoE Web site *http://nccoe.nist.gov/.*

Kevin Kimball,

NIST Chief of Staff.

[FR Doc. 2016–12860 Filed 5–31–16; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE221

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Issuance of one enhancement of survival permit.

SUMMARY: Notice is hereby given that NMFS has issued Permit 20032 to Sonoma County Water Agency.

ADDRESSES: The application, issued permit, and supporting documents are available upon written request or by appointment: California Coastal Office, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404, ph: (707)-387–0737, fax: (707) 578–3435).

FOR FURTHER INFORMATION CONTACT: Dan Wilson, Santa Rosa, CA (ph.: 707–578–8555, Fax: 707–578–3435, email: *dan.wilson@noaa.gov*).

SUPPLEMENTARY INFORMATION:

The issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations (50 CFR parts 222–226) governing listed fish and wildlife permits.

Species Covered in This Notice

The following listed species are covered in this notice:

Threatened California Coastal (CC) Chinook salmon (*Oncorhynchus tshawytscha*), Endangered Central California Coast (CCC) Coho salmon (*O. kisutch*), and

Threatened CCC Steelhead (*O. mykiss*).

Permits Issued

Permit 20032

A notice of receipt of an application for an enhancement of survival permit (20032) was published in the **Federal Register** on November 18, 2015 (80 FR 72047). Permit 20032 was issued to the Permit Holder, Sonoma County Water Agency, on March 3, 2016, and expires on March 3, 2051.

Permit 20032 facilitates the implementation of the Dry Creek Valley Programmatic Safe Harbor Agreement (Agreement) that is expected to promote the recovery of the Covered Species on non-federal properties within Dry Creek below Warm Springs Dam, a tributary to the Russian River in Sonoma County, California. The duration of the Agreement and Permit 20032 is 35 years.

Permit 20032 authorizes the incidental taking of the Covered Species associated with routine viticulture activities and the potential future return of any property included in the Agreement to the Elevated Baseline Condition. Under this Agreement, individual landowners (Cooperators) may include their properties by entering into a Cooperative Agreement with the Permit Holder. Each Cooperative Agreement will specify the restoration and/or enhancement, and management activities to be carried out on that specific property and a timetable for implementing those activities. All Cooperative Agreements will be reviewed by NMFS to determine whether the proposed activities will result in a net conservation benefit for the Covered Species and meet all required standards of the Safe Harbor Policy (64 FR 32717). Upon NMFS approval, the Permit Holder will issue a Certificate of Inclusion to the Cooperator. Each Certificate of Inclusion will extend the incidental take coverage conferred by the Enhancement of Survival permit to the Cooperator. Certificates of Inclusion will be valid for a minimum of 10 years, but no longer than the term of Permit 20032. The Agreement requires that each enrolled property adopt an Elevated Baseline Condition. Elevated Baseline levels for the Covered Species will be determined by completing the Elevated Baseline Habitat Worksheet (Table 1 in Attachment 3 of the Agreement), which will be completed by the Permit Holder. NMFS will review each Elevated Baseline determination prior to the Permit Holder issuing a Certificate of Inclusion to the Cooperator. The Agreement also contains a monitoring component that requires the Permit Holder to ensure that the Cooperators are in compliance with the terms and conditions of the Agreement, and that the Elevated Baseline levels of habitat for the Covered Species occur on the Enrolled Property. Results of these monitoring efforts will be provided to NMFS by the Permit Holder in annual reports for the duration of the 35-year permit term.

Permit 20032 authorizes those Cooperators who have been issued a Certificate of Inclusion to take Covered Species incidental to the implementation of the management activities specified in the Agreement, incidental to other lawful uses of the property including routine viticulture activities, and to return to Elevated Baseline Conditions if desired.

Dated: May 26, 2016.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–12825 Filed 5–31–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE468

Takes of Marine Mammals Incidental to Specified Activities; Seabird and Pinniped Research Activities in Central California, 2016–2017

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, we hereby give notification that the National Marine Fisheries Service (NMFS) has issued an Incidental Harassment Authorization (IHA) to Point Blue Conservation Science (Point Blue), to take marine mammals, by Level B harassment, incidental to conducting seabird and pinniped research activities in central California, May, 2016 through May, 2017.

DATES: Effective May 16, 2016 through May 15, 2017.

ADDRESSES: The public may obtain an electronic copy of the Point Blue's application, supporting documentation, the authorization, and a list of the

references cited in this document by visiting: *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm.* In the case of problems accessing these documents, please call the contact listed here (see **FOR FURTHER INFORMATION CONTACT**).

The Environmental Assessment and associated Finding of No Significant Impact, prepared pursuant to the National Environmental Policy Act of 1969, are also available at the same site.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of Point Blue's application and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental/research.htm.* In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if: (1) We make certain findings; (2) the taking is limited to harassment; and (3) we provide a notice of a proposed authorization to the public for review.

We shall grant an authorization for the incidental taking of small numbers of marine mammals if we find that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). Also, the authorization must set forth the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings. We have defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On September 29, 2015, NMFS received an application from Point Blue requesting the taking by harassment of marine mammals incidental to conducting seabird research activities on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore in central California. Point Blue, along with partners Oikonos Ecosystem Knowledge and Point Reyes National Seashore, plan to conduct the proposed activities for one year. These partners are conducting this research under cooperative agreements with the U.S. Fish and Wildlife Service in consultation with the Gulf of the Farallones National Marine Sanctuary. Following the initial application submission, Point Blue submitted an updated version of their application on February 23, 2016. We considered the revised renewal request for 2016–2017 activities as adequate and complete on February 25, 2016.

On December 24, 2015 (80 FR 80321), we published a **Federal Register** notice announcing our issuance of a revised Authorization (effective through January 30, 2016) to Point Blue to take marine mammals by harassment, incidental to conducting the same activities presented in this notice of proposed Authorization. The revised Authorization increased the number of authorized take for California sea lions from approximately 9,871 to 44,871 due to Point Blue encountering unprecedented numbers of California sea lions hauled out in survey areas due to warming environmental conditions in the Pacific Ocean offshore California—which researchers have attributed to an El Niño event.

These proposed activities would occur in the vicinity of pinniped haul out sites and could likely result in the incidental take of marine mammals. We anticipate take, by Level B Harassment only, of individuals of California sea lions (*Zalophus californianus*), Pacific harbor seals *(Phoca vitulina*), northern elephant seals (*Mirounga angustirostris*), Steller sea lions (*Eumetopias jubatus*) and northern fur seals (*Callorhinus ursinus)* to result from the specified activity.

This is the organization's seventh request for an Authorization. To date, we have issued an Incidental Harassment Authorization (Authorization) to Point Blue (formerly known as PRBO Conservation Science) for the conduct of similar activities from 2007 to 2015 (72 FR 71121, December 14, 2007; 73 FR 77011, December 18, 2008; 75 FR 8677, February 19, 2010; 77 FR 73989, December 7, 2012; 78 FR 66686, November 6, 2013; December 24, 2015; 80 FR 80321).

Description of the Specified Activity

Overview

Point Blue proposes to monitor and census seabird colonies; observe seabird nesting habitat; restore nesting burrows; observe breeding elephant and harbor seals; and resupply a field station annually in central California (*i.e.,* Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore in central California).

The purpose of the seabird research is to continue a 30-year monitoring program of the region's seabird populations. Point Blue's long-term pinniped research program monitors pinniped colonies to understand elephant and harbor seal population dynamics and to contribute to the conservation of both species.

Dates and Duration

The Authorization would be effective from May 16, 2016 through May 15, 2017.

Specified Geographic Region

Point Blue will conduct their research activities within the vicinity of pinniped haul out sites in the following locations:

South Farallones Islands: The South Farallon Islands consist of Southeast Farallon Island located at 37°41′54.32″ N; 123°0′8.33″ W and West End Island. The South Farallon Islands have a land area of approximately 120 acres (0.49 square kilometers (km)) and are part of the Farallon National Wildlife Refuge. The islands are located near the edge of the continental shelf 28 miles (mi) (45.1 km) west of San Francisco, CA, and lie within the waters of the Gulf of the Farallones National Marine Sanctuary.

Año Nuevo Island: Año Nuevo Island located at 37°6′29.25″ N; 122°20′12.20″ W is one-quarter mile (402 meters (m)) offshore of Año Nuevo Point in San Mateo County, CA. The island lies within the Monterey Bay National Marine Sanctuary and the Año Nuevo State Marine Conservation Area.

Point Reyes National Seashore: Point Reyes National Seashore is

approximately 40 miles (64.3 km) north of San Francisco Bay and also lies within the Gulf of the Farallones National Marine Sanctuary.

Detailed Description of Activities

We outlined the purpose of Point Blue's activities in a previous notice for the proposed authorization (81 FR 15249, March 22, 2016). Following is a brief summary of the activities.

Seabird Research on Southeast Farallon Island: Daily observations of seabird colonies would occur at a maximum frequency of three 15-minute visits per day; and daily observations would be conducted of breeding common murres (*Uria aalge*) at a maximum frequency of one, five-hour visit per day in September. These activities usually involve one or two observers conducting daily censuses of seabirds or conducting mark/recapture studies of breeding seabirds on Southeast Farallon Island. The researchers plan to access the island's two landing areas, the North Landing and the East Landing, by 14 to 18 feet (ft) (4.3 to 5.5 meters [m]) open motorboats which are hoisted onto the island using a derrick system and then travel by foot to coastal areas of the island to view breeding seabirds from behind an observation blind.

Field Station Resupply on Southeast Farallon Island: Resupply of the field station would occur once every two weeks at a maximum frequency of 26 visits annually. Resupply activities involve personnel approaching either the North Landing or East Landing by motorboat to offload supplies.

Seabird Research on Año Nuevo Island: Researchers would monitor seabird burrow nesting habitat quality and to conduct habitat restoration at a maximum frequency of 20 visits per year. This activity involves two to three researchers accessing the north side of the island by a 12 ft (3.7 m) Zodiac boat. Once onshore, the researchers will check subterranean nest boxes and restore any nesting habitat for approximately 15 minutes.

Seabird Research on Point Reyes National Seashore: The National Park Service in collaboration with Point Blue would monitor seabird breeding and roosting colonies; conduct habitat restoration; remove non-native plants; monitor intertidal areas; and maintain coastal dune habitat. Seabird monitoring usually involves one or two observers conducting the survey by small boats along the shoreline. Researchers would visit the site at a maximum frequency of 20 times per year.

The proposed activities have not changed between the proposed authorization notice and this final notice announcing the issuance of the Authorization. For a more detailed description of the authorized action, we refer the reader to the notice for the proposed authorization (81 FR 15249, March 22, 2016).

Comments and Responses

We published a notice of receipt of Point Blue's application and proposed Authorization in the **Federal Register** on March 22, 2016 (81 FR 15249). During the 30-day comment period, we received one comment from the Marine Mammal Commission (Commission) which recommended that we issue the requested Authorization, provided that Point Blue carries out the required monitoring and mitigation measures as described in the notice of the proposed authorization (81 FR 15249, March 22, 2016) and the application. We have included all measures proposed in the notice of the proposed authorization (81 FR 15249, March 22, 2016).

We also received a comment letter from one private citizen who opposed the authorization on the basis that NMFS should not allow any Authorizations for harassment. We considered the commenter's general opposition to Point Blue's activities and to our issuance of an Authorization. The Authorization, described in detail in the **Federal Register** notice of the proposed Authorization (81 FR 15249, March 22, 2016) includes mitigation and monitoring measures to effect the least practicable impact to marine mammals and their habitat. It is our responsibility to determine whether the activities will have a negligible impact on the affected species or stocks; will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, where relevant; and to prescribe the means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, as well as monitoring and reporting requirements. The MMPA allows U.S. citizens to request take of marine mammals incidental to specified activities, and requires us to authorize such taking if we can make the necessary findings required by law and if we set forth the appropriate prescriptions. As explained throughout the **Federal Register** notice (81 FR 15249, March 22, 2016) we made the necessary preliminary findings under 16 U.S.C. 1361(a)(5)(D) to support issuance of Authorization.

Description of the Marine Mammals in the Area of the Proposed Specified Activity

The marine mammals most likely to be harassed incidental to conducting seabird and pinniped research at the proposed research areas are primarily California sea lions, northern elephant seals, Pacific harbor seals, and to a lesser extent the eastern distinct population segment (DPS) of the Steller sea lion and northern fur seal. We refer the public to Carretta *et al.,* (2015) for general information on these species which we presented in the notice of the proposed authorization (81 FR 15249, March 22, 2016).

California (southern) sea otters (*Enhydra lutris nereis*), listed as threatened under the ESA and categorized as depleted under the MMPA, usually range in coastal waters within 1.24 miles (2 km) of the shoreline. Point Blue has not encountered California sea otters during the course of their seabird or pinniped research activities over the past five years. This species is managed by the U.S. Fish and Wildlife Service and we do not consider it further in this notice of issuance of an Authorization.

Potential Effects on Marine Mammals

Acoustic and visual stimuli generated by: (1) Noise generated by motorboat approaches and departures; (2) noise generated during restoration activities and loading operations while resupplying the field station; and (3) human presence during seabird and pinniped research activities, have the potential to cause California sea lions, Pacific harbor seals, northern elephant seals, and Steller sea lions hauled out in areas within Southeast Farallon Island, Año Nuevo Island and Point Reyes National Seashore to flush into the surrounding water or to cause a short-term behavioral disturbance for marine mammals.

We expect that acoustic and visual stimuli resulting from the proposed motorboat operations and human presence has the potential to harass marine mammals. We also expect that these disturbances would be temporary and result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of certain species of marine mammals.

We included a summary and discussion of the ways that the types of stressors associated with Point Blue's specified activities (*i.e.,* visual and acoustic disturbance) have the potential to impact marine mammals in a previous notice for the proposed

authorization (81 FR 15249, March 22, 2016).

Vessel Strike: The potential for striking marine mammals is a concern with vessel traffic. However, it is highly unlikely that the use of small, slow-moving boats to access the research areas would result in injury, serious injury, or mortality to any marine mammal. Typically, the reasons for vessel strikes are fast transit speeds, lack of maneuverability, or not seeing the animal because the boat is so large. Point Blue's researchers will access areas at slow transit speeds in easily maneuverable boats negating any chance of an accidental strike.

Rookeries: No research activities would occur on pinniped rookeries and breeding animals are concentrated in areas where researchers would not visit. Therefore, we do not expect mother and pup separation or crushing of pups during flushing.

The potential effects to marine mammals described in the notice for the proposed authorization (81 FR 15249, March 22, 2016) did not take into consideration the proposed monitoring and mitigation measures described later in this document (see the ''Proposed Mitigation'' and ''Proposed Monitoring and Reporting'' sections).

Anticipated Effects on Habitat

We considered these impacts in detail in the notice for the proposed authorization (81 FR 15249, March 22, 2016). Briefly, we do not anticipate that the proposed research activities would result in any significant or long-term effects on the habitats used by the marine mammals in the proposed area, including the food sources they use (*i.e.,* fish and invertebrates). While we anticipate that the specified activity could potentially result in marine mammals avoiding certain areas due to temporary ensonification and human presence, this impact to habitat is temporary and reversible. We do not consider behavioral modification to cause significant or long-term consequences for individual marine mammals or their populations.

Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act, we must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

Point Blue has based the mitigation measures which they will implement during the proposed research, on the following: (1) Protocols used during previous Point Blue seabird research activities as required by our previous authorizations for these activities; and (2) recommended best practices in Richardson *et al.* (1995).

To reduce the potential for disturbance from acoustic and visual stimuli associated with the activities Point Blue and/or its designees has proposed to implement the following mitigation measures for marine mammals:

(1) Postpone beach landings on Año Nuevo Island until pinnipeds that may be present on the beach have slowly entered the water.

(2) Select a pathway of approach to research sites that minimizes the number of marine mammals harassed.

(3) Avoid visits to sites used by pinnipeds for pupping.

(4) Monitor for offshore predators and do not approach hauled out pinnipeds if great white sharks (*Carcharodon carcharias*) or killer whales (*Orcinas orca*) are present. If Point Blue and/or its designees see predators in the area, they must not disturb the animals until the area is free of predators.

(5) Keep voices hushed and bodies low to the ground in the visual presence of pinnipeds.

(6) Conduct seabird observations at North Landing on Southeast Farallon Island in an observation blind, shielded from the view of hauled out pinnipeds.

(7) Crawl slowly to access seabird nest boxes on Año Nuevo Island if pinnipeds are within view.

(8) Coordinate research visits to intertidal areas of Southeast Farallon Island (to reduce potential take) and coordinate research goals for Año Nuevo Island to minimize the number of trips to the island.

(9) Coordinate monitoring schedules on Año Nuevo Island, so that areas near any pinnipeds would be accessed only once per visit.

(10) Have the lead biologist serve as an observer to evaluate incidental take.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and have considered a range of other measures in the context of ensuring that we have prescribed the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. NMFS' evaluation of potential measures included consideration of the following factors in relation to one another:

(1) The manner in which, and the degree to which, we expect that the successful implementation of the measure would minimize adverse impacts to marine mammals;

(2) The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

(3) The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing the severity of harassment takes only).

5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of Point Blue's proposed measures, we have determined that the mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries,

mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an incidental take authorization for an activity, section 101(a)(5)(D) of the Marine Mammal Protection Act states that we must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The Act's implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for an incidental take authorization must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and our expectations of the level of taking or impacts on populations of marine mammals present in the action area.

Monitoring measures prescribed by NMFS should accomplish one or more of the general goals by documenting the following:

- Occurrence of marine mammal species in action area (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) Affected species (*e.g.,* life history, dive patterns); (3) Co-occurrence of marine mammal species with the action; or (4) Biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual responses to acute stressors, or impacts of chronic exposures (behavioral or physiological).
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of an individual; or (2) Population, species, or stock.
- Effects on marine mammal habitat and resultant impacts to marine mammals.
- Mitigation and monitoring effectiveness.

As part of its 2016–2017 application, Point Blue proposes to sponsor marine mammal monitoring during the present project, in order to implement the mitigation measures that require real-time monitoring, and to satisfy the monitoring requirements of the incidental harassment authorization. The Point Blue researchers will monitor the area for pinnipeds during all research activities. Monitoring activities will consist of conducting and recording observations on pinnipeds within the vicinity of the proposed research areas. The monitoring notes would provide dates, location, species, the researcher's activity, behavioral state, and numbers of animals that were alert or moved and numbers of pinnipeds that flushed into the water.

Observers will record marine mammal behavior patterns and disturbances observed before, during, and after the activities according to a three-point scale including:

(1) Head orientation in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, or changing from a lying to a sitting position and/or slight movement of less than 1 m; ''alert'';

(2) Movements in response to or away from disturbance, over short distances (typically two times its body length) and including dramatic changes in direction or speed of locomotion for animals already in motion ''movement'';

(3) All flushes to the water as well as lengthier retreats (>3 m); ''flight''. However, authorized takes shall only be recorded when disturbances meet criteria for #2 and #3 described above.

Point Blue has complied with the monitoring requirements under the previous authorizations for the 2007 through 2015 seasons. The results from previous Point Blue's monitoring reports support our findings that the proposed mitigation measures, which we also required under the 2007–2015 Authorizations provide the means of effecting the least practicable adverse impact on the species or stock.

Point Blue will submit a monitoring report on the May 16, 2016 through May 15, 2017 research. Upon receipt and review, we will post this annual report on our Web site at *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm.*

Point Blue must submit a draft final report to NMFS' Office of Protected Resources within 60 days after the conclusion of the 2016–2017 field season. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the Authorization.

Point Blue will submit a final report to the Chief, Permits and Conservation Division, Office of Protected Resources, within 30 days after receiving comments from NMFS on the draft final report. If Point Blue does not receive any comments from NMFS on the draft report, NMFS and Point Blue will consider the draft final report to be the final report.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the Marine Mammal Protection Act defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

NMFS proposes to authorize take by Level B harassment only for the proposed seabird research activities on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore. Acoustic (*i.e.,* increased sound) and visual stimuli generated during these proposed activities may have the potential to cause marine mammals in the harbor area to experience temporary, short-term changes in behavior.

Based on Point Blue's previous research experiences, with the same activities conducted in the proposed research area, and on marine mammal research activities in these areas, we estimate that approximately 53,538 California sea lions, 485 harbor seals, 221 northern elephant seals, 5 northern fur seals, and 38 Steller sea lions could be affected by Level B behavioral harassment over the course of the effective period of the proposed Authorization.

The authorized take differs from Point Blue's original request for California sea lions (44,871), harbor seals (343), northern elephant seals (196), and Steller sea lions (106). NMFS bases these new estimates on historical data from previous monitoring reports and anecdotal data for the same activities conducted in the proposed research areas. In brief, for four species (*i.e.,* California sea lions, harbor seals, northern elephant seals, and Steller sea lions), we created a statistical model to derive an estimate of the average annual increase of reported take based on a best fit regression analysis (*i.e.,* linear or polynomial regression) of reported take from 2007 to 2016. Next, we added the predicted annual increase in take for each species to the baseline reported take for the 2015–2016 seasons to project the estimated take for each species for the 2016–2017 proposed Authorization. We carried through the same predicted annual increase in take for future Authorizations (2017–2019) to obtain a mean projected take for each

species. Last, we analyzed the reported take for each activity by calculating the upper bound of the 95 percent confidence interval of the mean reported take (2007–2016) and mean projected take (2017–2019) for each species. Our use of the upper confidence interval represents the best available information that supports our precautionary deliberation of how much take could occur annually.

Although Point Blue has not reported encountering northern fur seals during the course of their previously authorized activities, NMFS has included take (5) for northern fur seals based on recent stranding information in the area for that species.

There is no evidence that Point Blue's planned activities could result in injury, serious injury or mortality within the action area. Moreover, the required mitigation and monitoring measures will minimize further any potential risk for injury, serious injury, or mortality. Thus, we do not authorize any injury, serious injury or mortality. We expect all potential takes to fall under the category of Level B harassment only.

Encouraging and Coordinating Research

Point Blue will continue to coordinate monitoring of pinnipeds during the research activities occurring on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore. Point Blue conducts bone fide research on marine mammals, the results of which may contribute to the basic knowledge of marine mammal biology or ecology, or are likely to identify, evaluate, or resolve conservation problems.

Analysis and Determinations

Negligible Impact Analysis

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, we consider other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

To avoid repetition, the discussion below applies to all five species discussed earlier in this notice. In making a negligible impact determination, we consider:

- The number of anticipated injuries, serious injuries, or mortalities;
- The number, nature, and intensity, and duration of Level B harassment;
- The context in which the takes occur (*e.g.,* impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);
- The status of stock or species of marine mammals (*i.e.,* depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);
- Impacts on habitat affecting rates of recruitment/survival; and
- The effectiveness of monitoring and mitigation measures to reduce the number or severity of incidental take.

For reasons stated previously in this document and based on the following factors, NMFS does not expect Point Blue's specified activities to cause long-term behavioral disturbance, abandonment of the haul-out area, injury, serious injury, or mortality:

(1) The takes from Level B harassment would be due to potential behavioral disturbance. The effects of the seabird research activities would be limited to short-term startle responses and localized behavioral changes due to the short and sporadic duration of the research activities. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering.

(2) The availability of alternate areas for pinnipeds to avoid the resultant acoustic and visual disturbances from the research operations. Results from previous monitoring reports also show that the pinnipeds returned to the various sites and did not permanently abandon haul-out sites after Point Blue conducted their pinniped and research activities.

(3) There is no potential for large-scale movements leading to injury, serious injury, or mortality because the researchers must delay ingress into the landing areas until after the pinnipeds present have slowly entered the water.

(4) The limited access of Point Blue's researchers to Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore during the pupping season.

We do not anticipate that any injuries, serious injuries, or mortalities would occur as a result of Point Blue's proposed activities, and we do not propose to authorize injury, serious injury or mortality. These species may exhibit behavioral modifications, including temporarily vacating the area during the proposed seabird and pinniped research activities to avoid the resultant acoustic and visual disturbances. Further, these proposed activities would not take place in areas of significance for marine mammal feeding, resting, breeding, or calving and would not adversely impact marine mammal habitat. Due to the nature, degree, and context of the behavioral harassment anticipated, the activities are not expected to impact annual rates of recruitment or survival.

NMFS does not expect pinnipeds to permanently abandon any area that is surveyed by researchers, as is evidenced by continued presence of pinnipeds at the sites during annual monitoring counts. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed mitigation and monitoring measures, NMFS finds that the total marine mammal take from Point Blue's seabird research activities will not adversely affect annual rates of recruitment or survival and therefore will have a negligible impact on the affected species or stocks.

Small Numbers Analysis

As mentioned previously, NMFS estimates that five species of marine mammals could be potentially affected by Level B harassment over the course of the proposed Authorization. For each species, these numbers are small relative to the population size. These incidental harassment numbers represent approximately 18.04 percent of the U.S. stock of California sea lion, 1.61 percent of the California stock of Pacific harbor seal, 0.12 percent of the California breeding stock of northern elephant seal, 0.04 percent of the California stock of northern fur seals, and 0.06 percent of the eastern distinct population segment of Steller sea lion.

Because these are maximum estimates, actual take numbers are likely to be lower, as some animals may select other haul-out sites the day the researchers are present.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Section 101(a)(5)(D) of the MMPA also requires us to determine that the taking will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals implicated by this action. Thus, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

No marine mammal species listed under the ESA are anticipated to occur in the action area. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

We prepared an Environmental Assessment (DEA) analyzing the potential effects to the human environment from the issuance of an Authorization to Point Blue for their seabird research activities. The EA titled, *Issuance of an Incidental Harassment Authorization to Point Blue Conservation Science and Partners to Take Marine Mammals by Harassment Incidental to Seabird Research Conducted in Central California* is posted on our Web site at *www.nmfs.noaa.gov/pr/permits/incidental/research.htm.* NMFS provided relevant environmental information to the public through the notice of proposed Authorization (81 FR 15249, March 22, 2016) and considered public comments received prior to finalizing our EA and deciding whether or not to issue a Finding of No Significant Impact (FONSI). NMFS concluded that issuance of an Incidental Harassment Authorization would not significantly affect the quality of the human environment and prepared and issued a FONSI in accordance with NEPA and NOAA Administrative Order 216–6. NMFS' EA and FONSI for this activity are available upon request (see **ADDRESSES**).

Authorization

As a result of these determinations, we have issued an Authorization to Point Blue for the take of marine mammals incidental to proposed seabird and pinniped research activities, provided they incorporate the previously mentioned mitigation, monitoring, and reporting requirements.

Dated: May 26, 2016.

Perry Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE443

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Boost-Backs and Landings of Rockets at Vandenberg Air Force Base

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that we have issued an incidental harassment authorization (IHA) to Space Explorations Technology Corporation (SpaceX), to incidentally harass, by Level B harassment only, marine mammals incidental to boost-backs and landings of Falcon 9 rockets at Vandenberg Air Force Base in California, and at a contingency landing location approximately 30 miles offshore.

DATES: This Authorization is effective from June 30, 2016, through June 29, 2017.

FOR FURTHER INFORMATION CONTACT: Jordan Carduner, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of SpaceX's IHA application and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the Internet at *www.nmfs.noaa.gov/pr/permits/incidental/.* In case of problems accessing these documents, please call the contact listed under **FOR FURTHER INFORMATION CONTACT**.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified area, the incidental, but not intentional, taking of small numbers of marine mammals, providing that certain findings are made and the necessary prescriptions are established.

The incidental taking of small numbers of marine mammals may be allowed only if NMFS (through authority delegated by the Secretary) finds that the total taking by the specified activity during the specified time period will (i) have a negligible impact on the species or stock(s) and (ii) not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). Further, the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking must be set forth.

The allowance of such incidental taking under section 101(a)(5)(A), by harassment, serious injury, death, or a combination thereof, requires that regulations be established. Subsequently, a Letter of Authorization may be issued pursuant to the prescriptions established in such regulations, providing that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations. Under section 101(a)(5)(D), NMFS may authorize such incidental taking by harassment only, for periods of not more than one year, pursuant to requirements and conditions contained within an IHA. The establishment of these prescriptions requires notice and opportunity for public comment.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: ''. . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

Summary of Request

On July 28, 2015, we received a request from SpaceX for authorization to take marine mammals incidental to

Falcon 9 First Stage recovery activities, including in-air boost-back maneuvers and landings of the First Stage of the Falcon 9 rocket at Vandenberg Air Force Base (VAFB) in California, and at a contingency landing location approximately 50 km (31 mi) offshore of VAFB. SpaceX submitted a revised version of the request on November 5, 2015. This revised version of the application was deemed adequate and complete. Acoustic stimuli, including sonic booms (overpressure of high-energy impulsive sound), landing noise, and possible explosions, resulting from boost-back maneuvers and landings of the Falcon 9 First Stage have the potential to result in take, in the form of Level B harassment, of six species of pinnipeds.

Description of the Specified Activity

A detailed description of the Falcon 9 First Stage recovery project is provided in the **Federal Register** notice for the proposed IHA (81 FR 18574; March 31, 2016). Since that time, no changes have been made to the planned Falcon 9 First Stage recovery activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS's proposal to issue an IHA to SpaceX was published in the **Federal Register** on March 31, 2016 (81 FR 18574). That notice described, in detail, SpaceX's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission. The Marine Mammal Commission recommended that NMFS issue the IHA, subject to inclusion of the proposed mitigation, monitoring, and reporting measures.

Description of Marine Mammals in the Area of the Specified Activity

There are six marine mammal species with expected occurrence in the project area (including at VAFB, on the NCI, and in the waters surrounding VAFB, the NCI and the contingency landing location) that are expected to be affected by the specified activities. These include the Steller sea lion (*Eumetopias jubatus*), northern fur seal (*Callorhinus ursinus*), northern elephant seal (*Mirounga angustirostris*), Guadalupe fur seal (*Arctocephalus townsendi*), California sea lion (*Zalophus californianus*), and Pacific harbor seal (*Phoca vitulina richardsi*). There are an additional 28 species of cetaceans with expected or possible occurrence in the project area. However, despite the fact that the ranges of these cetacean species overlap spatially with SpaceX's planned activities, we have determined that none of the potential stressors associated with the planned activities (including exposure to debris strike, rocket fuel, and visual and acoustic stimuli, as described further in ''Potential Effects of the Specified Activity on Marine Mammals'') are likely to result in take of cetaceans. As we have concluded that the likelihood of a cetacean being taken incidentally as a result of SpaceX's planned activities is so low as to be discountable, cetaceans are not considered further in this authorization. Please see Table 3–1 in the IHA application for a complete list of species with expected or potential occurrence in the project area.

A detailed description of the of the species likely to be affected by the dock construction project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (81 FR 18574; March 31, 2016); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' Web site for generalized species accounts, at: *www.nmfs.noaa.gov/pr/species/mammals.*

Table 1 lists the marine mammal species with expected potential for occurrence in the vicinity of the project during the project timeframe that are likely to be affected by the specified activities, and summarizes key information regarding stock status and abundance. Please see NMFS' Stock Assessment Reports (SAR), available at *www.nmfs.noaa.gov/pr/sars,* for more detailed accounts of these stocks' status and abundance.

TABLE 1—MARINE MAMMALS EXPECTED TO BE PRESENT IN THE VICINITY OF THE PROJECT LOCATION THAT ARE LIKELY TO BE AFFECTED BY THE SPECIFIED ACTIVITIES

Species	Stock	ESA Status/ MMPA status; strategic (Y/N) [1]	Stock abundance [2]	Occurrence in project area
Order Carnivora—Superfamily Pinnipedia				
Family Otariidae (eared seals and sea lions)				
Steller sea lion	Eastern U.S. DPS	–/D; Y	60,131	Rare.
California sea lion	U.S. stock	–/–; N	296,750	Common.
Family Phocidae (earless seals)				
Harbor seal	California stock	–/–; N	30,968	Common.
Northern elephant seal	California breeding stock	–/–; N	179,000	Common.
Northern fur seal	California stock	–/–; N	12,844	Common.
Guadalupe fur seal	n/a	T/D; Y	[3] 7,408	Rare.

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (–) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the species (or similar species) life history to arrive at a best abundance estimate.

[3] Abundance estimate for this stock is greater than ten years old and is therefore not considered current. We nevertheless present the most recent abundance estimate, as this represents the best available information for use in this document.

Potential Effects of the Specified Activity on Marine Mammals

The effects of noise from sonic booms resulting from the Falcon 9 First Stage recovery project have the potential to result in behavioral harassment of marine mammals in the vicinity of the action area. The **Federal Register** notice for the proposed IHA (81 FR 18574; March 31, 2016) included a discussion of the effects of anthropogenic noise on marine mammals, therefore that information is not repeated here; please refer to the **Federal Register** notice (81 FR 18574; March 31, 2016) for that information. No instances of hearing threshold shifts, injury, serious injury, or mortality are expected as a result of the Falcon 9 First Stage recovery activities.

Anticipated Effects on Marine Mammal Habitat

The main impact associated with the Falcon 9 First Stage recovery project would be temporarily elevated sound levels and the associated direct effects on marine mammals. We do not anticipate that the planned activities would result in any temporary or permanent effects on the habitats used by the marine mammals in the action area, including the food sources they use (*i.e.* fish and invertebrates). The project would not result in permanent impacts to habitats used directly by marine mammals, such as haulout sites and are unlikely to result in long term or permanent avoidance of the exposure areas or loss of habitat. The planned activities are also not expected to result in any reduction in foraging habitat or adverse impacts to marine mammal prey. This is discussed in greater detail in the **Federal Register** notice for the proposed IHA (81 FR 18574; March 31, 2016), therefore that information is not repeated here; please refer to that **Federal Register** notice for that information.

Mitigation Measures

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

SpaceX's IHA application contains descriptions of the mitigation measures to be implemented during the specified activities in order to effect the least practicable adverse impact on the affected marine mammal species and stocks and their habitats. These mitigation measures include the following:

• Unless constrained by other factors including human safety or national security concerns, launches will be scheduled to avoid, whenever possible, boost-backs and landings during the harbor seal pupping season of March through June.

We have carefully evaluated SpaceX's planned mitigation and considered their likely effectiveness relative to implementation of similar mitigation measures in previously issued incidental take authorizations to determine whether they are likely to affect the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

(1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;

(2) The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

(3) The practicability of the measure for applicant implementation.

Any mitigation measure(s) we prescribe should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the number (total number or number at biologically important time or location) of individual marine mammals exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(3) A reduction in the number (total number or number at biologically important time or location) of times any individual marine mammal would be exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(4) A reduction in the intensity of exposure to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing the severity of behavioral harassment only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying particular attention to the prey base, blockage or limitation of passage to or from biologically important areas, permanent destruction of habitat, or temporary disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation, an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of SpaceX's planned measures, we have determined that the mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

Any monitoring requirement we prescribe should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals, both within defined zones of effect (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;

2. An increase in our understanding of how many marine mammals are likely to be exposed to stimuli that we associate with specific adverse effects, such as behavioral harassment or hearing threshold shifts;

3. An increase in our understanding of how marine mammals respond to stimuli expected to result in incidental take and how anticipated adverse effects on individuals may impact the population, stock, or species (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

• Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict pertinent information, *e.g.,* received level, distance from source);

• Physiological measurements in the presence of stimuli compared to

observations in the absence of stimuli (need to be able to accurately predict pertinent information, *e.g.,* received level, distance from source); and

• Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli.

4. An increased knowledge of the affected species; or

5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

SpaceX submitted a monitoring plan as part of their IHA application. SpaceX's marine mammal monitoring plan was created with input from NMFS and was based on similar plans that have been successfully implemented by other action proponents under previous authorizations for similar projects, specifically the USAF's monitoring of rocket launches from VAFB.

Monitoring protocols vary according to modeled sonic boom intensity and season. Sonic boom modeling will be performed prior to all boost-back events. PCBoom, a commercially available modeling program, or an acceptable substitute, will be used to model sonic booms. Launch parameters specific to each launch will be incorporated into each model. These include direction and trajectory, weight, length, engine thrust, engine plume drag, position versus time from initiating boost-back to additional engine burns, among other aspects. Various weather scenarios will be analyzed from NOAA weather records for the region, then run through the model. Among other factors, these will include the presence or absence of the jet stream, and if present, its direction, altitude and velocity. The type, altitude, and density of clouds will also be considered. From these data, the models will predict peak amplitudes and impact locations.

Marine Mammal Monitoring

Marine mammal monitoring procedures will consist of the following:

• Should sonic boom model results indicate that a peak overpressure of 1.0 psf or greater is likely to impact VAFB, then acoustic and biological monitoring at VAFB will be implemented.

• If it is determined that a sonic boom of 1.0 psf or greater is likely to impact one of the Northern Channel Islands between 1 March and 30 June; a sonic boom greater than 1.5 psf between 1 July and 30 September, and a sonic boom greater than 2.0 psf between 1 October and 28 February, then monitoring will be conducted at the haulout site closest to the predicted sonic boom impact area.

• Monitoring would commence at least 72 hours prior to the boost-back and continue until at least 48 hours after the event.

• Monitoring data collected would include multiple surveys each day that record the species; number of animals; general behavior; presence of pups; age class; gender; and reaction to booms or other natural or human-caused disturbances. Environmental conditions such as tide, wind speed, air temperature, and swell would also be recorded.

• If the boost-back is scheduled for daylight; video recording of pinnipeds would be conducted during the Falcon 9 First Stage recovery in order to collect data on reactions to noise.

• For launches during the harbor seal pupping season (March through June), follow-up surveys will be conducted within 2 weeks of the boost-back/landing.

Acoustic Monitoring

Acoustic measurements of the sonic boom created during boost-back at the monitoring location will be recorded to determine the overpressure level.

Reporting

SpaceX will submit a report within 90 days after each Falcon 9 First Stage recovery event that includes the following information:

- Summary of activity (including dates, times, and specific locations of Falcon 9 First Stage recovery activities)
- Summary of monitoring measures implemented
- Detailed monitoring results and a comprehensive summary addressing goals of monitoring plan, including:
  - Number, species, and any other relevant information regarding marine mammals observed and estimated exposed/taken during activities;
  - Description of the observed behaviors (in both presence and absence of activities);
  - Environmental conditions when observations were made; and
  - Assessment of the implementation and effectiveness of monitoring measures.

In addition to the above post-activity reports, a draft annual report will be submitted within 90 calendar days of the expiration of the IHA, or within 45 calendar days prior to the effective date of a subsequent IHA (if applicable). The annual report will summarize the information from the post-activity reports, including but not necessarily limited to: (a) Numbers of pinnipeds present on the haulouts prior to commencement of Falcon 9 First Stage recovery activities; (b) numbers of pinnipeds that may have been harassed as noted by the number of pinnipeds estimated to have entered the water as a result of Falcon 9 First Stage recovery noise; (c) for pinnipeds that entered the water as a result of Falcon 9 First Stage recovery noise, the length of time(s) those pinnipeds remained off the haulout or rookery; and (d) any behavioral modifications by pinnipeds that likely were the result of stimuli associated with the planned activities.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner not authorized by the IHA, such as a Level A harassment, or a take of a marine mammal species other than those authorized, SpaceX would immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources. The report would include the following information:

• Time, date, and location (latitude/longitude) of the incident;

• Description of the incident;

• Status of all Falcon 9 First Stage recovery activities in the 48 hours preceding the incident;

• Description of all marine mammal observations in the 48 hours preceding the incident;

• Species identification or description of the animal(s) involved;

• Fate of the animal(s); and

• Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with SpaceX to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. SpaceX would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that SpaceX discovers an injured or dead marine mammal, and the lead MMO determines the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition), SpaceX would immediately report the incident to mail to: The Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS West Coast Region Stranding Coordinator.

The report would include the same information identified in the paragraph above. Authorized activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with SpaceX to

determine whether modifications in the activities are appropriate.

In the event that SpaceX discovers an injured or dead marine mammal, and the lead MMO determines the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), SpaceX would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and NMFS West Coast Region Stranding Coordinator, within 24 hours of the discovery. SpaceX would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: ''. . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

All anticipated takes would be by Level B harassment only, resulting from noise associated with sonic booms and involving temporary changes in behavior. Estimates of the number of harbor seals, California sea lions, northern elephant seals, Steller sea lions, northern fur seals, and Guadalupe fur seals that may be harassed by the planned activities is based upon the number of potential events associated with Falcon 9 First Stage recovery activities (maximum six per year) and the average number of individuals of each species that are present in areas that will be exposed to the activities at levels that are expected to result in Level B harassment.

In order to estimate the potential incidents of take that may occur incidental to the specified activity, we must first estimate the extent of the sound field that may be produced by the activity and then incorporate information about marine mammal density or abundance in the project area. We first provide information on applicable thresholds for determining effects to marine mammals before describing the information used in estimating the sound fields, the available marine mammal density or abundance information, and the method of estimating potential incidences of take. It should be noted that estimates of Level B take described below are not necessarily estimates of the number of individual animals that are expected to be taken; a smaller number of individuals may accrue a number of incidences of harassment per individual than for each incidence to accrue to a new individual, especially if those individuals display some degree of residency or site fidelity and the impetus to use the site (*e.g.,* because of foraging opportunities) is stronger than the deterrence presented by the harassing activity.

Sound Thresholds

Typically NMFS relies on the acoustic criteria shown in Table 2 to estimate the extent of take by Level A and/or Level B harassment that is expected as a result of an activity. If we relied on the acoustic criteria shown in Table 2, we would assume harbor seals exposed to airborne sound at levels at or above 90 dB rms re 20 μPa, and non-harbor seal pinnipeds exposed to airborne sound at levels at or above 100 dB rms re 20 μPa, would experience Level B harassment. However, in this case we have the benefit of more than 20 years of observational data on pinniped responses to the stimuli associated with the planned activities that we expect to result in harassment (sonic booms) in the particular geographic area of the planned activity (VAFB and the NCI). Therefore, we consider these data to be the best available information in regard to estimating take based on modeled exposures among pinnipeds to sounds associated with the planned activities. These data suggest that pinniped reactions to sonic booms are dependent on the species, the age of the animal, and the intensity of the sonic boom (see Table 3).

TABLE 2—NMFS CRITERIA FOR ACOUSTIC IMPACTS TO MARINE MAMMALS

Criterion	Criterion definition	Threshold
In-Water Acoustic Thresholds		
Level A	PTS (injury) conservatively based on TTS	190 dB_{rms} for pinnipeds. 180 dB_{rms} for cetaceans.
Level B	Behavioral disruption for impulsive noise	160 dB_{rms}.
Level B	Behavioral disruption for non-pulse noise	120 dB_{rms}.
In-Air Acoustic Thresholds		
Level A	PTS (injury) conservatively based on TTS	None established.
Level B	Behavioral disruption for harbor seals	90 dB_{rms}.
Level B	Behavioral disruption for non-harbor seal pinnipeds	100 dB_{rms}.

As described above, data from launch monitoring by the USAF on the NCI and at VAFB have shown that pinniped reactions to sonic booms are correlated to the level of the sonic boom. Low energy sonic booms (<1.0 psf) have resulted in little to no behavioral responses, including head raising and briefly alerting but returning to normal behavior shortly after the stimulus. More powerful sonic booms have flushed animals from haulouts (but not resulted in any mortality or sustained decreased in numbers after the stimulus). Table 3 presents a summary of monitoring efforts at the NCI from 1999 to 2011. These data show that reactions to sonic booms tend to be insignificant below 1.0 psf and that, even above 1.0 psf, only a portion of the animals present react to the sonic boom. Therefore, for the purposes of estimating the extent of take that is likely to occur as a result of the planned activities, we assume that Level B harassment occurs when a pinniped (on land) is exposed to a sonic boom at or above 1.0 psf. Therefore the number of expected takes by Level B harassment is based on estimates of the numbers of animals that would be within the area exposed to sonic booms at levels at or above 1.0 psf.

TABLE 3—PINNIPED REACTIONS TO SONIC BOOMS AT SAN MIGUEL ISLAND

Launch event	Sonic boom level (psf)	Location	Species & associated reaction
Athena II (27 April 1999)	1.0	Adams Cove	Calif. sea lion—866 alerted, 232 flushed into water; northern elephant seal—alerted but did not flush; northern fur seal—alerted but did not flush.
Athena II (24 September 1999)	0.95	Point Bennett	Calif. sea lion—600 alerted, 12 flushed into water; northern elephant seal—alerted but did not flush; northern fur seal—alerted but did not flush.
Delta II 20 (November 2000)	0.4	Point Bennett	Calif. sea lion—60 flushed into water, no reaction from rest; Northern elephant seal—no reaction.
Atlas II (8 September 2001)	0.75	Cardwell Point	Calif. sea lion—no reaction; northern elephant seal—no reaction; harbor seal—2 of 4 flushed into water.
Delta II (11 February 2002)	0.64	Point Bennett	Calif. sea lion—no reaction; northern fur seal—no reaction; northern elephant seal—no reaction.
Atlas II (2 December 2003)	0.88	Point Bennett	Calif. sea lion—40% alerted, several flushed to water; northern elephant seal—no reaction.
Delta II (15 July 2004)	1.34	Adams Cove	Calif. sea lion—10% alerted.
Atlas V (13 March 2008)	1.24	Cardwell Point	northern elephant seal—no reaction.
Delta II (5 May 2009)	0.76	West of Judith Rock	Calif. sea lion—no reaction.
Atlas V (14 April 2011)	1.01	Cuyler Harbor	northern elephant seal—no reaction.
Atlas V (3 April 2014)	0.74	Cardwell Point	harbor seal—1 of ~25 flushed into water, no reaction from others.
Atlas V (12 December 2014)	1.16	Point Bennett	Calif. sea lion—5 of ~225 alerted, none flushed.

The data recorded by USAF at VAFB and the NCI over the past 20 years has also shown that pinniped reactions to sonic booms vary between species. As described above, little or no reaction has been observed in harbor seals, California sea lions, northern fur seals and northern elephant seals when overpressures were below 1.0 psf (data on responses among Steller sea lions and Guadalupe fur seals is not available). At the NCI sea lions have reacted more strongly to sonic booms than most other species. Harbor seals also appear to be more sensitive to sonic booms than most other pinnipeds, often resulting in startling and fleeing into the water. Northern fur seals generally show little or no reaction, and northern elephant seals generally exhibit no reaction at all, except perhaps a heads-up response or some stirring, especially if sea lions in the same area mingled with the elephant seals react strongly to the boom. No data is available on Steller sea lion or Guadalupe fur seal responses to sonic booms.

Exposure Area

As described above, SpaceX performed acoustic modeling to estimate overpressure levels that would be created during the return flight of the Falcon 9 First Stage (Wyle, Inc. 2015). The predicted acoustic footprint of the sonic boom was computed using the computer program PCBoom (Plotkin and Grandi 2002; Page et al. 2010). Modeling was performed for a landing at VAFB and separately for a contingency barge landing (see Figures 2–1, 2–2, 2–3 and 2–4 in the IHA application).

The model results predicted that sonic overpressures would reach up to 2.0 pounds psf in the immediate area around SLC–4W (see Figures 2–1 and 2–2 in the IHA application) and an overpressure between 1.0 and 2.0 psf would impact the coastline of VAFB from approximately 8 km north of SLC–4W to approximately 18 km southeast of SLC–4W (see Figures 2–1 and 2–2 in the IHA application). A substantially larger area, including the mainland, the Pacific Ocean, and the NCI would experience an overpressure between 0.1 and 1.0 psf (see Figure 2–1 in the IHA application). In addition, San Miguel Island and Santa Rosa Island may experience an overpressure up to 3.1 psf and the west end of Santa Cruz Island may experience an overpressure up to 1.0 psf (see Figures 2–1 and 2–3 in the IHA application). During a contingency barge landing event, an overpressure of up to 2.0 psf would impact the Pacific Ocean at the contingency landing location approximately 50 km offshore of VAFB. San Miguel Island and Santa Rosa Island would experience a sonic boom between 0.1 and 0.2 psf, while sonic boom overpressures on the mainland would be between 0.2 and 0.4 psf.

SpaceX assumes that actual sonic booms that occur during the planned activities will vary slightly from the modeled sonic booms; therefore, when estimating take based on areas anticipated to be impacted by sonic booms at or above 1.0 psf, haulouts within approximately 8.0 km (5 miles) of modeled contour lines for sonic booms at or above 1.0 psf were included to be conservative. Therefore, in estimating take for a VAFB landing, haulouts were included from the areas of Point Arguello and Point Conception, all of San Miguel Island, the northwestern half of Santa Rosa Island, and northwestern quarter of Santa Cruz Island (see Figure 2–2 and 2–3 in the IHA application). For a contingency landing event, sonic booms are far enough offshore so that only haulouts along the northwestern edge of San Miguel Island may be exposed to a 1.0 psf or greater sonic boom (see Figure 2–4 in the IHA application). As modeling indicates that substantially more haulouts would be impacted by a sonic boom at or above 1.0 psf in the event of a landing at VAFB versus a landing at the contingency landing location, estimated takes are substantially higher in the event of a VAFB landing versus a barge landing.

Description of Take Calculation

The take calculations presented here rely on the best data currently available for marine mammal populations in the project location. Data collected from marine mammal surveys represent the best available information on the occurrence of the six pinniped species in the project area. The quality of information available on pinniped abundance in the project area is varies depending on species; some species, such as California sea lions, are surveyed regularly at VAFB and the NCI, while for others, such as northern fur seals, survey data is largely lacking. See Table 4 for total estimated incidents of take. Take estimates were based on

''worst case scenario'' assumptions, as follows:

• All six Falcon 9 First Stage recovery actions are assumed to result in landings at VAFB, with no landings occurring at the contingency barge landing location. This is a conservative assumption as sonic boom modeling indicates landings at VAFB are expected to result in a greater number of exposures to sound resulting in Level B harassment than would be expected for landings at the contingency landing location offshore. Some landings may ultimately occur at the contingency landing location; however, the number of landings at each location is not known in advance.

• All pinnipeds estimated to be in areas ensonified by sonic booms at or above 1.0 psf are assumed to be hauled out at the time the sonic boom occurs. This assumption is conservative as some animals may in fact be in the water with heads submerged when a sonic boom occurs and would therefore not be exposed to the sonic boom at a level that would result in Level B harassment.

• Actual sonic booms that occur during the planned activities are assumed to vary slightly from the modeled sonic booms; therefore, when estimating take based on areas expected to be impacted by sonic booms at or above 1.0 psf, an additional buffer of 8.0 km (5 miles) was added to modeled sonic boom contour lines. Thus haulouts that are within approximately 8.0 km (5 miles) of modeled sonic booms at 1.0 psf and above were included in the take estimate. This is a conservative assumption as it expands the area of ensonification that would be expected to result in Level B harassment.

California sea lion—California sea lions are common offshore of VAFB and haul out on rocks and beaches along the coastline of VAFB, though pupping rarely occurs on the VAFB coastline. They haulout in large numbers on the NCI and rookeries exist on San Miguel and Santa Cruz islands. Based on modeling of sonic booms from Falcon 9 First Stage recovery activities, Level B harassment of California sea lions is expected to occur both at VAFB and at the NCI. Estimated take of California sea lions at VAFB was calculated using the largest count totals from monthly surveys of VAFB haulout sites from 2013–2015. These data were compared to the modeled sonic boom profiles. Counts from haulouts that were within the area expected to be ensonified by a sonic boom above 1.0 psf, plus the buffer of 8km as described above, were included in take estimates; those haulouts outside the area expected to be ensonified by a sonic boom above 1.0 psf, plus the buffer of 8 km, were not included in the take estimate. The estimated number of California sea lion takes on the NCI and at Point Conception was derived from aerial survey data collected from 2002 to 2012 by the NOAA Southwest Fishery Science Center (SWFSC). The estimates are based on the largest number of individuals observed in the count blocks that fall within the area expected to be ensonified by a sonic boom above 1.0 psf plus a radius of 8 km, based on sonic boom modeling. Estimates of Level B harassment for California sea lions are shown in Table 4.

Harbor Seal—Pacific harbor seals are the most common marine mammal inhabiting VAFB, congregating on several rocky haul-out sites along the VAFB coastline. They also haul out, breed, and pup in isolated beaches and coves throughout the coasts of the NCI. Based on modeling of sonic booms from Falcon 9 First Stage recovery activities, Level B harassment of harbor seals is expected to occur both at VAFB and at the NCI. Estimated take of harbor seals at VAFB was calculated using the largest count totals from monthly surveys of VAFB haulout sites from 2013–2015. These data were compared to the modeled sonic boom profiles. Counts from haulouts that were within the area expected to be ensonified by a sonic boom above 1.0 psf plus a radius of 8 km were included in take estimates; those haulouts outside the area expected to be ensonified by a sonic boom above 1.0 psf plus a radius of 8 km were not included in the take estimate. The estimated number of harbor seal takes on the NCI and at Point Conception was derived from aerial survey data collected from 2002 to 2012 by the NOAA SWFSC. The estimates are based on the largest number of individuals observed in the count blocks that fall within the area expected to be ensonified by a sonic boom above 1.0 psf plus a radius of 8 km, based on sonic boom modeling.

It should be noted that total take estimates shown in Table 4 represent incidents of exposure to sound resulting in Level B harassment from the planned activities, and not estimates of the number of individual harbor seals exposed. As described above, harbor seals display a high degree of site fidelity to their preferred haulout sites, and are non-migratory, rarely traveling more than 50 km from their haulout sites. Thus, while the estimated abundance of the California stock of Pacific harbor seals is 30,968 (Carretta *et al.* 2015), a substantially smaller number of individual harbor seals is expected to occur within the project area. The number of harbor seals expected to be taken by Level B harassment, per Falcon 9 First Stage recovery action, is 2,157 (Table 4). We expect that, because of harbor seals' site fidelity to haulout locations at VAFB and the NCI, and because of their limited ranges, the same individuals are likely to be taken repeatedly over the course of the planned activities (six Falcon 9 First Stage recovery actions). Estimates of Level B harassment for harbor seals are shown in Table 4.

Steller Sea Lion—Steller sea lions occur in small numbers at VAFB (maximum 16 individuals observed at any time) and on San Miguel Island (maximum 4 individuals recorded at any time). They have not been observed on the Channel Islands other than San Miguel Island and they not currently have rookeries on the NCI or at VAFB. Estimated take of Steller sea lions at VAFB was calculated using the largest count totals from monthly surveys of VAFB from 2013–2015. These data were compared to the modeled sonic boom profiles. Counts from haulouts that were within the area expected to be ensonified by a sonic boom above 1.0 psf plus a radius of 8 km were included in take estimates; those haulouts outside the area expected to be ensonified by a sonic boom above 1.0 psf plus a radius of 8 km were not included in the take estimate. Estimates of Level B harassment for Steller sea lions are shown in Table 4.

Northern elephant seal—Northern elephant seals haul out sporadically on rocks and beaches along the coastline of VAFB and at Point Conception, but they do not currently breed or pup at VAFB or at Point Conception. Northern elephant seals have rookeries on San Miguel Island and Santa Rosa Island. They are rarely seen on Santa Cruz Island and Anacapa Island. Based on modeling of sonic booms from Falcon 9 First Stage recovery activities, Level B harassment of northern elephant seals is expected to occur both at VAFB and at the NCI.

Estimated take of northern elephant seals at VAFB was calculated using the largest count totals from monthly surveys of VAFB haulout sites from 2013–2015. These data were compared to the modeled sonic boom profiles. Counts from haulouts that were within the area expected to be ensonified by a sonic boom above 1.0 psf plus a radius of 8 km were included in take estimates; those haulouts outside the area expected to be ensonified by a sonic boom above 1.0 psf plus a radius of 8 km were not included in the take estimate. The estimated number of northern elephant

seal takes on the NCI and at Point Conception was derived from aerial survey data collected from 2002 to 2012 by the NOAA SWFSC. The estimates are based on the largest number of individuals observed in the count blocks that fall within the area expected to be ensonified by a sonic boom above 1.0 psf plus a radius of 8 km, based on sonic boom modeling.

As described above, monitoring data has shown that reactions to sonic booms among pinnipeds vary between species, with northern elephant seals consistently showing little or no reaction (Table 3). USAF launch monitoring data shows that northern elephant seals have never been observed responding to sonic booms. No elephant seal has been observed flushing to the water in response to a sonic boom. Because of the data showing that elephant seals consistently show little to no reaction to the sonic booms, we conservatively estimate that 10 percent of northern elephant seal exposures to sonic booms at or above 1.0 psf will result in Level B harassment. Estimates of Level B harassment for northern elephant seals are shown in Table 4. Note that the take estimate for northern elephant seals shown in Table 4 has been revised from the take estimate in the proposed IHA.

Northern fur seal—Northern fur seals have rookeries on San Miguel Island, the only island in the NCI on which they have been observed. No haulout or rookery sites exist for northern fur seals at VAFB or on the mainland coast, thus take from sonic booms is only expected on San Miguel Island and not on the mainland. Comprehensive count data for northern fur seals on San Miguel Island are not available. Estimated take of northern fur seals was derived from northern fur seals pup and bull census data (Testa 2013), and personal communications with subject matter experts based at the NMFS National Marine Mammal Laboratory. Northern fur seal abundance on San Miguel Island varies substantially depending on the season, with a maximum of 6,000–8,000 seals hauled out on the western end of the island and at Castle Rock (~1 km northwest of San Miguel Island) during peak pupping season in July; the number of seals on San Miguel Island then decreases steadily from August until November, when very few seals are present. The number of seals on the island does not begin to increase again until the following June (pers. comm., T. Orr, NMFS NMML, to J. Carduner, NMFS, 2/27/16). As the dates of Falcon 9 First Stage recovery activities are not known, the activities could occur when the maximum number or the minimum number of fur seals is present, depending on season. We therefore estimated an average of 5,000 northern fur seals would be present in the area affected by sonic booms above 1.0 psf.

As described above, monitoring data has shown that reactions to sonic booms among pinnipeds vary between species, with northern fur seals consistently showing little or no reaction (Table 3). As described above, launch monitoring data shows that northern fur seals sometimes alert to sonic booms but have never been observed flushing to the water in response to sonic booms. Because of the data showing that fur seals consistently show little to no reaction to sonic booms, we conservatively estimate that 10 percent of northern fur seal exposures to sonic booms at or above 1.0 psf will result in Level B harassment. Estimates of Level B harassment for northern fur seals are shown in Table 4.

Guadalupe fur seal—There are estimated to be approximately 20–25 individual Guadalupe fur seals that have fidelity to San Miguel Island. The highest number of individuals observed at any one time on San Miguel Island is thirteen. No haul-out or rookery sites exist for Guadalupe fur seals on the mainland coast, including VAFB. Comprehensive survey data on Guadalupe fur seals in the NCI is not readily available. Though we are aware of no data on Guadalupe fur seal responses to sonic booms, because of the data showing that northern fur seals consistently show little to no reaction to sonic booms, we conservatively estimate that 10 percent of Guadalupe fur seal exposures to sonic booms at or above 1.0 psf will result in Level B harassment. The estimated number of takes of Guadalupe fur seals was based the maximum number of Guadalupe fur seals observed at any one time on San Miguel Island (pers. comm., J. LaBonte, ManTech, to J. Carduner, NMFS, Feb 29, 2016). Estimates of Level B harassment for Guadalupe fur seals are shown in Table 4. Note that the take estimate for Guadalupe fur seals shown in Table 4 has been revised from the take estimate in the proposed IHA.

As described above, the take estimates shown in Table 4 are considered reasonable estimates of the number of marine mammal exposures to sound resulting in Level B harassment that are likely to occur over the course of the project, and not necessarily the number of individual animals exposed.

TABLE 4—NUMBER OF INCIDENTAL TAKES OF MARINE MAMMALS, AND PERCENTAGE OF STOCK ABUNDANCE, AS A RESULT OF THE PLANNED ACTIVITIES

Species	Geographic location	Estimated takes per Falcon 9 First Stage recovery action	Total estimated takes over the duration of the IHA ^	Percentage of stock abundance estimated taken
Harbor Seal	VAFB [a]	366	12,942	*7
	Pt. Conception [b]	488		
	San Miguel Island [b]	752		
	Santa Rosa Island [b]	412		
	Santa Cruz Island [b]	139		
California Sea Lion	VAFB [a]	416	56,496	19
	Pt. Conception	n/a		
	San Miguel Island [c]	9,000		
	Santa Rosa Island [c].			
	Santa Cruz Island [c].			
Northern Elephant Seal	VAFB [a]	19	1,020	0.5
	Pt. Conception [d]	1		
	San Miguel Island [c]	150		
	Santa Rosa Island [c].			
	Santa Cruz Island [c].			
Steller Sea Lion	VAFB [a]	16	120	0.2
	Pt. Conception	n/a		

TABLE 4—NUMBER OF INCIDENTAL TAKES OF MARINE MAMMALS, AND PERCENTAGE OF STOCK ABUNDANCE, AS A RESULT OF THE PLANNED ACTIVITIES—Continued

Species	Geographic location	Estimated takes per Falcon 9 First Stage recovery action	Total estimated takes over the duration of the IHA ^	Percentage of stock abundance estimated taken
	San Miguel Island	4		
	Santa Rosa Island	n/a		
	Santa Cruz Island	n/a		
Northern Fur Seal	VAFB	n/a	3,000	23
	Pt. Conception	n/a		
	San Miguel Island [c]	500		
	Santa Rosa Island	n/a		
	Santa Cruz Island	n/a		
Guadalupe Fur Seal	VAFB	n/a	6	0.1
	Pt. Conception	n/a		
	San Miguel Island [e]	1		
	Santa Rosa Island	n/a		
	Santa Cruz Island	n/a		

[a] VAFB monthly marine mammal survey data 2013–2015 (ManTech SRS Technologies, Inc. 2014, 2015 and VAFB, unpubl. data).
[b] NOAA Fisheries aerial survey data June 2002 and May 2004 (M. Lowry, NOAA Fisheries, unpubl. data).
[c] Testa 2013; USAF 2013; pers. comm., T. Orr, NMFS NMML, to J. Carduner, NMFS, Feb 27, 2016.
[d] NOAA Fisheries aerial survey data February 2010 (M. Lowry, NOAA Fisheries, unpubl. data).
[e] DeLong and Melin 2000; J. Harris, NOAA Fisheries, pers. comm.
^ Based on six Falcon 9 First Stage recovery actions, with SLC–4W landings, per year.
* For harbor seals, estimated percentage of stock abundance taken is based on estimated number of individuals taken versus estimated total exposures.

Analyses and Determinations

Negligible Impact Analysis

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, we consider other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

To avoid repetition, the discussion of our analyses applies to all the species listed in Table 4, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is no information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity.

Activities associated with the Falcon 9 First Stage recovery project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from in-air sounds generated from sonic booms. Potential takes could occur if marine mammals are hauled out in areas where a sonic boom above 1.0 psf occurs, which is considered likely given the modeled acoustic footprint of the planned activities and the occurrence of pinnipeds in the project area. Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from similar activities that have received incidental take authorizations from NMFS, will likely be limited to reactions such as alerting to the noise, with some animals possibly moving toward or entering the water, depending on the species and the psf associated with the sonic boom. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. In addition, it is expected that exposures of individuals to levels of sound that may cause Level B harassment will be very brief (a few seconds) and very infrequent (six total over the course of the Authorization). Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in fitness to those individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable impact through use of mitigation measures described above.

If a marine mammal responds to a stimulus by changing its behavior (*e.g.,* through relatively minor changes in locomotion direction/speed), the response may or may not constitute taking at the individual level, and is unlikely to affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals or on the stock or species could potentially be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007). Flushing of pinnipeds into the water has the potential to result in mother-pup separation, or could result in stampede, either of which could potentially result in serious injury or mortality and thereby could potentially impact the stock or species. However, based the best available information, which in this case is over 20 years of monitoring data from the project location as described below, no serious injury or mortality of marine mammals is anticipated as a result of the planned activities.

Even in the instances of pinnipeds being behaviorally disturbed by sonic booms from rocket launches at VAFB, no evidence has been presented of abnormal behavior, injuries or mortalities, or pup abandonment as a

result of sonic booms (SAIC 2013). These findings came as a result of more than two decades of surveys at VAFB and the NCI (MMCG and SAIC, 2012). Post-launch monitoring generally reveals a return to normal patterns within minutes up to an hour or two of each launch, regardless of species. For instance, eight space vehicle launches occurred from north VAFB, near the Spur Road and Purisima Point haul-out sites, during the period 7 February 2009 through 6 February 2014. Of these eight Delta II and Taurus launches, three occurred during the harbor seal pupping season. The continued use of the Spur Road and Purisima Point haulout sites indicates that it is unlikely that these rocket launches (and associated sonic booms) resulted in long-term disturbances of pinnipeds using the haulout sites. Moreover, adverse cumulative impacts from launches were not observed at this site. San Miguel Island represents the most important pinniped rookery in the lower 48 states, and as such extensive research has been conducted there for decades. From this research, as well as stock assessment reports, it is clear that VAFB operations (including associated sonic booms) have not had any significant impacts on San Miguel Island rookeries and haulouts (SAIC 2012). Based on this extensive record, we believe the likelihood of serious injury or mortality of any marine mammal as a result of the planned activities is so low as to be discountable. Thus we do not anticipate Level A harassment will occur as a result of the planned activities and we do not authorize take in the form of Level A harassment.

The activities analyzed here are substantially similar to other activities that have received MMPA incidental take authorizations previously, including Letters of Authorization for USAF launches of space launch vehicles at VAFB, which have occurred for over 20 years with no reported injuries or mortalities to marine mammals, and no known long-term adverse consequences to marine mammals from behavioral harassment. As described above, several cetacean species occur within the project area, however no cetaceans are expected to be affected by the planned activities.

In summary, this negligible impact analysis is founded on the following factors:

1. The possibility of injury, serious injury, or mortality may reasonably be considered discountable;

2. The anticipated incidences of Level B harassment consist of, at worst, temporary modifications in behavior (*i.e.,* short distance movements and occasional flushing into the water with return to haulouts within at most two days), which are not expected to adversely affect the fitness of any individuals;

3. The considerable evidence, based on over 20 years of monitoring data, suggesting no long-term changes in the use by pinnipeds of rookeries and haulouts in the project area as a result of sonic booms; and

4. The presumed efficacy of planned mitigation measures in reducing the effects of the specified activity to the level of least practicable impact.

In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activity will be short-term on individual animals. Though the project area does represent an important pupping area for several species that may be taken, the specified activity is not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, we find that the total marine mammal take from SpaceX's Falcon 9 First Stage recovery activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers Analysis

The numbers of authorized takes would be considered small relative to the relevant stocks or populations (23 percent for northern fur seals; 19 percent for California sea lions; 7 percent for Pacific harbor seals; less than 1 percent each for northern elephant seals, Guadalupe fur seals and Steller sea lions). But, it is important to note that the number of expected takes does not necessarily represent of the number of individual animals expected to be taken. Our small numbers analysis accounts for this fact. Multiple exposures to Level B harassment can accrue to the same individuals over the course of an activity that occurs multiple times in the same area (such as SpaceX's planned activity). This is especially likely in the case of species that have limited ranges and that have site fidelity to a location within the project area, as is the case with Pacific harbor seals.

As described above, harbor seals are non-migratory, rarely traveling more than 50 km from their haul-out sites. Thus, while the estimated abundance of the California stock of Pacific harbor seals is 30,968 (Carretta *et al.* 2015), a substantially smaller number of individual harbor seals is expected to occur within the project area. We expect that, because of harbor seals' site fidelity to locations at VAFB and the NCI, and because of their limited ranges, the same individuals are likely to be taken repeatedly over the course of the planned activities (maximum of six Falcon 9 First Stage recovery actions). Therefore the number of exposures to Level B harassment over the course of the authorization (the total number of takes shown in Table 4) is expected to accrue to a much smaller number of individuals. The maximum number of harbor seals expected to be taken by Level B harassment, per Falcon 9 First Stage recovery action, is 2,157. As we believe the same individuals are likely to be taken repeatedly over the course of the planned activities, we use the estimate of 2,157 individual animals taken per Falcon 9 First Stage recovery activity for the purposes of estimating the percentage of the stock abundance likely to be taken.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, we find that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

Potential impacts resulting from the planned activities will be limited to individuals of marine mammal species located in areas that have no subsistence requirements. Therefore, no impacts on the availability of marine mammal species or stocks for subsistence use are expected.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), the USAF prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from the Falcon 9 First Stage recovery project. NMFS made the USAF's EA available to the public for review and comment, concurrently with the publication of the proposed IHA, on the NMFS Web site (at *www.nmfs.noaa.gov/pr/permits/incidental/*), in relation to its suitability

for adoption by NMFS in order to assess the impacts to the human environment of issuance of an IHA to SpaceX. Also in compliance with NEPA and the CEQ regulations, as well as NOAA Administrative Order 216–6, NMFS has reviewed the USAF's EA, determined it to be sufficient, and adopted that EA and signed a Finding of No Significant Impact (FONSI) on May 6, 2016.

Endangered Species Act (ESA)

There is one marine mammal species (Guadalupe fur seal) listed under the ESA with confirmed occurrence in the area expected to be impacted by the planned activities. The NMFS West Coast Region Protected Resources Division has determined that the NMFS Permits and Conservation Division's authorization of SpaceX's Falcon 9 First Stage recovery activities are not likely to adversely affect the Guadalupe fur seal. Therefore, formal ESA section 7 consultation on this authorization is not required.

Authorization

NMFS has issued an IHA to SpaceX for the potential harassment of small numbers of six marine mammal species incidental to the Falcon 9 First Stage recovery project in California and in the Pacific Ocean offshore California, provided the previously mentioned mitigation.

Dated: May 25, 2016.

Perry Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–12818 Filed 5–31–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE503

Takes of Marine Mammals Incidental to Specified Activities; Seabird Monitoring and Research in Glacier Bay National Park, Alaska, 2016

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, we, the National Marine Fisheries Service (NMFS), hereby give notification that NMFS has issued an Incidental Harassment Authorization (IHA) to Glacier Bay National Park (Glacier Bay NP), to take marine mammals, by Level B harassment, incidental to conducting seabird monitoring and research activities in Alaska, May through September, 2016.

DATES: Effective May 16, 2016 through September 30, 2016.

ADDRESSES: The public may obtain an electronic copy of Glacier Bay NP's application, supporting documentation, the authorization, and a list of the references cited in this document by visiting: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* In the case of problems accessing these documents, please call the contact listed here (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Robert Pauline, NMFS, Office of Protected Resources, NMFS (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if, after NMFS provides a notice of a proposed authorization to the public for review and comment: (1) NMFS makes certain findings; and (2) the taking is limited to harassment.

An Authorization shall be granted for the incidental taking of small numbers of marine mammals if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The Authorization must also set forth the permissible methods of taking; other means of effecting the least practicable adverse impact on the species or stock and its habitat; and requirements pertaining to the mitigation, monitoring and reporting of such taking. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On January 12, 2016, NMFS received an application from Glacier Bay NP requesting that we issue an Authorization for the take of marine mammals, incidental to conducting monitoring and research studies on glaucus-winged gulls (*Larus glaucescens*) within Glacier Bay National Park and Preserve in Alaska. NMFS determined the application complete and adequate on February 25, 2016.

NMFS previously issued two Authorizations to Glacier Bay NP for the same activities in 2014 and 2015 (79 FR 56065, September 18, 2014 and 80 FR 28229, May 18, 2015).

Glacier Bay NP proposes to conduct ground-based and vessel-based surveys to collect data on the number and distribution of nesting gulls within five study sites in Glacier Bay, AK. Glacier Bay NP proposes to complete up to five visits per study site, from May through September, 2016.

The activities are within the vicinity of pinniped haulout sites and the following aspects of the proposed activities are likely to result in the take of marine mammals: Noise generated by motorboat approaches and departures; noise generated by researchers while conducting ground surveys; and human presence during the monitoring and research activities. NMFS anticipates that take by Level B harassment only, of individuals of harbor seals (*Phoca vitulina*) would result from the specified activity. Although Steller sea lions (*Eumetopias jubatus*) may be present in the action area, Glacier Bay NP has proposed to avoid any site used by Steller sea lions, therefore, take is not requested for this species.

Description of the Specified Activity

Overview

Glacier Bay NP proposes to identify the onset of gull nesting; conduct mid-season surveys of adult gulls, and locate and document gull nest sites within the following study areas: Boulder, Lone, and Flapjack Islands, and Geikie Rock. Each of these study sites contains harbor seal haulout sites and Glacier Bay NP

proposes to visit each study site up to five times during the research season.

Glacier Bay NP must conduct the gull monitoring studies to meet the requirements of a 2010 Record of Decision for a Legislative Environmental Impact Statement (NPS, 2010) which states that Glacier Bay NP must initiate a monitoring program for the gulls to inform future native egg harvests by the Hoonah Tlingit in Glacier Bay, AK. Glacier Bay NP actively monitors harbor seals at breeding and molting sites to assess population trends over time (*e.g.,* Mathews & Pendleton, 2006; Womble *et al.,* 2010). Glacier Bay NP also coordinates pinniped monitoring programs with NMFS' National Marine Mammal Laboratory and the Alaska Department of Fish & Game and plans to continue these collaborations and sharing of monitoring data and observations in the future.

Dates and Duration

The Authorization would be effective from May 16, 2016 through September 30, 2016. Following is a brief summary of the activities.

Glacier Bay NP proposes to conduct a maximum of three ground-based surveys per each study site and a maximum of two vessel-based surveys per each study site. NMFS refers the reader to the notice of proposed Authorization (81 FR 15684, March 24, 2016) for detailed information on the scope of the proposed activities.

Specified Geographic Region

The proposed study sites would occur in the vicinity of the following locations: Boulder (58°33′18.08″ N.; 136°1′13.36″ W.), Lone (58°43′17.67″ N.; 136°17′41.32″ W.), and Flapjack Islands,(58°35′10.19″ N.; 135°58′50.78″ W.) and Geikie Rock (58°41′39.75″ N.; 136°18′39.06″ W.) in Glacier Bay, Alaska. Glacier Bay NP will also conduct studies at Tlingit Point Islet located at 58°45′16.86″ N.; 136°10′41.74″ W.; however, there are no reported pinniped haulout sites at that location.

Detailed Description of Activities

Glacier Bay NP proposes to conduct: (1) Ground-based surveys at a maximum frequency of three visits per site; and (2) vessel-based surveys at a maximum frequency of two visits per site from the period of May 16 through September 30, 2016.

Ground-Based Surveys: These surveys involve two trained observers visiting the largest gull colony on each island to: (1) Obtain information on the numbers of nests, their location, and contents (*i.e.,* eggs or chicks); (2) determine the onset of laying, distribution, abundance, and predation of gull nests and eggs; and (3) record the proximity of other species relative to colony locations.

The observers would access each island using a kayak, a 32.8 to 39.4-foot (ft) (10 to 12 meter (m)) motorboat, or a 12 ft (4 m) inflatable rowing dinghy. The landing craft's transit speed would not exceed 4 knots (4.6 miles per hour (mph). Ground surveys generally last from 30 minutes to up to two hours depending on the size of the island and the number of nesting gulls. Glacier Bay NP will discontinue ground surveys after they detect the first hatchling to minimize disturbance to the gull colonies.

Vessel-Based Surveys: These surveys involve two trained observers observing and counting the number of adult and fledgling gulls from the deck of a motorized vessel which would transit around each island at a distance of approximately 328 ft (100 m) to avoid flushing the birds from the colonies. Vessel-based surveys generally last from 30 minutes to up to two hours depending on the size of the island and the number of nesting gulls.

Comments and Responses

We published a notice of receipt of Glacier Bay NP's application and proposed Authorization in the **Federal Register** (81 FR 15684, March 24, 2016). During the 30-day comment period, we received one comment letter from the Marine Mammal Commission (Commission) which recommended that we issue the requested Authorization, provided that Glacier Bay NP carries out the required monitoring and mitigation measures as described in the notice of the proposed authorization (81 FR 15684, March 24, 2016) and the application. We have included all measures proposed in the notice of the proposed authorization (81 FR 15684, March 24, 2016) in the final Authorization.

We also received a comment letter from one private citizen who opposed the authorization on the basis that NMFS should not allow any Authorizations for harassment. We considered the commenter's general opposition to Glacier Bay NP's activities and to our issuance of an Authorization; however, the Authorization, described in detail in the **Federal Register** notice of the proposed Authorization (81 FR 15684, March 24, 2016) includes mitigation and monitoring measures to effect the least practicable impact to marine mammals and their habitat. Further, it is our responsibility to determine whether the activities will have a negligible impact on the affected species or stocks; will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, where relevant; and to prescribe the means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, as well as monitoring and reporting requirements.

Regarding the commenter's opposition to authorizing harassment, the MMPA allows U.S. citizens (which includes Glacier Bay NP) to request take of marine mammals incidental to specified activities, and requires us to authorize such taking if we can make the necessary findings required by law and if we set forth the appropriate prescriptions. As explained throughout the **Federal Register** notice (81 FR 15684, March 24, 2016) we made the necessary preliminary findings under 16 U.S.C. 1361(a)(5)(D) to support issuance of Authorization.

Description of Marine Mammals in the Area of the Specified Activity

The marine mammals most likely to be harassed incidental to conducting seabird monitoring and research are Pacific harbor seals. We do not anticipate harassment of Steller sea lions due to the researchers avoiding any site with Steller sea lions present.

NMFS refers the public to the Glacier Bay NP's application and the 2015 NMFS Marine Mammal Stock Assessment Report available online at: *http://www.nmfs.noaa.gov/pr/sars/species.htm* for further information on the biology and local distribution of these species.

Other Marine Mammals in the Proposed Action Area

Northern sea otters (*Enhydra lutris kenyoni*) and polar bears (*Ursis maritimus*) listed as threatened under the Endangered Species Act could occur in the proposed area. The U.S. Fish and Wildlife Service manages these species and we do not consider them further in this notice of issuance of an Authorization.

Potential Effects of the Specified Activities on Marine Mammals

Acoustic and visual stimuli generated by: (1) Noise generated by kayak, motorboat, or dinghy approaches and departures; (2) human presence during seabird monitoring and research activities, have the potential to cause Pacific harbor seals hauled out on Boulder, Lone, and Flapjack Islands, and Geikie Rock to flush into the surrounding water or to cause a short-term behavioral disturbance for marine mammals.

We expect that acoustic and visual stimuli resulting from the proposed activities have the potential to harass marine mammals. We also expect that these disturbances would be temporary and result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of harbor seals.

We included a summary and discussion of the ways that the types of stressors associated with Glacier Bay NP's specified activities (*i.e.,* visual and acoustic disturbance) have the potential to impact marine mammals in the notice of proposed authorization (81 FR 15684, March 24, 2016).

Vessel Strike: The potential for striking marine mammals is a concern with vessel traffic. However, it is highly unlikely that the use of small, slow-moving kayaks or boats to access the research areas would result in injury, serious injury, or mortality to any marine mammal. Typically, the reasons for vessel strikes are fast transit speeds, lack of maneuverability, or not seeing the animal because the boat is so large. Glacier Bay NP's researchers will access areas at slow transit speeds in easily maneuverable kayaks or small boats negating any chance of an accidental strike.

Rookeries: No monitoring or research activities would occur on pinniped rookeries and breeding animals are concentrated in areas where researchers would not visit. Therefore, we do not expect mother and pup separation or crushing of pups during flushing.

Anticipated Effects on Marine Mammal Habitat

We considered these impacts in detail in the notice for the proposed authorization (81 FR 15684, March 24, 2016). Briefly, we do not anticipate that the proposed research would result in any temporary or permanent effects on the habitats used by the marine mammals in the proposed area, including the food sources they use (*i.e.,* fish and invertebrates). While NMFS anticipates that the specified activity may result in marine mammals avoiding certain areas due to motorboat operations or human presence, this impact to habitat is temporary and reversible. NMFS considered these as behavioral modification. The main impact associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, previously discussed in this notice. Based on the preceding discussion, NMFS does not anticipate that the proposed activity would have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations.

Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant). Applications for incidental take authorizations must include the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact on the affected species or stock and their habitat (50 CFR 216.104(a)(11)).

The Glacier Bay NP has reviewed the following source documents and has incorporated a suite of proposed mitigation measures into their project description.

(1) Recommended best practices in Womble *et al.* (2013); Richardson *et al.* (1995); Pierson *et al.* (1998); and Weir and Dolman, (2007).

(2) To reduce the potential for disturbance from acoustic and visual stimuli associated with the activities Glacier Bay NP and/or its designees has proposed to implement the following mitigation measures for marine mammals:

- Perform pre-survey monitoring before deciding to access a study site;
- Avoid accessing a site based on a pre-determined threshold number of animals present; sites used by pinnipeds for pupping; or sites used by Steller sea lions;
- Perform controlled and slow ingress to the study site to prevent a stampede and select a pathway of approach to minimize the number of marine mammals harassed;
- Monitor for offshore predators at study sites. Avoid approaching the study site if killer whales (*Orcinus orca*) are present. If Glacier Bay NP and/or its designees see predators in the area, they must not disturb the pinnipeds until the area is free of predators.
- Maintain a quiet research atmosphere in the visual presence of pinnipeds.

Pre-Survey Monitoring: Prior to deciding to land onshore to conduct the study, the researchers would use high-powered image stabilizing binoculars from the watercraft to document the number, species, and location of hauled out marine mammals at each island. The vessels would maintain a distance of 328 to 1,640 ft (100 to 500 m) from the shoreline to allow the researchers to conduct pre-survey monitoring. During every visit, the researchers will examine each study site closely using high powered image stabilizing binoculars before approaching at distances of greater than 500 m (1,640 ft) to determine and document the number, species, and location of hauled out marine mammals.

Site Avoidance: Researchers would decide whether or not to approach the island based on the species present, number of individuals, and the presence of pups. If there are high numbers (more than 25) harbor seals hauled out (with or without young pups present), any time pups are present, or any time that Steller sea lions are present, the researchers will not approach the island and will not conduct gull monitoring research.

Controlled Landings: The researchers would determine whether to approach the island based on the number and type of animals present. If the island has 25 or fewer individuals without pups, the researchers would approach the island by motorboat at a speed of approximately 2 to 3 knots (2.3 to 3.4 mph). This would provide enough time for any marine mammals present to slowly enter the water without panic or stampede. The researchers would also select a pathway of approach farthest from the hauled out harbor seals to minimize disturbance.

Minimize Predator Interactions: If the researchers visually observe marine predators (*i.e.* killer whales) present in the vicinity of hauled out marine mammals, the researchers would not approach the study site.

Noise Reduction Protocols: While onshore at study sites, the researchers would remain vigilant for hauled out marine mammals. If marine mammals are present, the researchers would move slowly and use quiet voices to minimize disturbance to the animals present.

Mitigation Conclusions

NMFS has carefully evaluated Glacier Bay NP's proposed mitigation measures in the context of ensuring that we prescribe the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is

expected to minimize adverse impacts to marine mammals;

• The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

• The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed here:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to motorboat operations or visual presence that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

3. A reduction in the number of times (total number or number at biologically important time or location) individuals exposed to motorboat operations or visual presence that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to motorboat operations or visual presence that we expect to result in the take of marine mammals (this goal may contribute to 1 above, or to reducing the severity of harassment takes only).

5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on the evaluation of Glacier Bay NP's proposed measures, NMFS has determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for Authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that we expect to be present in the proposed action area. Glacier Bay NP submitted a marine mammal monitoring plan in section 13 of their Authorization application. NMFS or the Glacier Bay NP has not modified or supplemented the plan based on comments or new information received from the public during the public comment period.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in our understanding of the likely occurrence of marine mammal species in the vicinity of the action, (*i.e.,* presence, abundance, distribution, and/or density of species).

2. An increase in our understanding of the nature, scope, or context of the likely exposure of marine mammal species to any of the potential stressor(s) associated with the action (*e.g.,* sound or visual stimuli), through better understanding of one or more of the following: The action itself and its environment (*e.g.,* sound source characterization, propagation, and ambient noise levels); the affected species (*e.g.,* life history or dive pattern); the likely co-occurrence of marine mammal species with the action (in whole or part) associated with specific adverse effects; and/or the likely biological or behavioral context of exposure to the stressor for the marine mammal (*e.g.,* age class of exposed animals or known pupping, calving or feeding areas).

3. An increase in our understanding of how individual marine mammals respond (behaviorally or physiologically) to the specific stressors associated with the action (in specific contexts, where possible, *e.g.,* at what distance or received level).

4. An increase in our understanding of how anticipated individual responses, to individual stressors or anticipated combinations of stressors, may impact either: The long-term fitness and survival of an individual; or the population, species, or stock (*e.g.* through effects on annual rates of recruitment or survival).

5. An increase in our understanding of how the activity affects marine mammal habitat, such as through effects on prey sources or acoustic habitat (*e.g.,* through characterization of longer-term contributions of multiple sound sources to rising ambient noise levels and assessment of the potential chronic effects on marine mammals).

6. An increase in understanding of the impacts of the activity on marine mammals in combination with the impacts of other anthropogenic activities or natural factors occurring in the region.

7. An increase in our understanding of the effectiveness of mitigation and monitoring measures.

8. An increase in the probability of detecting marine mammals (through improved technology or methodology), both specifically within the safety zone (thus allowing for more effective implementation of the mitigation) and in general, to better achieve the above goals.

As part of its Authorization application, Glacier Bay NP proposes to sponsor marine mammal monitoring during the project, in order to implement the mitigation measures that require real-time monitoring, and to satisfy the monitoring requirements of the MMPA.

The Glacier Bay NP researchers will monitor the area for pinnipeds during all research activities. Monitoring activities will consist of conducting and recording observations on pinnipeds within the vicinity of the proposed research areas. The monitoring notes would provide dates and location of the researcher's activities and the number and type of species present. The researchers would document the behavioral state of animals present, and any apparent disturbance reactions or lack thereof.

Glacier Bay NP can add to the knowledge of pinnipeds in the proposed action area by noting observations of: (1) Unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; (2) tag-bearing carcasses of pinnipeds, allowing transmittal of the information to appropriate agencies and personnel; and (3) rare or unusual species of marine mammals for agency follow-up.

Monitoring results from the IHA issued on May 18, 2015 IHA indicated that the three survey sites were accessed a total of 15 times with 57 takes of harbor seals. Glacier Bay NP had been authorized to take 500 harbor seals.

If at any time injury, serious injury, or mortality of the species for which take is authorized should occur, or if take of any kind of any other marine mammal occurs, and such action may be a result of the proposed land survey, Glacier Bay NP would suspend research and monitoring activities and contact NMFS immediately to determine how best to proceed to ensure that another injury or death does not occur and to ensure that the applicant remains in compliance with the MMPA.

Encouraging and Coordinating Research

Glacier Bay NP actively monitors harbor seals at breeding and molting haul out locations to assess trends over time. This monitoring program involves collaborations with biologists from the Alaska Department of Fish and Game, and the National Marine Mammal Laboratory. Glacier Bay NP will continue these collaborations and encourage continued or renewed monitoring of marine mammal species. Additionally, they would report vessel-based counts of marine mammals, branded, or injured animals, and all observed disturbances to the appropriate state and federal agencies.

Reporting

Glacier Bay NP will submit a draft monitoring report to NMFS no later than 90 days after the expiration of the Incidental Harassment Authorization. The report will describe the operations conducted and sightings of marine mammals near the proposed project. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The report will provide:

1. A summary and table of the dates, times, and weather during all research activities.

2. Species, number, location, and behavior of any marine mammals observed throughout all monitoring activities. Report the numbers of disturbances, by species and age, according to a three-point scale of intensity including: (1) Head orientation in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, or changing from a lying to a sitting position and/or slight movement of less than 1 meter; ''alert''; (2) Movements in response to or away from disturbance, typically over short distances (1–3 meters) and including dramatic changes in direction or speed of locomotion for animals already in motion; ''movement''; and (3) All flushes to the water as well as lengthier retreats (>3 meters); ''flight''.

3. An estimate of the number (by species) of marine mammals exposed to acoustic or visual stimuli associated with the research activities.

4. A description of the implementation and effectiveness of the monitoring and mitigation measures of the Authorization and full documentation of methods, results, and interpretation pertaining to all monitoring.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the authorization, such as an injury (Level A harassment), serious injury, or mortality (*e.g.,* vessel-strike, stampede, etc.), Glacier Bay NP shall immediately cease the specified activities and immediately report the incident to the Division Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and the Alaska Regional Stranding Coordinator at (907) 586–7248. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Description and location of the incident (including water depth, if applicable);
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Glacier Bay NP shall not resume its activities until NMFS is able to review the circumstances of the prohibited take. We will work with Glacier Bay to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Glacier Bay NP may not resume their activities until notified by us via letter, email, or telephone.

In the event that Glacier Bay NP discovers an injured or dead marine mammal, and the lead researcher determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as we describe in the next paragraph), Glacier Bay NP will immediately report the incident to the Division Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and the Alaska Regional Stranding Coordinator at (907) 586–7248. The report must include the same information identified in the paragraph above this section. Activities may continue while we review the circumstances of the incident. We will work with Glacier Bay NP to determine whether modifications in the activities are appropriate.

In the event that Glacier Bay NP discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Glacier Bay will report the incident to the Division Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and the Alaska Regional Stranding Coordinator at (907) 586–7248 within 24 hours of the discovery. Glacier Bay NP researchers will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us. Glacier Bay NP can continue their research activities.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

All anticipated takes would be by Level B harassment, involving temporary changes in behavior. NMFS expects that the proposed mitigation and monitoring measures would minimize the possibility of injurious or lethal takes. NMFS considers the potential for take by injury, serious injury, or mortality as remote. NMFS expects that the presence of Glacier Bay NP personnel could disturb animals hauled out and that the animals may alter their behavior or attempt to move away from the researchers.

NMFS considers an animal to have been harassed if it moved greater than 1 m (3.3 ft) in response to the surveyors' presence or if the animal was already moving and changed direction and/or speed, or if the animal flushed into the water. NMFS does not consider animals that became alert without such movements as harassed.

Based on pinniped survey counts conducted by Glacier Bay NP (*e.g.,* Mathews & Pendleton, 2006; Womble *et al.,* 2010), NMFS estimates that the research activities could potentially affect by Level B behavioral harassment 500 harbor seals over the course of the Authorization (Table 1). This estimate represents 6.9 percent of the Glacier Bay/Icy Strait stock of harbor seals and accounts for a maximum disturbance of 25 harbor seals each per visit at Boulder, Lone, and Flapjack Islands, and Geikie Rock, Alaska over a maximum level of five visits.

TABLE 1—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO ACOUSTIC AND VISUAL STIMULI DURING THE PROPOSED RESEARCH ACTIVITIES ON BOULDER, LONE, AND FLAPJACK ISLANDS, AND GEIKIE ROCK, ALASKA, MAY THROUGH SEPTEMBER, 2016

Species	Est. number of individuals exposed	Proposed take authorization	Percent of species or stock [1]	Population trend [2]
Harbor seal	500	500	6.9	Declining.
Steller sea lion	0	0	0	Increasing.

[1] Table 1 in this notice lists the stock species abundance estimates that NMFS used to calculate the percentage of species/stock.
[2] The population trend information is from Muto and Angliss, 2015.

Harbor seals tend to haul out in small numbers (on average, less than 50 animals) at most sites with the exception of Flapjack Island (Womble, Pers. Comm.). Animals on Flapjack Boulder Islands generally haul out on the south side of the Islands and are not located near the research sites located on the northern side of the Islands. Aerial survey maximum counts show that harbor seals sometimes haul out in large numbers at all four locations (see Table 2 in Glacier Bays NP's application), and sometimes individuals and mother/pup pairs occupy different terrestrial locations than the main haulout (J. Womble, personal observation).

Considering the conservation status for the Western stock of the Steller sea lion, the Glacier Bay NP researchers would not conduct ground-based or vessel-based surveys if they observe Steller sea lions before accessing Boulder, Lone, and Flapjack Islands, and Geikie Rock. Thus, NMFS expects no takes to occur for this species during the proposed activities.

NMFS does not propose to authorize any injury, serious injury, or mortality. NMFS expect all potential takes to fall under the category of Level B harassment only.

Analysis and Determinations

Negligible Impact

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, we consider other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

To avoid repetition, the discussion below applies to all four species discussed in this notice. In making a negligible impact determination, we consider:

- The number of anticipated injuries, serious injuries, or mortalities;
- The number, nature, and intensity, and duration of Level B harassment;
- The context in which the takes occur (*e.g.,* impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);
- The status of stock or species of marine mammals (*i.e.,* depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);
- Impacts on habitat affecting rates of recruitment/survival; and

The effectiveness of monitoring and mitigation measures to reduce the number or severity of incidental take.

For reasons stated previously in this document and based on the following factors, NMFS does not expect Glacier Bay NP's specified activities to cause long-term behavioral disturbance, abandonment of the haul-out area, injury, serious injury, or mortality:

1. The takes from Level B harassment would be due to potential behavioral disturbance. The effects of the research activities would be limited to short-term startle responses and localized behavioral changes due to the short and sporadic duration of the research activities. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering.

2. The availability of alternate areas for pinnipeds to avoid the resultant acoustic and visual disturbances from the research operations. Anecdotal observations and results from previous monitoring reports also show that the pinnipeds returned to the various sites and did not permanently abandon haul-out sites after Glacier Bay NP conducted their research activities.

3. There is no potential for large-scale movements leading to injury, serious injury, or mortality because the researchers will delay ingress into the landing areas only after the pinnipeds have slowly entered the water.

4. Glacier Bay NP would limit access to Boulder, Lone, and Flapjack Islands, and Geikie Rock when there are high numbers (more than 25) harbor seals hauled out (with or without young pups present), any time pups are present, or any time that Steller sea lions are present, the researchers will not approach the island and will not conduct gull monitoring research.

We do not anticipate that any injuries, serious injuries, or mortalities would occur as a result of Glacier Bay NP's proposed activities and we do not propose to authorize injury, serious injury, or mortality. These species may exhibit behavioral modifications, including temporarily vacating the area during the proposed seabird and pinniped research activities to avoid the resultant acoustic and visual disturbances. Further, these proposed activities would not take place in areas

of significance for marine mammal feeding, resting, breeding, or calving and would not adversely impact marine mammal habitat. Due to the nature, degree, and context of the behavioral harassment anticipated, we do not expect the activities to impact annual rates of recruitment or survival.

NMFS does not expect pinnipeds to permanently abandon any area surveyed by researchers, as is evidenced by continued presence of pinnipeds at the sites during annual seabird monitoring. In summary, NMFS anticipates that impacts to hauled-out harbor seals during Glacier Bay NP's research activities would be behavioral harassment of limited duration (*i.e.,* up to two hours per visit) and limited intensity (*i.e.,* temporary flushing at most). NMFS does not expect stampeding, and therefore injury or mortality, to occur (see ''Mitigation'' for more details).

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed mitigation and monitoring measures, NMFS finds that the total marine mammal take from Glacier Bay NP's proposed research activities will not adversely affect annual rates of recruitment or survival and therefore will have a negligible impact on the affected species or stocks

Small Numbers

As mentioned previously, NMFS estimates that Glacier Bay NP's activities could potentially affect, by Level B harassment only, one species of marine mammal under our jurisdiction. For harbor seals, this estimate is small (6.9 percent) relative to the population size.

Based on the analysis contained in this notice of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that Glacier Bay NP's proposed activities would take small numbers of marine mammals relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Glacier Bay National Park prohibits subsistence harvest of harbor seals within the Park (Catton, 1995).

Endangered Species Act (ESA)

NMFS does not expect that Glacier Bay NP's proposed research activities (which includes mitigation measures to avoid harassment of Steller sea lions) would affect any species listed under the ESA. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

In 2014, NMFS prepared an Environmental Assessment (EA) analyzing the potential effects to the human environment from NMFS' issuance of an Authorization to Glacier Bay NP for their seabird research activities.

In September 2014, NMFS issued a Finding of No Significant Impact (FONSI) on the issuance of an Authorization for Glacier Bay NP's research activities in accordance with section 6.01 of the NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999). Glacier Bay NP's proposed activities and impacts for 2016 are within the scope of the 2014 EA and FONSI. NMFS provided relevant environmental information to the public through a previous notice for the proposed Authorization (79 FR 32226, June 4, 2014) and considered public comments received in response prior to finalizing the 2014 EA and deciding whether or not to issue a Finding of No Significant Impact (FONSI). NMFS has performed an environmental review of the 2014 EA and other relevant documents under NEPA and CEQ guidelines in determining that there are no new direct, indirect, or cumulative impacts to the human and natural environment associated with the Authorization requiring evaluation in a supplemental EA and NMFS.

Authorization

As a result of these determinations, we have issued an Incidental Harassment Authorization to Glacier Bay National Park for conducting seabird research from May 16, 2016 through September 30, 2016, provided they incorporate the previously mentioned mitigation, monitoring, and reporting requirements.

Dated: May 26, 2016.

Perry Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–12817 Filed 5–31–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Alaska Saltwater Sport Fishing Economic Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA), 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 August 1, 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 Dr. Dan Lew (Phone: (530) 554–1842; Email: *Dan.Lew@noaa.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a reinstatement, with changes, of a previously approved data collect (OMB Control Number 0648–0639).

The National Marine Fisheries Service (NMFS) previously collected survey data in 2007 and 2012 for conducting economic analyses of marine sport fishing in Alaska. These surveys were necessary to understand the factors that affect the economic value of marine recreational fishing trips and improve estimates of fishing trip values that can aid fishery managers evaluate management options pertaining to sport fisheries. The proposed survey is an update of the previously conducted surveys and is needed to improve estimates of fishing trip values potentially affected by recent changes in federal recreational fisheries off Alaska, most notably the Halibut Catch Sharing Plan (76 FR 44156) which went into effect in 2014 for the Pacific halibut fishery. Several questions in the survey have been updated to better reflect these recent fishery management changes.

The Federal Government is responsible for the management of the Pacific halibut sport fishery off Alaska, while the State of Alaska manages the salmon sport fisheries (Chinook, coho, sockeye, chum, and pink), as well as several other saltwater sport fisheries. The updated survey's scope covers marine sport fishing for Pacific halibut, salmon, and other popular marine sport species in Alaska (*e.g.,* lingcod and rockfish). The data collected from the survey will be used to update estimates of the demand for and value of marine fishing to anglers and to analyze how the type of fish caught, fishery regulations, and other factors affect fishing values and anglers' decisions to participate in Alaska marine fishing activities. The economic information provided from the survey will help inform fishery managers about the economic values of Alaska marine sport fisheries and the changes to participation in these fisheries with proposed regulations.

II. Method of Collection

Data will be collected through a mixed mode mail-telephone survey. A random sample of sport anglers who have fished in Alaska will receive an advance letter informing them that a survey is on its way. A few days later the initial questionnaire will arrive. In subsequent weeks, a reminder postcard, a reminder telephone call, and a second questionnaire will be mailed to respondents who have not completed and returned the mail survey. The reminder telephone calls will collect information from individuals who have not responded to the mail survey and encourage them to complete and return the survey.

III. Data

OMB Control Number: 0648–0639.
Form Number(s): None.
Type of Review: Regular (reinstatement with changes).
Affected Public: Individuals or households.
Estimated Number of Respondents: 3,000.
Estimated Time per Response: 30 minutes.
Estimated Total Annual Burden Hours: 1,500 hours.
Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

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: May 26, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–12808 Filed 5–31–16; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0067, Part 162 Subpart C—Identify Theft Red Flags

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the duties of CFTC registrants to design, develop and implement reasonable policies and procedures to identify relevant red flags (the ''Identity Theft Red Flags Rules''), and potentially to notify cardholders of identity theft risks. Regulations in part 162 subpart C—Identify Theft Red Flags, including the information collection requirements thereunder, are designed to better protect investors from the risks of identity theft, and, in the case of entities that issue credit or debit cards, to assess the validity of, and communicate with cardholders regarding, address changes.

DATES: Comments must be submitted on or before August 1, 2016.

ADDRESSES: You may submit comments, identified by ''Part 162 Subpart C—Identify Theft Red Flags; OMB Control No. 3038–0067,'' by any of the following methods:

- The Agency's Web site, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov/.* Follow the instructions for submitting comments through the Portal.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Sue McDonough, Office of General Counsel, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581; (202) 418–5132, email: *smcdonough@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, 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 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, the CFTC is publishing notice of the proposed collection of information listed below.

Title: Part 162 Subpart C—Identify Theft Red Flags (OMB Control No. 3038–0067). This is a request for extension of a currently approved information collection.

Abstract: This collection of information is needed because under part 162 subpart C—Identify Theft, CFTC-regulated entities are required to develop and implement reasonable policies and procedures to identify,

detect, and respond to relevant red flags (the Identity Theft Red Flags Rules) and, in the case of entities that issue credit or debit cards, to assess the validity of, and communicate with cardholders regarding, address changes. Section 162.30 includes the following information collection requirements for each CFTC-regulated entity that qualifies as a ''financial institution'' or ''creditor'' under and that offers or maintains covered accounts: (i) Creation and periodic updating of an identity theft prevention program (''Program'') that is approved by the board of directors, an appropriate committee thereof, or a designated senior management employee; (ii) periodic staff reporting to the board of directors on compliance with the Identity Theft Red Flags Rules and related guidelines; and (iii) training of staff to implement the Program. Section 162.32 includes the following information collection requirements for each CFTC-regulated entity that is a credit or debit card issuer: (i) Establishment of policies and procedures that assess the validity of a change of address notification if a request for an additional or replacement card on the account follows soon after the address change; and (ii) notification of a cardholder, before issuance of an additional or replacement card, at the previous address or through some other previously agreed-upon form of communication, or alternatively, assessment of the validity of the address change request through the entity's established policies and procedures. The Commission uses the collection of information to discharge its regulatory responsibilities to protect investors from the risks of identity theft.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the CFTC, including whether the information will have a practical use;
- The accuracy of the CFTC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

You should submit only information that you wish to make available publicly. If you wish the CFTC to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the CFTC's regulations.[1]

The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: CFTC staff estimates of the hour burdens associated with section 162.30 include the one-time burden of complying with this section for newly-formed CFTC-regulated entities, as well as the ongoing costs of compliance for all CFTC-regulated entities. With respect to the one-time burden hours, staff estimates that each newly-formed financial institution or creditor would incur a burden of 2 hours to conduct an initial assessment of covered accounts. Staff estimates that approximately 572 CFTC-regulated financial institutions and creditors are newly formed each year, and the total estimated one-time burden to initially assess covered accounts is therefore 1,144 hours. Staff also estimates that each financial institution or creditor that maintains covered accounts would incur an additional initial burden of 29 hours to develop and obtain board approval of a Program and hours to train the staff of the financial institution or creditor. Staff estimates that approximately 47 [2] CFTC-regulated financial institutions and creditors that maintain covered accounts are newly formed each year, and thus the total estimated one-time burden to develop and obtain board approval of a Program and train staff is 1,363 hours. Thus, the total initial estimated burden for all newly-formed CFTC-regulated entities is 2,507 hours (1,144 hours + 1,363 hours).

With respect to ongoing annual burden hours, CFTC staff estimates that each financial institution or creditor would incur a burden of 2 hours to periodically assess whether it offers or maintains covered accounts. Staff estimates that there are approximately 3,956 CFTC-regulated entities that are either financial institutions or creditors, and the total estimated annual burden to periodically assess covered accounts is therefore 7,912 hours. Staff also estimates that each financial institution or creditor that maintains covered accounts would incur an additional annual burden of 4 hours to prepare and present an annual report to the board and 2 hours to periodically review and update the Program. Staff estimates that there are approximately 47 CFTC-regulated entities that are financial institutions or creditors that offer or maintain covered accounts, and thus the total estimated additional annual burden for these entities is 282 hours. Thus, the total ongoing annual estimated burden for all CFTC-regulated entities is 8,194 hours (7912 hours + 282 hours).

The collections of information required by section 162.32 will apply only to CFTC-regulated entities that issue credit or debit cards. CFTC staff understands that CFTC-regulated entities generally do not issue credit or debit cards, but instead may partner with other entities, such as banks, that issue cards on their behalf. These other entities, which are not regulated by the CFTC, are already subject to substantially similar change of address obligations pursuant to other federal regulators' identity theft red flags rules. Therefore, staff does not expect that any CFTC-regulated entities will be subject to the information collection requirements of section 163.32, and

[1] 17 CFR 145.9.

[2] Based on a review of new registrations typically filed with the CFTC each year, CFTC staff estimates that approximately 6 futures commission merchants (''FCMs''), 83 introducing brokers (''IBs''), 282 commodity trading advisors (''CTAs''), 198 commodity pool operators (''CPOs''), and 3 swap dealers (''SDs'') are newly formed each year, for a total of 572 entities. CFTC staff also has observed that approximately 50 percent of all CPOs are dually registered as CTAs, thus half of the 198 CPOs or 99 CPOs are excluded from the calculation. With respect to retail forex dealers (''RFEDs''), CFTC staff has observed that all entities registering as RFEDs also register as FCMs. Based on these observation, CFTC has determined that the total number of newly-formed financial institutions and creditors is 473 (572–99 CPOs that are also registered as CTAs). There were no newly registered RFEDs or MSPs. Each of these 473 financial institutions or creditors would bear the initial one-time burden of compliance.

Of the total 473 newly-formed entities, staff estimates that all of the FCMs are likely to carry covered accounts, 10 percent of CTAs and CPOs are likely to carry covered accounts, and none of the IBs are likely to carry covered accounts, for a total of 44 newly-formed financial institutions or creditors (6 FCMs, 38 CPOS and CTAs, and 3 SDs) carrying covered accounts that would be required to conduct an initial one-time burden of compliance with subpart C of part 162.

accordingly, staff estimates that there is no hour burden related to section 162.32 for CFTC-regulated entities.

In total, CFTC staff estimates that the aggregate annual information collection burden of part 162 subpart C—Identity Theft is 10,701 hours (2,507 hours + 8,194 hours). Compliance with part 162 subpart C—Identity Theft, including compliance with the information collection requirements thereunder, is mandatory for each CFTC regulated entity that qualifies as a ''financial institution'' or ''creditor'' under Part 162 Subpart C—Identity Theft (as discussed above, certain collections of information under Part 162 Subpart C—Identity Theft are mandatory only for financial institutions or creditors that offer or maintain covered accounts).

Frequency of collection: Ongoing. There are no capital costs or operating and maintenance costs associated with this collection.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: May 26, 2016.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2016–12858 Filed 5–31–16; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–OS–0097]

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 July 1, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Collection of Required Data Elements to Verify Eligibility; OMB Control Number 0704–0545.

Type of Request: Extension

Number of Respondents: 1,000,000.

Responses per Respondent: 1.

Annual Responses: 1,000,000.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 83,333.

Needs and Uses: The information collection requirement is necessary for the Government to verify whether or not an individual was impacted by the OPM cybersecurity incident involving background investigation records and to send a letter confirming status as ''impacted'' or ''not impacted'' by this incident. Once the minimally required information has been input into the OPM secure portal, it will be compared to an electronic master file and verification will be accomplished electronically. After the Government has validated the individual's status, the DoD Defense Manpower Data Center (DMDC) will generate and mail a response letter. This letter will either confirm eligibility and contain a PIN for impacted individuals, or confirm that the individual was not impacted by this cybersecurity incident.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, 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: May 26, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–12855 Filed 5–31–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program Between the Department of Education and the Department of Veterans Affairs

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: This document provides notice of the continuation of the computer matching program between the Department of Education (ED) (recipient agency) and the Department of Veterans Affairs (VA) (source agency). The continuation is effective on the date in paragraph 5 of this notice.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the following information is provided:

1. *Names of Participating Agencies.*

ED and VA.

2. *Purpose of the Match.*

The purpose of this matching program is to assist the Secretary of Education with verification of a veteran's status during the review of applications for financial assistance under title IV of the Higher Education Act of 1965, as amended (HEA).

The Secretary of Education is authorized by the HEA to administer the title IV programs and to enforce the terms and conditions of the HEA.

Section 480(c)(1) of the HEA defines the term ''veteran'' to mean ''any individual who (A) has engaged in the active duty in the United States Army, Navy, Air Force, Marines, or Coast Guard; and (B) was released under a condition other than dishonorable.'' (20 U.S.C. 1087vv(c)(1)). Under section 480(d)(1)(D) of the HEA, an applicant who is a veteran (as defined in section 480(c)(1)) is considered an independent student for purposes of title IV, HEA program assistance eligibility, and therefore does not have to provide parental income and asset information to apply for title IV, HEA program assistance. (20 U.S.C. 1087vv(d)(1)(D)).

3. *Authority for Conducting the Matching Program.*

ED is authorized to participate in the matching program under sections 480(c)(1) and 480(d)(1)(D) of the HEA (20 U.S.C. 1087vv(c)(1) and (d)(1)(D)). VA is authorized to participate in the matching program under 38 U.S.C. 523.

4. *Categories of Records and Individuals Covered by the Match.*

ED will provide the Social Security number and other identifying information of each applicant for financial assistance under title IV of the HEA who indicates veteran status. This information will be disclosed from the

Federal Student Aid Application File system of records (18–11–01), which was most recently published in the **Federal Register** on August 3, 2011 (76 FR 46774–46781). ED will disclose this information to VA under routine use 14 of the system of records (18–11–01). ED data will be matched against data in the Veterans and Beneficiaries Identification and Records Location Subsystem—VA (38VA21) system of records, under routine use 21, as added to that system of records (38VA21) by a notice published in the **Federal Register** on June 4, 2001 (66 FR 30049–30050).

5. *Effective Dates of the Matching Program.*

The matching program will be effective on the latest of the following three dates: (A) June 30, 2016; (B) 30 days from the date ED publishes a Computer Matching Notice in the **Federal Register**, as required by 5 U.S.C. 552a(e)(12); or, (C) 40 days from the date that ED transmits the report of the matching program, as required by 5 U.S.C. 552a(r), to OMB, the U.S. House Committee on Oversight and Government Reform, and the U.S. Senate Committee on Homeland Security and Governmental Affairs, unless OMB waives 10 or fewer days of this 40-day period for compelling reasons shown by the Department, in which case, 30 days plus the number of days that OMB did not waive from the date of ED's transmittal of the matching program report to OMB and Congress.

The matching program will continue for 18 months after the effective date of the CMA and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

6. *Address for Receipt of Public Comments or Inquiries.*

Individuals wishing to comment on this matching program or obtain additional information about the program, including requesting a copy of the CMA between ED and VA, may contact Ms. Marya Dennis, Management and Program Analyst, U.S. Department of Education, Federal Student Aid, Union Center Plaza, Room 63G2, 830 First Street NE., Washington, DC 20202–5454. Telephone: (202) 377–3385.

Accessible Format: If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the person listed in the preceding paragraph.

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 Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 26, 2016.

James W. Runcie,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2016–12880 Filed 5–31–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0031]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Federal Perkins Loan Program Regulations

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 1, 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–0031. 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: Federal Perkins Loan Program Regulations.

OMB Control Number: 1845–0023.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Individuals or Households; Private Sector.

Total Estimated Number of Annual Responses: 8,217,172.

Total Estimated Number of Annual Burden Hours: 149,369.

Abstract: Institutions of higher education make Perkins loans. Information is necessary in order to monitor a school's due diligence in its contact with the borrower regarding repayment, billing and collections, reimbursement to its Perkins loan revolving fund, rehabilitation of

defaulted loans as well as institutions use of third party collections. This revision is a request for approval of reporting and record-keeping requirements contained in the regulations related to the administrative requirements of the Perkins Loan Program.

Dated: May 25, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–12735 Filed 5–31–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Notice of Meeting on DOE Wind Energy Environmental Research Strategy

AGENCY: Wind and Water Power Technologies Office, Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Meeting on DOE Wind Energy Environmental Research Strategy.

SUMMARY: The Wind and Water Power Technologies Office (''WWPTO'') within the U.S. Department of Energy (DOE) intends to hold a meeting to seek input on its draft wind energy environmental research strategy on June 24, 2016 from 8:30 a.m. to 12:30 p.m. in Boulder, Colorado at the National Renewable Energy Laboratory's (''NREL'') National Wind Technology Center (''NWTC''). At this meeting, the WWPTO will seek input on wind energy near-term and long-term environmental research priorities needed to help enable the sustainable development of wind energy technologies in the United States.

DATES: NREL will host the meeting from 8:30 a.m. to 12:30 p.m. on Friday, June 24, 2016.

ADDRESSES: The meeting will be held at the National Wind Technology Center, 18200 CO–128, Boulder, CO 80303.

FOR FURTHER INFORMATION CONTACT: Jocelyn Brown-Saracino, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Ave SW., Washington, DC 20585. Telephone: (202) 287–6097. Email: *WindEnviroStrategy@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Office of Energy Efficiency and Renewable Energy accelerates development and deployment of energy efficiency and renewable energy technologies and market-based solutions that strengthen U.S. energy security, environmental quality, and economic vitality. The Wind Program supports environmentally sustainable development of wind power and invests in projects that seek to understand and mitigate the impacts of wind energy on wildlife and to address other siting issues.

The Wind Program is hosting a meeting to seek input on its draft 5 to 15 year wind energy environmental research strategy. Specifically, the purpose of this meeting is to seek individual input on near-term and long-term wind energy environmental research priorities. The Program will also seek input on how the draft plan aligns with and complements the current and future research goals and plans of other individuals and relevant organizations.

Participants will include stakeholders from the wind energy environmental community, including but not limited to wind plant developers/operators, wildlife regulatory agencies, environmental consultants/researchers, and NGOs.

Public Participation

While this meeting is open to the public, seating is limited and will be provided on a first-come-first-served basis. Individuals wishing to participate must submit a registration request to *WindEnviroStrategy@ee.doe.gov.* DOE will also accept public comments for purposes of better understanding stakeholder's research priorities relating to understanding, avoiding, minimizing, mitigating, and compensating for wildlife impacts from wind power. These comments may be submitted at *WindEnviroStrategy@ee.doe.gov.*

Participants should limit information and comments to those based on personal experience, individual advice, information, or facts regarding this topic. It is not the object of this meeting to obtain any group position or consensus from participants. To most effectively use the limited time, please refrain from passing judgment on another participant's recommendations or advice, and instead, concentrate on your individual experiences.

Following the meeting, a summary will be compiled by DOE and posted to *wind.energy.gov* for public review. Those interested in providing additional comments may do so by emailing *WindEnviroStrategy@ee.doe.gov.*

Issued on May 25, 2016 in Washington, DC.

Hoyt Battey,

Acting Director, Wind and Water Power Technologies Office, Office of Energy Efficiency and Renewable Energy.

[FR Doc. 2016–12870 Filed 5–31–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1754–000]

Americhoice Energy PA, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request For Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Americhoice Energy PA, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 13, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 23, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–12764 Filed 5–31–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1750–000]

Eastern Shore Solar LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Eastern Shore Solar LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 13, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 23, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–12768 Filed 5–31–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1689–000]

ArcelorMittal Cleveland LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of ArcelorMittal Cleveland LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 13, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 23, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–12766 Filed 5–31–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14108–002]

Western Minnesota Municipal Power Agency; Notice of Surrender of Preliminary Permit

Take notice that Western Minnesota Municipal Power Agency, permittee for the proposed Mississippi Lock and Dam, Iowa—Hydroelectric Water Power Project, has requested that its preliminary permit be terminated. The permit was issued on July 5, 2011, and would have expired on June 30, 2016.[1] The project would have been located at

[1] *Western Minnesota Municipal Power Agency,* 136 FERC ¶ 62,005 (2011).

the existing U.S. Army Corps of Engineers' (Corps) Mississippi River Lock and Dam No. 15, in Rock Island and Scott Counties near Davenport, Iowa.

The preliminary permit for Project No. 14108 will remain in effect until the close of business, June 24, 2016. But, if the Commission is closed on this day, then the permit remains in effect until the close of business on the next day in which the Commission is open.[2] New applications for this site may not be submitted until after the permit surrender is effective.

Dated: May 25, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–12831 Filed 5–31–16; 8:45 am]

BILLING CODE 6717–01–P

[2] 18 CFR 385.2007(a)(2) (2014).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–107–000.
Applicants: Eastern Shore Solar LLC.
Description: Eastern Shore Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 5/25/16.
Accession Number: 20160525–5102.
Comments Due: 5 p.m. ET 6/15/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–2109–005; ER13–2106–005; ER13–2100–001; ER13–321–005; ER13–434–004; ER16–1750–001.
Applicants: Fowler Ridge Wind Farm LLC, NedPower Mount Storm, LLC, Virginia Electric and Power Company, Fairless Energy, LLC, Dominion Energy Marketing, Inc., Eastern Shore Solar LLC.
Description: Notice of Change in Status and Request for Confidential Treatment of the Dominion Companies, et al.
Filed Date: 5/25/16.
Accession Number: 20160525–5111.
Comments Due: 5 p.m. ET 6/15/16.

Docket Numbers: ER16–1781–000.
Applicants: Tucson Electric Power Company.
Description: § 205(d) Rate Filing: Concurrence to APS RS No. 32 to be effective 7/19/2016.
Filed Date: 5/25/16.
Accession Number: 20160525–5072.
Comments Due: 5 p.m. ET 6/15/16.

Docket Numbers: ER16–1782–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Service Agreement No. 355 to be effective 5/3/2016.
Filed Date: 5/25/16.
Accession Number: 20160525–5075.
Comments Due: 5 p.m. ET 6/15/16.

Docket Numbers: ER16–1783–000.
Applicants: ITC Midwest LLC.
Description: § 205(d) Rate Filing: Filing of CIAC Agreement with MidAmerican to be effective 6/1/2016.
Filed Date: 5/25/16.
Accession Number: 20160525–5105.
Comments Due: 5 p.m. ET 6/15/16.

Docket Numbers: ER16–1784–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Service Agreement Nos. 937, Third Revised, and 4463, Original Queue No. Z2–108 to be effective 4/25/2016.
Filed Date: 5/25/16.
Accession Number: 20160525–5126.
Comments Due: 5 p.m. ET 6/15/16.

Docket Numbers: ER16–1785–000.
Applicants: New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: Operating Agreement between NYISO and Transco to be effective 5/23/2016.
Filed Date: 5/25/16.
Accession Number: 20160525–5141.
Comments Due: 5 p.m. ET 6/15/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 25, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–12845 Filed 5–31–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–102–010.
Applicants: New York Independent System Operator, Inc.
Description: Compliance filing: NYISO errata correcting compliance filing to be effective 4/1/2016.
Filed Date: 5/24/16.
Accession Number: 20160524–5195.
Comments Due: 5 p.m. ET 6/14/16.

Docket Numbers: ER16–1775–000.
Applicants: Imperial Valley Solar Company (IVSC) 2, LLC.
Description: Compliance filing: Comp. Filing—Amendment to MBR Tariff to Category 1 Seller to be effective 5/25/2016.
Filed Date: 5/24/16.
Accession Number: 20160524–5192.
Comments Due: 5 p.m. ET 6/14/16.

Docket Numbers: ER16–1776–000.
Applicants: Maricopa West Solar PV, LLC.
Description: Compliance filing: Comp. Filing—Amendment to MBR Tariff to Category 1 Seller to be effective 5/25/2016.
Filed Date: 5/24/16.
Accession Number: 20160524–5196.
Comments Due: 5 p.m. ET 6/14/16.

Docket Numbers: ER16–1777–000.
Applicants: San Diego Gas & Electric.
Description: Fifth Annual Informational Filing [Cycle 5] of Fourth Transmission Owner Rate Formula rate mechanism of San Diego Gas & Electric Company.
Filed Date: 5/24/16.
Accession Number: 20160524–5223.
Comments Due: 5 p.m. ET 6/14/16.

Docket Numbers: ER16–1778–000.
Applicants: NorthWestern Corporation.
Description: Initial rate filing: SA 777—Agreement to Provide Services with Western Energy Company to be effective 5/26/2016.
Filed Date: 5/25/16.
Accession Number: 20160525–5031.
Comments Due: 5 p.m. ET 6/15/16.

Docket Numbers: ER16–1779–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3198 KCP&L GMO and City of Gilman City, MO Inter. Agr. to be effective 5/23/2016.
Filed Date: 5/25/16.
Accession Number: 20160525–5041.
Comments Due: 5 p.m. ET 6/15/16.

Docket Numbers: ER16–1780–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3199 KCP&L GMO and City of Liberal, MO Interconnection Agr to be effective 5/23/2016.
Filed Date: 5/25/16.
Accession Number: 20160525–5063.
Comments Due: 5 p.m. ET 6/15/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 25, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–12844 Filed 5–31–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1179–024.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: Order No. 745 Compliance Filing Pursuant to Order issued in ER12–1179–016 to be effective. N/A
Filed Date: 5/24/16.
Accession Number: 20160524–5189.
Comments Due: 5 p.m. ET 6/14/16.

Docket Numbers: ER15–2237–003.
Applicants: Kanstar Transmission, LLC.
Description: Compliance filing: Compliance Filing, Kanstar Transmission, LLC to be effective 9/21/2015.
Filed Date: 5/24/16.
Accession Number: 20160524–5127.
Comments Due: 5 p.m. ET 6/14/16.

Docket Numbers: ER16–606–001.
Applicants: PacifiCorp.
Description: Compliance filing: Revisions to Market-Based Rate Tariff—EIM Compliance Filing to be effective 12/1/2015.
Filed Date: 5/23/16.
Accession Number: 20160523–5166.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: ER16–1509–000.
Applicants: New Wave Energy Corp.
Description: Amendment to April 27, 2016 New Wave Energy Corp tariff filing.
Filed Date: 5/23/16.
Accession Number: 20160523–5217.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: ER16–1765–000.
Applicants: RE Camelot LLC.
Description: Compliance filing: Comp. Filing—Amendment to MBR Tariff to Category 1 Seller to be effective 5/24/2016.
Filed Date: 5/23/16.
Accession Number: 20160523–5165.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: ER16–1766–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2016–05–23 RSG Compliance Filing to be effective 4/1/2011.
Filed Date: 5/23/16.
Accession Number: 20160523–5170.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: ER16–1767–000.
Applicants: RE Columbia Two LLC.
Description: Compliance filing: Comp. Filing—Amendment to MBR Tariff to Category 1 Seller to be effective 5/24/2016.
Filed Date: 5/23/16.
Accession Number: 20160523–5196.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: ER16–1768–000.
Applicants: Alabama Power Company.
Description: Tariff Cancellation: Infigen Energy (Georgia Sun I) SGIA Termination Filing to be effective 7/24/2016.
Filed Date: 5/24/16.
Accession Number: 20160524–5098.
Comments Due: 5 p.m. ET 6/14/16.

Docket Numbers: ER16–1769–000.
Applicants: Alabama Power Company.
Description: Tariff Cancellation: Wheeler Solar (McRae Solar) SGIA Termination Filing to be effective 7/24/2016.
Filed Date: 5/24/16.
Accession Number: 20160524–5101.
Comments Due: 5 p.m. ET 6/14/16.

Docket Numbers: ER16–1770–000.
Applicants: Alabama Power Company.
Description: Tariff Cancellation: Wheeler Solar (Wheeler Solar) SGIA Termination Filing to be effective 7/24/2016.
Filed Date: 5/24/16.
Accession Number: 20160524–5102.
Comments Due: 5 p.m. ET 6/14/16.

Docket Numbers: ER16–1771–000.
Applicants: Central Hudson Gas & Electric Corporation.
Description: § 205(d) Rate Filing: Revision to FERC Rate Schedule 202 to be effective 4/27/2016.
Filed Date: 5/24/16.
Accession Number: 20160524–5108.
Comments Due: 5 p.m. ET 6/14/16.

Docket Numbers: ER16–1772–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: Attachment O–SPS LP&L Filing to be effective 9/21/2016.
Filed Date: 5/24/16.
Accession Number: 20160524–5136.
Comments Due: 5 p.m. ET 6/14/16.

Docket Numbers: ER16–1773–000.
Applicants: Southern Power Company.
Description: § 205(d) Rate Filing: Butler Solar PPA Filing to be effective 7/23/2016.
Filed Date: 5/24/16.
Accession Number: 20160524–5157.
Comments Due: 5 p.m. ET 6/14/16.

Docket Numbers: ER16–1774–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Western Farmers Electric Cooperative Formula Rate to be effective 7/1/2016.
Filed Date: 5/24/16.
Accession Number: 20160524–5186.
Comments Due: 5 p.m. ET 6/14/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 24, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–12759 Filed 5–31–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1752–000]

Americhoice Energy OH, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Americhoice Energy OH, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 13, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

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Dated: May 23, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–12769 Filed 5–31–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 308–007]

PacifiCorp Energy; Notice of Availability of Final Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for subsequent license for the Wallowa Falls Hydroelectric Project, located on Royal Purple Creek and the East and West Forks of the Wallowa River in Wallowa County, Oregon, and has prepared a final Environmental Assessment (final EA) for the project. The project occupies 12 acres of federal lands administered by the United States Department of Agriculture, Forest Service.

The final EA contains the staff's analysis of the potential environmental effects of the project and concludes that relicensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the final EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact Matt Cutlip at (503) 552–2762.

Dated: May 23, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–12762 Filed 5–31–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–965–000.

Applicants: Natural Gas Pipeline Company of America.

Description: § 4(d) rate filing per 154.204: Sabine Pass Liquefaction Negotiated Rate to be effective 6/1/2016.

Filed Date: 5/23/16.

Accession Number: 20160523–5155.

Comments Due: 5 p.m. ET 6/6/16.

Docket Numbers: RP16–966–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) rate filing per 154.204: Negotiated Rates—Colonial Energy Contract 911356 to be effective 6/1/2016.

Filed Date: 5/24/16.

Accession Number: 20160524–5039.

Comments Due: 5 p.m. ET 6/6/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 24, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–12761 Filed 5–31–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14540–002]

Western Minnesota Municipal Power Agency; Notice of Surrender of Preliminary Permit

Take notice that Western Minnesota Municipal Power Agency, permittee for the proposed Melvin Price Lock and Dam, Missouri—Hydroelectric Water Power Project, has requested that its preliminary permit be terminated. The permit was issued on June 25, 2014, and would have expired on May 31, 2017.[1] The project would have been located on the Mississippi River near the City of Alton, Illinois, in Madison County, Illinois, and the City of West Alton, in St. Charles County, Missouri.

The preliminary permit for Project No. 14540 will remain in effect until the close of business, June 24, 2016. But, if the Commission is closed on this day, then the permit remains in effect until the close of business on the next day in which the Commission is open.[2] New applications for this site may not be submitted until after the permit surrender is effective.

Dated: May 25, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–12832 Filed 5–31–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–106–000.
Applicants: 63SU 8ME LLC.
Description: Self-Certification of Exempt Wholesale Generator Status of 63SU 8ME LLC.
Filed Date: 5/23/16.
Accession Number: 20160523–5133.
Comments Due: 5 p.m. ET 6/13/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–604–001.
Applicants: Nevada Power Company.
Description: Compliance filing: Market-Based Rate Tariff, Volume 11 NPC to be effective 12/1/2015.
Filed Date: 5/23/16.
Accession Number: 20160523–5157.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: ER16–605–001.
Applicants: Sierra Pacific Power Company.
Description: Compliance filing: Market-Based Rate Tariff Volume No. 7 SPPC to be effective 12/1/2015.
Filed Date: 5/23/16.
Accession Number: 20160523–5158.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: ER16–1148–000.
Applicants: Tenaska Energía de Mexico, S. de R.L. de C.V.
Description: Second Supplement to March 11, 2016 Tenaska Energía de Mexico, S. de R.L. de C.V. tariff filing.
Filed Date: 5/20/16.
Accession Number: 20160520–5178.
Comments Due: 5 p.m. ET 5/31/16.

Docket Numbers: ER16–1333–001.
Applicants: Midcontinent Independent System Operator, Inc., WPPI Energy.
Description: Tariff Amendment: 2016–05–23_WPPI ATRR Recovery Filing Amendment to be effective 6/1/2016.
Filed Date: 5/23/16.
Accession Number: 20160523–5117.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: ER16–1755–000.
Applicants: CID Solar, LLC.
Description: Compliance filing: Comp. Filing—Amendment to MBR Tariff to Category 1 to be effective 5/21/2016.
Filed Date: 5/20/16.
Accession Number: 20160520–5171.
Comments Due: 5 p.m. ET 6/10/16.

Docket Numbers: ER16–1756–000.
Applicants: PJM Interconnection, LLC.
Description: § 205(d) Rate Filing: Revisions to OATT Attachment L to add ITCI as a Transmission Owner to be effective 6/1/2016.
Filed Date: 5/19/16.
Accession Number: 20160519–5243.
Comments Due: 5 p.m. ET 6/9/16.

Docket Numbers: ER16–1757–000.
Applicants: Grant Wind, LLC.
Description: § 205(d) Rate Filing: Grant Wind Tariff Amendment Filing to be effective 5/24/2016.
Filed Date: 5/23/16.
Accession Number: 20160523–5101.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: ER16–1758–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2016–05–23_Filing to revise SSR tariff provisions to be effective 8/22/2016.
Filed Date: 5/23/16.
Accession Number: 20160523–5114.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: ER16–1759–000.
Applicants: Cottonwood Solar, LLC.
Description: Compliance filing: Comp. Filing—Amendment to MBR Tariff to Category 1 Seller to be effective 5/24/2016.
Filed Date: 5/23/16.
Accession Number: 20160523–5148.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: ER16–1760–000.
Applicants: Armstrong Power, LLC.
Description: Compliance filing: Database Migration and Request for Administrative Cancellation to be effective 5/24/2016.
Filed Date: 5/23/16.
Accession Number: 20160523–5149.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: ER16–1761–000.
Applicants: Calumet Energy Team, LLC.
Description: Compliance filing: Database Migration and Request for Administrative Cancellation to be effective 5/24/2016.
Filed Date: 5/23/16.
Accession Number: 20160523–5150.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: ER16–1762–000.
Applicants: Northeastern Power Company.
Description: Compliance filing: Database Migration and Request for Administrative Cancellation to be effective 5/24/2016.
Filed Date: 5/23/16.
Accession Number: 20160523–5151.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: ER16–1763–000.
Applicants: Pleasants Energy, LLC.
Description: Compliance filing: Database Migration and Request for Administrative Cancellation to be effective 5/24/2016.
Filed Date: 5/23/16.
Accession Number: 20160523–5152.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: ER16–1764–000.
Applicants: Troy Energy, LLC.
Description: Compliance filing: Database Migration and Request for Administrative Cancellation to be effective 5/24/2016.
Filed Date: 5/23/16.
Accession Number: 20160523–5153.
Comments Due: 5 p.m. ET 6/13/16.

Take notice that the Commission received the following qualifying facility filings:

[1] *Western Minnesota Municipal Power Agency,* 147 FERC ¶ 62,226 (2014).

[2] 18 CFR 385.2007(a)(2) (2014).

Docket Numbers: QF16–832–000.
Applicants: Groton Fuel Cell 1, LLC.
Description: Form 556 of Groton Fuel Cell 1, LLC.
Filed Date: 5/19/16.
Accession Number: 20160519–5238.
Comments Due: None Applicable.

Docket Numbers: QF16–833–000.
Applicants: SRJFC, LLC.
Description: Form 556 of SRJFC, LLC.
Filed Date: 5/19/16.
Accession Number: 20160519–5240.
Comments Due: None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 23, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–12765 Filed 5–31–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–960–000.
Applicants: Equitrans, L.P.
Description: § 4(d) rate filing per 154.204: Negotiated Capacity Release Agreement—05–01–2016 to be effective 5/1/2016.
Filed Date: 5/20/16.
Accession Number: 20160520–5000.
Comments Due: 5 p.m. ET 6/1/16.

Docket Numbers: RP16–961–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) rate filing per 154.204: Update to Pro Forma Agreements to be effective 8/1/2016.
Filed Date: 5/20/16.
Accession Number: 20160520–5035.
Comments Due: 5 p.m. ET 6/1/16.

Docket Numbers: RP16–962–000.
Applicants: Rager Mountain Storage Company LLC.
Description: § 4(d) rate filing per 154.204: Miscellaneous Clean Ups—May 2016 to be effective 6/20/2016.
Filed Date: 5/20/16.
Accession Number: 20160520–5062.
Comments Due: 5 p.m. ET 6/1/16.

Docket Numbers: RP16–963–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: § 4(d) rate filing per 154.204: Amendment to NC Agmt (Panda 624) to be effective 5/20/2016.
Filed Date: 5/20/16.
Accession Number: 20160520–5068.
Comments Due: 5 p.m. ET 6/1/16.

Docket Numbers: RP16–964–000.
Applicants: Rockies Express Pipeline LLC.
Description: Penalty Charge Reconciliation Filing of Rockies Express Pipeline LLC under RP16–964.
Filed Date: 5/20/16.
Accession Number: 20160520–5079.
Comments Due: 5 p.m. ET 6/1/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 23, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2016–12760 Filed 5–31–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1738–000]

Beacon Solar 4, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Beacon Solar 4, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 13, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email

FERCOnlineSupport@ferc.gov. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 23, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–12767 Filed 5–31–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1753–000]

Americhoice Energy IL, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Americhoice Energy IL, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 13, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 23, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–12763 Filed 5–31–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9947–15–OAR]

Clean Air Act Advisory Committee: Notice of Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The Environmental Protection Agency (EPA) announces upcoming public meetings of the Clean Air Act Advisory Committee (CAAAC). The EPA established the CAAAC on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical, scientific and enforcement policy issues.

DATES: Pursuant to 5 U.S.C. App. 2 Section 10(a)(2), notice is hereby given that the CAAAC will hold its next face-to-face meetings on June 28, 2016, from 1:30 p.m. to 3:30 p.m. and June 29, 2016, from 8:30 a.m. to 4:30 p.m. Both meetings are open to the public.

ADDRESSES: The Subcommittee on Permits, New Source Review and Toxics will meet from 1:30 p.m. to 3:30 p.m. June 28, in the EPA's William Jefferson Clinton East Building, Room 1153 (Map Room), 1201 Constitution Avenue NW., Washington, DC 20004. The full committee will meet from 8:30 a.m. to 4:30 p.m. June 29 at the DoubleTree by Hilton Hotel, 300 Army Navy Drive, in Arlington, VA 22202–2891.

Inspection of Committee Documents: The committee agenda, confirmed times for the meetings, and any documents prepared for these meetings will be publicly available on the CAAAC Web site at *http://www.epa.gov/oar/caaac/* prior to the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will also be available on the CAAAC Web site or by contacting the Office of Air and Radiation Docket and requesting information under docket EPA–HQ–OAR–2004–0075. The docket office can be reached by email at: *a-and-r-Docket@epa.gov* or FAX: 202–566–9744.

FOR FURTHER INFORMATION CONTACT: For more information about the CAAAC, please contact Jim Ketcham-Colwill, Interim Designated Federal Officer (DFO), Office of Air and Radiation, U.S. EPA by email at *ketcham-colwill.jim@epa.gov* or by telephone at (202) 564–1676. Additional information about this meeting, CAAAC, and its subcommittees can be found on the CAAAC Web site: *http://www.epa.gov/oar/caaac/.*

For information on access or services for individuals with disabilities, please contact Lorraine Reddick at (202) 564–1293 or *reddick.lorraine@epa.gov,* preferably at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated May 23, 2016.

Jim Ketcham-Colwill,

Interim Designated Federal Officer, Clean Air Act Advisory Committee, Office of Air and Radiation.

[FR Doc. 2016–12803 Filed 5–31–16; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: 2016–3022]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and Comments request.

Form Title: EIB 12–01 Medium-Term Master Guarantee Agreement Disbursement Approval Request.

SUMMARY: The Export-Import Bank of the United States (EXIM Bank), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

EXIM Bank has an electronic disbursement approval processing system for guarantee lenders with

transactions documented under Medium-Term Master Guarantee Agreements. After an export transaction has been authorized by EXIM Bank and legal documentation has been completed, the lender will obtain and review the required disbursement documents (*e.g.,* invoices, bills of lading, Exporter's Certificate, etc.) and will disburse the proceeds of the loan for eligible goods and services. In order to obtain approval of the disbursement, the lender will access and complete an electronic questionnaire through EXIM Bank's online application system (EXIM Online). Using the form, the lender will input key data and request EXIM Bank's approval of the disbursement. EXIM Bank's action (approved or denied) is posted on the lender's history page.

The information collected in the questionnaire will assist EXIM Bank in determining that each disbursement under a Medium-Term Guarantee meets all the terms and conditions for approval.

The information collection tool can be reviewed at: *http://exim.gov/sites/default/files/pub/pending/eib12-01.pdf.*

DATES: Comments must be received on or before August 1, 2016 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20038, Attn: OMB 3048–0049.

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 12–01 Medium-Term Master Guarantee Agreement Disbursement Approval Request.

OMB Number: 3048–0049.

Type of Review: Regular.

Need and Use: The information requested enables EXIM Bank to determine that a disbursement under a Medium-Term Guarantee meets all of the terms and conditions for approval.

Affected Public: This form affects lenders involved in the financing of U.S. goods and services exports.

Annual Number of Respondents: 150.

Estimated Time per Respondent: 30 minutes.

Annual Burden Hours: 75 hours.

Frequency of Reporting of Use: Annual.

Government Expenses:

Reviewing Time per Year: 38 hours.

Average Wages per Hour: $42.50.

*Average Cost per Year (time*wages):* $1,615.00.

Benefits and Overhead: 20%.

Total Government Cost: $1,938.

Bonita Jones-McNeil,

Program Analyst, Agency Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2016–12824 Filed 5–31–16; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

Notice of Open Meeting of the Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

SUMMARY: The Advisory Committee was established by Public Law 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the report on competitiveness of the Export-Import Bank of the United States to Congress.

Time and Place: Wednesday, June 1, 2016 from 11:00 a.m.–3:00 p.m.. A break for lunch will be at the expense of the attendee. Security processing will be necessary for reentry into the building. The meeting will be held at EXIM Bank in the Main Conference Room—11th Floor, 811 Vermont Avenue NW., Washington, DC 20571.

Agenda: Discussion of EXIM's Annual Competitiveness Report to Congress.

Public Participation: The meeting will be open to public participation, and 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If you plan to attend, a photo ID must be presented at the guard's desk as part of the clearance process into the building, you may contact Tia Pitt at *tia.pitt@exim.gov* to be placed on an attendee list. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please email Tia Pitt at *tia.pitt@exim.gov* prior to May 27, 2016.

Members of the Press: For members of the Press planning to attend the meeting, a photo ID must be presented at the guard's desk as part of the clearance process into the building please email Tia Pitt at *tia.pitt@exim.gov* to be placed on an attendee list.

FOR FURTHER INFORMATION CONTACT: For further information, contact Tia Pitt, 811 Vermont Ave. NW., Washington, DC 20571, at *tia.pitt@exim.gov*

Bonita Jones-McNeil,

Program Analyst, Agency Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2016–12830 Filed 5–27–16; 11:15 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice: 2016–3023]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and Comments request.

Form Title: EIB 12–02 Credit Guarantee Facility Disbursement Approval Request.

SUMMARY: The Export-Import Bank of the United States (EXIM Bank), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

EXIM Bank has an electronic disbursement approval processing system for guaranteed lenders with Credit Guarantee Facilities. After a Credit Guarantee Facility (CGF) has been authorized by EXIM Bank and legal documentation has been completed, the lender will obtain and review the required disbursement documents (*e.g.,* invoices, bills of lading, Exporter's Certificate, etc.) and will disburse the proceeds of the loan for eligible goods and services. In order to obtain approval of the disbursement, the lender will access and complete an electronic questionnaire through EXIM Bank's online application system (EXIM Online). Using the form, the lender will input key data and request EXIM Bank's approval of the disbursement. EXIM Bank's action (approved or denied) is posted on the lender's history page.

The information collected in the questionnaire will assist EXIM Bank in determining that each disbursement under a Medium-Term Guarantee meets all the terms and conditions for approval.

The information collection tool can be reviewed at: *http://exim.gov/sites/default/files/pub/pending/eib12-02.pdf.*

DATES: Comments must be received on or before August 1, 2016 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20038, Attn: OMB 3048–0046.

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 12–02 Credit Guarantee Facility Disbursement Approval Request.

OMB Number: 3048–0046.
Type of Review: Regular.
Need and Use: The information requested enables EXIM Bank to determine that a disbursement under a Credit Guarantee Facility meets all of the terms and conditions for approval.
Affected Public:
This form affects lenders involved in the financing of U.S. goods and services exports.
Annual Number of Respondents: 50.
Estimated Time per Respondent: 60 minutes.
Annual Burden Hours: 50 hours.
Frequency of Reporting of Use: Annual.
Government Expenses:
Reviewing Time per Year: 25 hours.
Average Wages per Hour: $42.50.
*Average Cost per Year (time*wages):* $1,062.50.
Benefits and Overhead: 20%.
Total Government Cost: $1,275.

Bonita Jones-McNeil,
Program Analyst, Agency Clearance Officer, Office of the Chief Information Officer.
[FR Doc. 2016–12827 Filed 5–31–16; 8:45 am]
BILLING CODE 6690–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Notice of Public Availability of the Federal Mediation and Conciliation Service FY2015 Service Contract Analysis and Inventory

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010, Public Law 111–117 requires civilian agencies to prepare an annual inventory of their service contracts and to analyze the inventory to determine if the mix of Federal employees and contractors is effective or if rebalancing may be required. The Federal Mediation and Conciliation Service is publishing this notice to instruct the public of the availability of its FY 2015 Service Contract Analysis and Inventory. The Inventory provides information on service contract actions over $25,000 that were made in FY 2015. These documents are available on the FMCS Web site at *https://www.fmcs.gov/resources/documents-and-data/*. Please see section under Reports for Service Contract information.

FOR FURTHER INFORMATION CONTACT: Linda Gray-Broughton, Grants Specialist at *lgbroughton@fmcs.gov* or 202–606–8181.

Dated: May 12, 2016.
Michael J. Bartlett,
Deputy General Counsel, FMCS.
[FR Doc. 2016–12757 Filed 5–31–16; 8:45 am]
BILLING CODE 6732–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

May 27, 2016.

TIME AND DATE: 10:00 a.m., Wednesday, June 8, 2016.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *The American Coal Company,* Docket No. LAKE 2011–13 (Issues include whether the Judge erred by denying the Secretary's motion to approve a proposed settlement because the Judge concluded that more information was needed.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sarah L. Stewart,
Deputy General Counsel.
[FR Doc. 2016–12966 Filed 5–27–16; 4:15 pm]
BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 24, 2016.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Employee Stock Ownership Plan Trust of People's Bank and Trust Company of Pickett County,* Byrdstown, Tennessee; to acquire an additional 2.16 percent, for a total of 24.40 percent of the voting shares of Upper Cumberland Bancshares, Inc., Byrdstown, Tennessee, and thereby indirectly acquire voting shares of People's Bank and Trust Company of Pickett County, Byrdstown, Tennessee, and People's Bank and Trust of Clinton County, Albany, Kentucky.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *RCB Holding Company,* Claremore, Oklahoma; to acquire 100 percent of the voting shares of Cornerstone Alliance, Ltd., and thereby indirectly acquire voting shares of CornerBank, both in Winfield, Kansas.

C. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *The MINT Holdings, Inc.,* Kingwood, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of The MINT National Bank, Kingwood, Texas.

Board of Governors of the Federal Reserve System, May 26, 2016.
Michele Taylor Fennell,
Assistant Secretary of the Board.
[FR Doc. 2016–12837 Filed 5–31–16; 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.

ACTION: Notice for comment regarding the Federal Reserve proposal to extend with revision, the clearance under the Paperwork Reduction Act for the following information collection activity.

SUMMARY: The Board of Governors of the Federal Reserve System (Board or Federal Reserve) invites comment on a proposal to extend the clearance to collect information from a newly-formed savings and loan holding company (SLHC) and on a proposal to extend the clearance to collect information on all dividends declared by a subsidiary savings association of a savings and loan holding company (SLHC).

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

DATES: Comments must be submitted on or before August 1, 2016.

ADDRESSES: You may submit comments, identified by *FR 1583 or FR LL–10(b),* 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 Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request For Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. 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 startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Federal Reserve should modify the proposed revisions prior to giving final approval.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, With Revision, of the Following Report

1. *Report Title:* Savings and Loan Holding Company Registration Statement.

Agency Form Number: FR LL–10(b).

OMB Control Number: 7100–0337.

Frequency: As needed.

Respondents: Newly Formed Savings and Loan Holding Companies.

Estimated Number of Respondents: 3.

Estimated Average Hours per Response: 8 hours.

Estimated Annual Burden Hours: 24.

General Description of Report: The FR LL–10(b) includes information on the financial condition, ownership, operations, management, and intercompany relationships of the SLHC and its subsidiaries.

Federal Reserve staff review the FR LL–10(b) to assess the adequacy of responses to items, disclosure of pertinent facts, and completeness in all material respects. This includes information concerning the date of consummation of transactions and the number of shares acquired.

Legal authorization and confidentiality: The Boards' Legal Division has determined that FR LL–10(b) is authorized by Section 10(b)(1) of the HOLA and Regulation LL, 12 CFR 238.4(c). Section 10(b) of the Home Owners' Loan Act, as amended (HOLA), 12 U.S.C. 1467a(b)(1), provides that each SLHC is required to register with the Federal Reserve within 90 days of becoming an SLHC on forms prescribed by the Board that contain such information as the Board may deem necessary or appropriate. The Federal Reserve is therefore authorized to collect information on this form pursuant to section 10(b) of HOLA. The obligation to respond is mandatory, as described in the previous paragraph. Information contained in the FR LL–10(b) is not considered confidential. If an SLHC wishes to claim confidential treatment for any information submitted on or with the form, it would need to describe the circumstances and provide a justification for the withholding of the information consistent with the

Freedom of Information Act, (5 U.S.C. 552).

Proposed Revisions: The Federal Reserve proposes to change the number of the form from the ''H-(b)10'' to the ''LL–10(b)'' (the authority to require an SLHC to register is section 10(b) in HOLA, and ''LL'' is the Board's regulation governing the operations and activities of an SLHC). This format is consistent with the numbering of other Federal Reserve forms (*e.g.,* Y–3, Y–3N, Y–4). In addition, all references to the Office of Thrift Supervision (OTS) have been replaced with references to the Board or the Reserve Banks, including references to the former OTS regulations that have been replaced with citations to the Board's Regulation LL.

The Federal Reserve proposes to add an explanation of its submission deadline, including filing instructions for when the 90th day falls on a weekend or a holiday.

HOLA permits the Federal Reserve to require an SLHC and each of its subsidiaries, other than a savings association, to file reports with the Federal Reserve. The FR LL–10(b) currently allows an SLHC to omit information regarding subsidiaries of a savings association. The Federal Reserve proposes to change that practice and require an SLHC to include information regarding subsidiaries of a savings association. The Federal Reserve also proposes to add language requiring an SLHC to provide information not only on the stock it acquired of a subsidiary savings association but also for any other types of ownership interest.

The Federal Reserve proposes to remove an OTS requirement that a copy of registration statement be submitted on disc as this information can now be submitted electronically. In addition, the Federal Reserve removed language on financial disclosure requirements since these requirements are already required by law for an SLHC that is required to register with the Securities and Exchange Commission.

Finally, the Federal Reserve proposes several stylistic and grammatical changes to the form and instructions.

2. Report Title: Notice of Proposed Declaration of Dividend.

Agency Form Number: FR 1583.

OMB Control Number: 7100–0339.

Frequency: As needed.

Respondents: Savings and Loan Holding Companies.

Estimated Number of Respondents: 133.

Estimated Average Hours per Response: 16.5 minutes.

Estimated Annual Burden Hours: 73.

General Description of Report: Savings association subsidiaries of SLHCs provide prior notice of a dividend by filing form FR 1583 that requires information on (1) the date of the filing, (2) the nature and amount of the proposed dividend declaration, and (3) the names and signatures of the executive officer and secretary of the savings association that have provided the notice. The savings association subsidiary must file this prior notice at least 30 days before the proposed declaration of a dividend by its board of directors. This notice may include a schedule proposing dividends of over a specified period, up to 12 months. The statute also provides that the 30-day period commences on the date of receipt of the complete record of the notice by the Federal Reserve. The Federal Reserve Board may request additional information or may impose conditions for the dividend and may determine that such dividend does not comply with the requirements of 12 CFR part 238, subpart K.

Legal authorization and confidentiality: The Board's Legal Division determined that FR 1583 is authorized by Section 10(f) of the Home Owners' Loan Act (HOLA) and section 238.103 of Regulation LL (12 CFR 238.103). Section 10(f) of the Home Owners' Loan Act, as amended (HOLA), 12 U.S.C. 1467a(f), provides that every subsidiary savings association of an SLHC shall give the Board at least 30 days' advance notice of the proposed declaration by its directors of any stock dividend. The obligation to respond is mandatory, as described in the previous paragraph, and the Federal Reserve is authorized to collection this information by section 10(f) of HOLA. The information collected on the FR 1583 is generally not considered confidential. It is possible that a savings association or SHLC could seek confidential treatment under FOIA exemption 4 for the nature and amount of the proposed dividend declaration, in which case the institution would need to submit a request stating that disclosure of the specific information would likely result in substantial harm to its competitive position and demonstrating the specific nature of the harm that would result from public release of the information. FOIA exemption 4 covers commercial or financial information obtained from a person that is privileged or confidential. The determination of whether confidential treatment should be granted will have be made on a case-by-case basis.

Proposed Revisions: The Federal Reserve proposes to change all references to the Office of Thrift Supervision (OTS) with references to the Board or the Reserve Banks and all citations to the former OTS regulations with citations to the Board's Regulation LL.

With respect to information that is included in the form, the Federal Reserve proposes to require the nature of dividend to be identified (*e.g.,* cash, stock) that the savings association subsidiary's board of directors intends to distribute.

Finally, the Federal Reserve proposes several stylistic and grammatical changes to the form and instructions.

Board of Governors of the Federal Reserve System, May 26, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–12838 Filed 5–31–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board or Federal Reserve) is adopting a proposal to revise, without extension, certain mandatory information collections to require intermediate holding companies of foreign banking organizations to (i) file regulatory reports applicable to bank holding companies and (ii) comply with the information collection requirements associated with regulatory capital requirements. The revisions to the mandatory information collections are effective July 1, 2016, which corresponds to the effective date of the requirements under Regulation YY. As applicable, an intermediate holding company must begin filing certain regulatory reports beginning with the reporting period ending on September 30, 2016, and other reports beginning with the reporting period ending on December 31, 2016. An intermediate holding company must comply with the information collections associated with the regulatory capital rules beginning on the July 1, 2016, effective date.

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of

information, the Board will consider all comments received from the public and other agencies.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Acting Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

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.

Final Approval Under OMB Delegated Authority of the Revision, Without Extension, of the Following Reports:

1. *Report Title:* Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations and the Abbreviated Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations.

Agency Form Number: FR 2314 and FR 2314S.

OMB Control Number: 7100–0073.

Frequency: Quarterly or annually, beginning with the reporting period ending on September 30, 2016.

Reporters: U.S. state member banks, holding companies, Edge or agreement corporations, and U.S. intermediate holding companies (IHCs).

Estimated Annual Reporting Hours: FR 2314 (quarterly): 18,427; FR 2314 (annual): 2,640; FR 2314S: 480.

Estimated Average Hours per Response: FR 2314 (quarterly): 6.6; FR 2314 (annual): 6.6; FR 2314S: 1.

Number of Respondents: FR 2314 (quarterly): 698; FR 2314 (annual): 400; FR 2314S: 480.

General Description of Report: This information collection is mandatory pursuant to 12 U.S.C. 324, 602, 625, 1844(c), 1467a(b), section 165 of the Dodd-Frank Act (12 U.S.C. 5365), and section 252.153(b)(2) of Regulation YY (12 CFR 252.153(b)(2)). Overall, the Federal Reserve does not consider these data to be confidential. However, a respondent may request confidential treatment pursuant to sections (b)(4), (b)(6), and (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(4), (b)(6), (b)(8)). The applicability of these exemptions would need to be determined on a case-by-case basis.

Abstract: The FR 2314 reporting forms collect financial information for non-functionally regulated direct or indirect foreign subsidiaries of U.S. state member banks (SMBs), Edge and agreement corporations, and holding companies (*i.e.,* bank holding companies, savings and loan holding companies, and securities holding companies). Parent organizations (SMBs, Edge and agreement corporations, or holding companies) file the FR 2314 on a quarterly or annual basis or the FR 2314S annually based predominantly on asset size thresholds, and for the FR 2314S, based on an additional threshold related to the percentage of consolidated assets of the top-tier organization. The FR 2314 data are used to identify current and potential problems at the foreign subsidiaries of U.S. parent companies, to monitor the activities of U.S. banking organizations in specific countries, and to develop a better understanding of activities within the industry, in general, and of individual institutions, in particular.

2. *Report Title:* Risk Based Capital Standards: Advanced Capital Adequacy Framework.

Agency Form Number: FR 4200.

OMB Control Number: 7100–0313.

Frequency: On occasion.

Reporters: National banks, state member banks, Federal savings associations, U.S. intermediate holding companies (IHCs), and top-tier bank holding companies and savings and loan holding companies domiciled in the United States not subject to the Federal Reserve's Small Bank Holding Company Policy Statement (12 CFR part 225, appendix C)), except certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities.

Estimated Annual Reporting Hours: Minimum capital ratios ongoing recordkeeping: 22,896 hours; standardized approach ongoing recordkeeping: 28,620 hours; standardized approach one-time recordkeeping: 174,582 hours; standardized approach ongoing disclosure: 3,281 hours; standardized approach one-time disclosure: 5,656 hours; advanced approach ongoing recordkeeping: 2,482 hours; advanced approach one-time recordkeeping: 7,140 hours; advanced approach ongoing disclosure: 595 hours; advanced approach one-time disclosure: 4,760 hours; disclosure table 13: 500 hours.

Estimated Average Hours per Response: Minimum capital ratios ongoing recordkeeping: 16 hours; standardized approach ongoing recordkeeping: 20 hours; standardized approach one-time recordkeeping: 122 hours; standardized approach ongoing disclosure: 131.25 hours; standardized approach one-time disclosure: 226.25 hours; advanced approach ongoing recordkeeping: 146 hours; advanced approach one-time recordkeeping: 420 hours; advanced approach ongoing disclosure: 35 hours; advanced approach one-time disclosure: 280 hours; disclosure table 13: 5 hours.

Number of Respondents: 1,431.

General Description of Report: This information collection is mandatory pursuant to section 38(o) of the Federal Deposit Insurance Act, (12 U.S.C. 1831o(c)), section 908 of the International Lending Supervision Act of 1983 (12 U.S.C. 3907(a)(1)), the Federal Reserve Act, (12 U.S.C. 324), and section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)), and section 252.153(b)(2) of Regulation YY (12 CFR 252.153(b)(2)). If a respondent considers the information to be trade secrets and/or privileged such information could be withheld from the public under the authority of the Freedom of Information Act, 5 U.S.C. 552(b)(4). Additionally, to the extent that such information may be contained in an examination report such information maybe also be withheld from the public, 5 U.S.C. 552(b)(8).

Abstract: The Risk Based Capital Standards: Advanced Capital Adequacy Framework Information Collection (FR 4200) collects information relating to the regulatory capital rule (12 CFR part 217). The regulatory capital rule includes a common equity tier1 minimum risk-based capital requirement, a minimum tier 1 risk-based capital requirement, a minimum total risk-based capital requirement, a minimum leverage ratio of tier 1 capital to average total consolidated assets, and, for banking organizations subject to the advanced approaches risk-based capital rules, a supplementary leverage ratio that incorporates both on- and off-balance sheet exposures. The regulatory capital rule also limits a banking organization's capital distributions and certain discretionary bonus payments to the extent that the banking organization does not hold a specified ''buffer'' of common equity tier 1 capital in addition to the minimum risk-based capital requirements. The FR 4200 information collection requires respondents to: (a) Obtain legal opinions for certain agreements and maintain sufficient written documentation of this legal review, (b) obtain prior written approvals for the use of certain measures or methodologies, (c) maintain policies, procedures, and programs; (d) perform due diligence, perform and document analyses, or make a demonstration to supervisors; (e)

develop plans for compliance and notify supervisors of certain changes; and (f) provide certain disclosures regarding their structure, regulatory capital, the risks to which they are subject, and other aspects of their operations. These obligations arise pursuant to sections _.3, _.22, _.35, _.37, _.41, _.42, _.62, _.63, _.121 through _.124, _.132, _.141, _.142, _.153, _.171, and _.173 of the regulatory capital rule (12 CFR part 217). Under most circumstances, IHCs would not be subject to the information collection requirements associated with sections _.62, _.63, _.121 through _.124, _.132, _.141, _.142, _.153, _.171, and _.173 of the regulatory capital rule.

3. *Report Title:* Risk-Based Capital Guidelines: Market Risk.

Agency Form Number: FR 4201.

OMB Control Number: 7100–0314.

Frequency: On occasion.

Reporters: Banking organizations, including U.S. intermediate holding companies (IHCs), with aggregate trading assets and trading liabilities equal to (1) 10 percent or more of quarter-end total assets or (2) $1 billion or more.

Estimated Annual Reporting Hours: Prior written approvals reporting: 34,560 hours; policies and procedures recordkeeping: 3,456 hours; trading and hedging strategy recordkeeping: 576 hours; internal models recordkeeping: 4,608 hours; section 4(b) backtesting and stress testing: 2,304 hours; sections 5(c) and 9(c) backtesting and stress testing: 3,744 hours; securitizations backtesting and stress testing: 17,280 hours; disclosure policy backtesting and stress testing: 1,440 hours; quantitative disclosure: 2,304 hours; qualitative disclosure: 432 hours.

Estimated Average Hours per Response: Prior written approvals reporting: 960 hours; policies and procedures recordkeeping: 96 hours; trading and hedging strategy recordkeeping: 16 hours; internal models recordkeeping: 128 hours; section 4(b) backtesting and stress testing: 16 hours; sections 5(c) and 9(c) backtesting and stress testing: 104 hours; securitizations backtesting and stress testing: 120 hours; disclosure policy backtesting and stress testing: 40 hours; quantitative disclosure: 16 hours; qualitative disclosure: 12 hours.

Number of Respondents: 36.

General Description of Report: This information collection is mandatory pursuant to 12 U.S.C. 324 and 12 U.S.C. 1844(c), section 165 of the Dodd-Frank Act (12 U.S.C. 5365), and section 252.153(b)(2) of Regulation YY (12 CFR 252.153(b)(2)). Information collected pursuant to the reporting requirements of the FR 4201 (specifically, information related to seeking regulatory approval for the use of certain incremental and comprehensive risk models and methodologies under sections 217.208 and 217.209) is exempt from disclosure pursuant to exemption (b)(8) of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(8)), and exemption (b)(4) of FOIA (5 U.S.C. 552(b)(4)). Exemption (b)(8) applies because the reported information is contained in or related to examination reports. Exemption (b)(4) applies because the information provided to obtain regulatory approval of the incremental or comprehensive risk models is confidential business information the release of which could cause substantial competitive harm to the reporting company. The recordkeeping requirements of the FR 4201 require banking organizations to maintain documentation regarding certain policies and procedures, trading and hedging strategies, and internal models. These documents would remain on the premises of the banking organizations and accordingly would not generally be subject to a FOIA request. To the extent these documents are provided to the regulators, they would be exempt under exemption (b)(8), and may be exempt under exemption (b)(4). Exemption (b)(4) protects from disclosure ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' The disclosure requirements of the FR 4201 do not raise any confidentiality issues because they require banking organizations to make certain disclosures public.

Abstract: The market risk rule is an integral part of the Board's regulatory capital framework. The collection of information permits the Federal Reserve to monitor the market risk profile of banking organizations that it regulates and evaluate the impact and competitive implications of the market risk rule on those banking organizations and the industry as a whole. The collection of information provides the most current statistical data available to identify areas of market risk on which to focus for onsite and offsite examinations and allows the Federal Reserve to assess and monitor the levels and components of each reporting institution's risk-based capital requirements for market risk and the adequacy of the institution's capital under the market risk rule. Finally, the collection of information contained in the market risk rule is necessary to ensure capital adequacy of banking organizations according to their level of market risk and assists banking organizations in implementing and validating the market risk framework.

4. *Report Title:* Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations, the Abbreviated Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations, and the Capital and Asset Report for Foreign Banking Organizations.

Agency Form Number: FR Y–6; FR Y–7; FR Y–10; FR Y–10E.

OMB Control Number: 7100–0297.

Frequency: FR Y–6: Annually, beginning with the reporting period ending on December 31, 2016; FR Y–7: Annually, beginning with the reporting period ending on December 31, 2016; FR Y–10: Event-generated; FR Y–10E: Event-generated.

Reporters: Bank holding companies (BHCs), U.S. intermediate holding companies (IHCs), and savings and loan holding companies (SLHCs) (collectively, holding companies), securities holding companies, foreign banking organizations (FBOs), state member banks unaffiliated with a BHC, Edge Act and agreement corporations, and nationally chartered banks that are not controlled by a BHC (with regard to their foreign investments only).

Estimated Annual Reporting Hours: FR Y–6 initial: 130 hours; FR Y–6 ongoing: 26,549 hours; FR Y–7: 972 hours; FR Y–10 initial: 530 hours; FR Y–10 ongoing: 39,735 hours; FR Y–10E: 2,649 hours.

Estimated Average Hours per Response: FR Y–6 initial: 10 hours; FR Y–6 ongoing: 5.5 hours; FR Y–7: 4 hours; FR Y–10 initial: 1 hour; FR Y–10 ongoing: 2.5 hours; FR Y–10E: 0.5 hours.

Number of Respondents: FR Y–6 initial: 13; FR Y–6 ongoing: 4,827; FR Y–7: 243; FR Y–10 initial: 530; FR Y–10 ongoing: 5,298; FR Y–10E: 5,298.

General Description of Report: These information collections are mandatory as follows:

FR Y–6: Section 5(c) of the BHC Act (12 U.S.C. 1844(c)); sections 8(a) and 13(a) of the IBA (12 U.S.C. 3106 and 3108(a)); sections 11(a)(1), 25, and 25A of the Federal Reserve Act (FRA) (12 U.S.C. 248(a), 602, and 611a); and sections 113, 312, 618, and 809 of the Dodd-Frank Act (12 U.S.C. 5361, 5412, 1850a(c)(1), and 5468(b)(1)), section 165 of the Dodd-Frank Act (12 U.S.C. 5365), and section 252.153(b)(2) of Regulation YY (12 CFR 252.153(b)(2)).

FR Y–7: Sections 8(a) and 13(a) of the IBA (12 U.S.C. 3106(a) and 3108(a)) and sections 113, 312, 618, and 809 of the Dodd-Frank Act (12 U.S.C. 5361, 5412, 1850a(c)(1), and 5468(b)(1), respectively).

FR Y–10 and FR Y–10E: Sections 4(k) and 5(c)(1)(A) of the BHC Act (12 U.S.C. 1843(k), 1844(c)(1)(A)), section 8(a) of the IBA (12 U.S.C. 3106(a)), sections 11(a)(1), 25(7), and 25A of the Federal Reserve Act (12 U.S.C. 248(a)(1), 321, 601, 602, 611a, 615, and 625), and sections 113, 312, 618, and 809 of the Dodd-Frank Act (12 U.S.C. 5361, 5412, 1850a(c)(1), and 5468(b)(1), respectively).

The data collected in the FR Y–6, FR Y–7, FR Y–10, and FR Y–10E are not considered confidential. With regard to information that a banking organization may deem confidential, the institution may request confidential treatment of such information under one or more of the exemptions in the Freedom of Information Act (FOIA) (5 U.S.C. 552). The most likely case for confidential treatment will be based on FOIA exemption 4, which permits an agency to exempt from disclosure ''trade secrets and commercial or financial information obtained from a person and privileged and confidential,'' (5 U.S.C. 552(b)(4)). To the extent an institution can establish the potential for substantial competitive harm, such information would be protected from disclosure under the standards set forth in *National Parks & Conservation Association* v. *Morton,* 498 F.2d 765 (D.C. Cir. 1974). Exemption 6 of FOIA might also apply with regard to the respondents' submission of non-public personal information of owners, shareholders, directors, officers and employees of respondents. Exemption 6 covers ''personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy,'' (5 U.S.C. 552(b)(6)). All requests for confidential treatment would need to be reviewed on a case-by-case basis and in response to a specific request for disclosure.

Abstract: The FR Y–6 is an annual information collection submitted by top-tier holding companies and non-qualifying FBOs. It collects financial data, an organization chart, verification of domestic branch data, and information about shareholders. The Federal Reserve uses the data to monitor holding company operations and determine holding company compliance with the provisions of the BHC Act, Regulation Y (12 CFR part 225), the Home Owners' Loan Act (HOLA), and Regulation LL (12 CFR part 238). The FR Y–7 is an annual information collection submitted by qualifying FBOs to update their financial and organizational information with the Federal Reserve. The FR Y–7 collects financial, organizational, and managerial information. The Federal Reserve uses information to assess an FBO's ability to be a continuing source of strength to its U.S. operations, and to determine compliance with U.S. laws and regulations. The FR Y–10 is an event-generated information collection submitted by FBOs; top-tier holding companies; security holding companies as authorized under Section 618 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (12 U.S.C. 1850a(c)(1)); state member banks unaffiliated with a BHC; Edge Act and agreement corporations that are not controlled by a member bank, a domestic BHC, or a FBO; and nationally chartered banks that are not controlled by a BHC (with regard to their foreign investments only) to capture changes in their regulated investments and activities. The Federal Reserve uses the data to monitor structure information on subsidiaries and regulated investments of these entities engaged in banking and nonbanking activities. The FR Y–10E is a free-form supplement that may be used to collect additional structural information deemed to be critical and needed in an expedited manner.

5. *Report Title:* Consolidated Financial Statements for Holding Companies, Parent Company Only Financial Statements for Large Holding Companies, Parent Company Only Financial Statements for Small Holding Companies, Financial Statements for Employee Stock Ownership Plan Holding Companies.[1]

Agency Form Number: FR Y–9C; FR Y–9LP; FR Y–9SP; FR Y–9ES; FR Y–9CS

OMB Control Number: 7100–0128.

Frequency: Quarterly, semi-annually, and annually, beginning with the reporting period ending on September 30, 2016.

Reporters: Bank holding companies (BHCs), savings and loan holding companies (SLHCs), securities holding companies (SHCs), and U.S. intermediate holding companies (IHCs), (collectively, ''holding companies'').

Estimated Annual Reporting Hours: FR Y–9C (non-Advanced Approaches HCs or other respondents): 131,777 hours; FR Y–9C (Advanced Approaches HCs or other respondents): 2,500 hours; FR Y–9LP: 17,262 hours; FR Y–9SP: 47,412; FR Y–9ES: 43; FR Y–9CS: 472.

Estimated Average Hours per Response: FR Y–9C (non-Advanced Approaches HCs or other respondents): 50.84 hours; FR Y–9C (Advanced Approaches HCs or other respondents): 52.09 hours; FR Y–9LP: 5.25 hours; FR Y–9SP: 5.4 hours; FR Y–9ES: 0.5 hours; FR Y–9CS: 0.5 hours.

Number of Respondents: FR Y–9C (non-Advanced Approaches HCs or other respondents): 648; FR Y–9C (Advanced Approaches HCs or other respondents): 12; FR Y–9LP: 822; FR Y–9SP: 4,390; FR Y–9ES: 86; FR Y–9CS: 236.

General Description of Report: This information collection is mandatory pursuant to section 5(c) of the BHC Act (12 U.S.C. 1844(c)), section 10 of Home Owners' Loan Act (HOLA) (12 U.S.C. 1467a(b)), 12 U.S.C. 1850a(c)(1), section 165 of the Dodd-Frank Act (12 U.S.C. 5365), and section 252.153(b)(2) of Regulation YY (12 CFR 252.153(b)(2)). Confidential treatment is not routinely given to the financial data in this report. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6), or (b)(8) of the Freedom of Information Act (FOIA) (5 U.S.C. 522(b)(4), (b)(6), and (b)(8)).

Abstract: Pursuant to the Bank Holding Company Act of 1956, as amended, and HOLA, the Federal Reserve requires HCs to provide standardized financial statements to fulfill the Federal Reserve's statutory obligation to supervise these organizations. HCs file the FR Y–9C and FR Y–9LP quarterly, the FR Y–9SP semi-annually, and the FR Y–9ES annually.

6. *Report Title:* Financial Statements of U.S. Nonbank Subsidiaries of U.S. Holding Companies and the Abbreviated Financial Statements of U.S. Nonbank Subsidiaries of U.S. Holding Companies.

Agency Form Number: FR Y–11 and FR Y–11S.

OMB Control Number: 7100–0244.

Frequency: Quarterly and annually, beginning with the reporting period ending on September 30, 2016.

Reporters: Holding companies.

Estimated Annual Reporting Hours: FR Y–11 (quarterly): 19,502; FR Y–11 (annual): 2,258; FR Y–11S: 473.

Estimated Average Hours per Response: FR Y–11 (quarterly): 6.8; FR Y–11 (annual): 6.8; FR Y–11S: 1.

Number of Respondents: FR Y–11 (quarterly): 717; FR Y–11 (annual): 332; FR Y–11S: 473.

General Description of Report: This information collection is mandatory pursuant to section 5(c) of the BHC Act (12 U.S.C. 1844(c)), section 10 of Home Owners' Loan Act (HOLA) (12 U.S.C.

[1] The family of FR Y–9 reporting forms also contains the Parent Company Only Financial Statements for Small Holding Companies (FR Y–9SP), the Financial Statements for Employee Stock Ownership Plan Holding Companies (FR Y–9ES), and the Supplement to the Consolidated Financial Statements for Holding Companies (FR Y–9CS) which are not being revised.

1467a(b)), 12 U.S.C. 1850a(c)(1), section 165 of the Dodd-Frank Act (12 U.S.C. 5365), and section 252.153(b)(2) of Regulation YY (12 CFR 252.153(b)(2)). Overall, the Federal Reserve does not consider these data to be confidential. However, a respondent may request confidential treatment pursuant to sections (b)(4), (b)(6), and (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(4), (b)(6), (b)(8)). The applicability of these exemptions would need to be determined on a case-by-case basis.

Abstract: The FR Y–11 reporting forms collect financial information for individual non-functionally regulated U.S. nonbank subsidiaries of domestic holding companies (*i.e.,* bank holding companies, savings and loan holding companies, and securities holding companies). Holding companies file the FR Y–11 on a quarterly or annual basis or the FR Y–11S annually predominantly based on asset size thresholds, and for the FR Y–11S, based on an additional threshold related to the percentage of consolidated assets of the top-tier organization. The FR Y–11 data are used with other holding company data to assess the condition of holding companies that are heavily engaged in nonbanking activities and to monitor the volume, nature, and condition of their nonbanking operations.

7. *Report Title:* Consolidated Bank Holding Company Report of Equity Investments in Nonfinancial Companies, and the Annual Report of Merchant Banking Investments Held for an Extended Period.

Agency Form Number: FR Y–12 and FR Y–12A.

OMB Control Number: 7100–0300.

Frequency: Quarterly, semi-annually, and annually, beginning with the reporting period ending on September 30, 2016.

Reporters: Bank holding companies (BHCs), financial holding companies (FHCs), U.S. intermediate holding companies (IHCs), and savings and loan holding companies (SLHCs).

Estimated Annual Reporting Hours: FR Y–12 Initial (FR Y–9C filers): 429 hours, FR Y–12 Ongoing (FR Y–9C filers): 2,442 hours, FR Y–12 Ongoing (FR Y–9SP filers): 132 hours, FR Y–12A Initial: 182 hours, FR Y–12A Ongoing: 224 hours.

Estimated Average Hours per Response: FR Y–12 Initial (FR Y–9C filers): 33 hours, FR Y–12 Ongoing (FR Y–9C filers): 16.5 hours, FR Y–12 Ongoing (FR Y–9SP filers): 16.5 hours, FR Y–12A Initial: 14 hours, FR Y–12A Ongoing: 7 hours.

Number of Respondents: FR Y–12 Initial (FR Y–9C filers): 13, FR Y–12 Ongoing (FR Y–9C filers): 37, FR Y–12 Ongoing (FR Y–9SP filers): 4, FR Y–12A Initial: 13, FR Y–12A Ongoing: 32.

General Description of Report: This collection of information is mandatory pursuant to section 5(c) of the BHC Act (12 U.S.C. 1844(c)), section 10 of HOLA (12 U.S.C. 1467a(b)), section 165 of the Dodd-Frank Act (12 U.S.C. 5365), and section 252.153(b)(2) of Regulation YY (12 CFR 252.153(b)(2)). The FR Y–12 data are not considered confidential, however, a BHC or SLHC may request confidential treatment pursuant to Sections (b)(4) of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)). The FR Y–12A data are considered confidential pursuant to sections (b)(4) and (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(8)).

Abstract: The FR Y–12 collects information from certain domestic BHCs and SLHCs on their equity investments in nonfinancial companies on four schedules: Type of Investments, Type of Security, Type of Entity within the Banking Organization, and Nonfinancial Investment Transactions during Reporting Period. The FR Y–12A collects data from financial holding companies (FHCs) which hold merchant banking investments that are approaching the end of the holding period permissible under Regulation Y. These data serve as an important risk-monitoring device for FHCs active in this business line by allowing supervisory staff to monitor an FHC's activity between review dates. They also serve as an early warning mechanism to identify FHCs whose activities in this area are growing rapidly and therefore warrant special supervisory attention.

8. *Report Title:* Capital Assessments and Stress Testing information collection.

Agency Form Number: FR Y–14A/Q/M.

OMB Control Number: 7100–0341.

Frequency: Annually, semi-annually, quarterly, and monthly, beginning with the reporting period ending on December 31, 2016

Reporters: Any top-tier bank holding company (BHC), and U.S. intermediate holding companies (IHC), (other than an FBO), that has $50 billion or more in total consolidated assets, as determined based on: (i) the average of the BHC's or IHC's total consolidated assets in the four most recent quarters as reported quarterly on the BHC's or IHC's Consolidated Financial Statements for Bank Holding Companies (FR Y–9C) (OMB No. 7100–0128); or (ii) the average of the BHC's or IHC's total consolidated assets in the most recent consecutive quarters as reported quarterly on the BHC's or IHC's FR Y–9Cs, if the BHC or IHC has not filed an FR Y–9C for each of the most recent four quarters. Reporting is required as of the first day of the quarter immediately following the quarter in which it meets this asset threshold, unless otherwise directed by the Federal Reserve.

Estimated Annual Reporting Hours: FR Y–14A: Summary, 76,986 hours; Macro scenario, 2,418 hours; Operational Risk, 468 hours; Regulatory capital transitions, 897 hours; Regulatory capital instruments, 780 hours; Retail repurchase, 390 hours; and Business plan changes, 1,560 hours. FR Y–14Q: Securities risk, 2,028 hours; Retail risk, 2,496 hours, Pre-provision net revenue (PPNR), 110,916 hours; Wholesale, 23,712 hours; Trading, 46,224 hours; Regulatory capital transitions, 3,588 hours; Regulatory capital instruments, 8,112 hours; Operational risk, 7,800 hours; Mortgage Servicing Rights (MSR) Valuation, 1,728 hours; Supplemental, 624 hours; and Retail Fair Value Option/Held for Sale (Retail FVO/HFS), 1,792 hours; CCR, 12,192 hours; and Balances, 2,496 hours. FR Y–14M: 1st lien mortgage, 228,660 hours; Home equity, 197,760 hours; and Credit card, 153,000 hours. FR Y–14 On-going automation revisions, 18,720 hours; and implementation, 93,600 hours. FR Y–14 Attestation: Implementation, 43,200 hours; and on-going revisions, 23,040 hours.

Estimated Average Hours per Response: FR Y–14A: Summary, 987 hours; Macro scenario, 31 hours; Operational Risk, 12 hours; Regulatory capital transitions, 23 hours; Regulatory capital instruments, 20 hours; Retail repurchase, 20 hours; and Business plan changes, 10 hours. FR Y–14Q: Securities risk, 13 hours; Retail risk, 16 hours; PPNR, 711 hours; Wholesale, 152 hours; Trading, 1,926 hours; Regulatory capital transitions, 23 hours; Regulatory capital instruments, 52 hours; Operational risk, 50 hours; MSR Valuation, 24 hours; Supplemental, 4 hours; Retail FVO/HFS, 16 hours; CCR, 508 hours; and Balances, 16 hours. FR Y–14M: 1st lien mortgage, 515 hours; Home equity, 515 hours; and Credit card, 510 hours. FR Y–14 On-Going automation revisions, 480 hours; and implementation, 7,200 hours. FR Y–14 Attestation: Implementation, 4,800 hours; and on-going revisions, 2,560 hours.

Number of Respondents: 39.

General Description of Report: This collection of information is mandatory pursuant to section 5(c) of the BHC Act (12 U.S.C. 1844(c)), section 165 of the Dodd-Frank Act (12 U.S.C. 5365), and section 252.153(b)(2) of Regulation YY (12 CFR 252.153(b)(2)).

As these data are collected as part of the supervisory process, they are subject to confidential treatment under exemption 8 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(8)). In addition, commercial and financial information contained in these information collections may be exempt from disclosure under exemption 4 of FOIA (5 U.S.C. 552(b)(4)), if disclosure would likely have the effect of (1) impairing the government's ability to obtain the necessary information in the future, or (2) causing substantial harm to the competitive position of the respondent. Such exemptions would be made on a case-by-case basis.

Abstract: The data collected through the FR Y–14A/Q/M schedules provide the Federal Reserve with the additional information and perspective needed to help ensure that large BHCs have strong, firm-wide risk measurement and management processes supporting their internal assessments of capital adequacy and that their capital resources are sufficient given their business focus, activities, and resulting risk exposures. The annual Comprehensive Capital Analysis and Review (CCAR) exercise is also complemented by other Federal Reserve supervisory efforts aimed at enhancing the continued viability of large BHCs, including continuous monitoring of BHCs' planning and management of liquidity and funding resources and regular assessments of credit, market and operational risks, and associated risk management practices. Information gathered in this data collection is also used in the supervision and regulation of these financial institutions. In order to fully evaluate the data submissions, the Federal Reserve may conduct follow up discussions with or request responses to follow up questions from respondents, as needed.

The Capital Assessments and Stress Testing information collection consists of the FR Y–14A, Q, and M reports. The semi-annual FR Y–14A collects information on the stress tests conducted by BHCs, including quantitative projections of balance sheet, income, losses, and capital across a range of macroeconomic scenarios, and qualitative information on methodologies used to develop internal projections of capital across scenarios.[2] The quarterly FR Y–14Q and the monthly FR Y–14M are used to support supervisory stress test models and for continuous monitoring efforts. The quarterly FR Y–14Q collects granular data on BHCs' various asset classes, including loans, securities and trading assets, and PPNR for the reporting period. The monthly FR Y–14M comprises three retail loan- and portfolio-level collections, and one detailed address matching collection to supplement two of the portfolio and loan-level collections.

9. *Report Title:* Banking Organization System Risk Report.

Agency Form Number: FR Y–15.

OMB Control Number: 7100–0352.

Frequency: Quarterly, beginning with the reporting period ending on September 30, 2016.

Reporters: U.S. intermediate holding companies (IHCs) and BHCs with total consolidated assets of $50 billion or more, and any U.S.-based organizations identified as global systemically important banks (GSIBs) that do not otherwise meet the consolidated assets threshold for BHCs.

Estimated Annual Reporting Hours: Initial: 4,000 hours; Ongoing: 60,952 hours.

Estimated Average Hours per Response: Initial: 1,000 hours; Ongoing: 401 hours.

Number of respondents: 38.

General Description of Report: This collection of information is mandatory pursuant to section 5(c) of the BHC Act (12 U.S.C. 1844(c)), section 10 of HOLA (12 U.S.C. 1467a(b), sections 8(a) and 13(a) of the International Banking Act (IBA) (12 U.S.C. 3106 and 3108(a)), sections 163 and 165 of the Dodd-Frank Act (12 U.S.C. 5363, 5365), section 604 of the Dodd-Frank Act, which amended section 5(c) of the BHC Act (12 U.S.C. 1844(c)), and section 252.153(b)(2) of Regulation YY (12 CFR 252.153(b)(2)). Except for those items subject to a delayed release, the individual data items collected on the FR Y–15 will be made available to the public for report dates beginning December 31, 2013. Though confidential treatment will not be routinely given to the financial data collected on the FR Y–15, respondents may request such treatment for any information that they believe is subject to an exemption from disclosure pursuant to sections (b)(4), (b)(6), or (b)(8) of FOIA (5 U.S.C. 522(b)(4), (b)(6), and (b)(8)).

Abstract: The FR Y–15 annual report collects systemic risk data from U.S. BHCs with total consolidated assets of $50 billion or more, and any U.S.-based organizations identified as GSIBs that do not otherwise meet the consolidated assets threshold for BHCs. The Federal Reserve uses the FR Y–15 data primarily to monitor, on an ongoing basis, the systemic risk profile of the institutions that are subject to enhanced prudential standards under section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA).

Current Actions: On February 5, 2016, the Federal Reserve published a notice in the **Federal Register**[3] requesting public comment for 60 days on the proposal to revise, without extension, certain mandatory information collections to require intermediate holding companies (IHCs) of foreign banking organizations (FBOs) to file the regulatory reports and comply with the information collection requirements listed above.[4] Under the proposal, an IHC would have been required to file its first regulatory reports beginning with the reporting period ending on September 30, 2016, as applicable. The comment period for this notice expired on April 5, 2016.

The Board received one joint comment letter on the proposal. The commenters generally supported the proposal, but provided views on the FR Y–14 series of reports relating to the collection of financial data for quarters prior to the formation of the IHC and the proposed timing of any future attestation requirement, the FR Y–15 report related to timing, and the FR 4200 and FR 4201 requirements regarding the purpose and presentation of the information collections. The commenters also requested clarity on specific items on the reports.

As discussed below, the Federal Reserve will consider requests relating to the requirement for an IHC to report financial data for previous years on the FR Y–14 series of reports on a case-by-case basis. In addition, the Board will consider the commenters' views on any future proposal to apply the attestation requirement to IHCs. The Board is also extending the filing date for the first FR Y–15 filing and clarifying that the FR 4200 and FR 4201 requirements relate to the recordkeeping and reporting requirements of the regulatory capital rules, and do not relate to a separate reporting form.

1. Comments on the FR Y–14 Series of Reports

The FR Y–14 series of reports enables the Federal Reserve to assess the capital adequacy of firms using forward-looking projections of revenue and losses and supports supervisory stress test models and continuous monitoring efforts. In

[2] BHCs that must re-submit their capital plan generally also must provide a revised FR Y–14A in connection with their resubmission.

[3] 81 FR 6265 (February 5, 2016).

[4] The proposal had also proposed to expand the respondent panel for the Recordkeeping and Reporting Requirements Associated with Regulation Y (Capital Plans) (Reg Y–13). However, IHCs were added to the reporting panel for Reg Y–13 in October 2014. *See* 79 FR 64026, 64039 (October 27, 2014).

the proposal, an IHC would have been required to complete the FR Y–14 series of reports in the same manner as a BHC and would have been subject to requirements to report financial data for previous years with respect to its U.S. bank and nonbank operations. However, the preamble to the proposal noted that many IHCs would have difficulty reporting these historical data for periods prior to the formation of the IHC and invited comment specifically on the ability of IHCs to report these historical data.

a. Historical PPNR Data

The commenters provided views on the requirement to report pre-provision net revenue (PPNR) data for previous years, and recommended that the submission of any historical IHC-specific data be on a best estimates basis with a look-back period limited to the prior seven quarters, rather than to the first quarter of 2009 as proposed. Additionally, the commenters suggested that IHCs not be required to submit any industry market size information for previous years.

In order to develop credible estimates of a firm's PPNR, the Federal Reserve and the firm itself must have several years of data in order to understand the firm's businesses in various macroeconomic environments. Therefore, the Board is adopting the requirement for IHC respondents to report PPNR information from 2009 to the present on the FR Y–14Q report as outlined in the instructions. However, in recognition of the challenges in providing these data, the Federal Reserve will consider requests to modify the requirements for an IHC to report financial data for previous years or extend the time period by which an IHC must report these historical data on the FR Y–14 series of reports, including the inclusion of best estimates for data prior to 2015, on a case-by-case basis. Requests should include a description of any data gaps or deficiencies, an overview of the approach to address the issues, and the timeframe for completion. To ensure proper routing of requests for extension or plans for remediation for these specific data, these requests should be submitted to the firm's designated Federal Reserve contact.

In regards to the comment that IHCs should not be required to submit industry market size information for previous years, the Board is not adopting this proposed change for IHCs.

b. Attestation Requirement

The commenters also noted that the proposal was silent on how the attestation requirement, which applies to U.S. bank holding companies subject to the Large Institution Supervision Coordinating Committee (LISCC) framework, would apply to IHC subsidiaries of FBOs subject to the LISCC framework. The commenters asked for guidance on the application of the attestation requirement to these IHCs and offered suggestions on transition periods.

The Board has not proposed to apply the attestation requirement to these IHCs; however, the Board will consider the commenters' views on any future proposal.

2. Comments on the FR Y–15 Report

The FR Y–15 report collects consolidated systemic risk data from large banking organizations. In the proposal, an IHC would have been required to complete the FR Y–15 report in the same manner as a BHC, effective September 30, 2016. The commenters requested that all IHCs be allowed 65 days following September 30, 2016, for the initial filing, and to file on a reasonable estimates basis. The commenters noted that the resources and personnel involved in the formation of the IHC are substantially the same as those personnel involved in implementing the FR Y–15 report, and also noted that the Board recently revised the frequency of the FR Y–15 report from an annual to a quarterly report.

In response to the commenters, the Board is permitting all IHCs (including an existing BHC designated as an IHC) to file their first FR Y–15 report by December 5, 2016 (65 days after the September 30, 2016 as-of date). This additional time will enable foreign banking organizations to efficiently allocate resources and facilitate the accurate reporting of data on the FR Y–15 report. To the extent that the IHC had not previously filed the FR Y–15 report (*i.e.,* was not an existing BHC designated as an IHC), the Board is permitting institutions to file reasonable estimates, consistent with the FR Y–15 report instructions. Except where otherwise noted in those instructions, reported data will be made available to the public.

3. Comments on the FR 4200 and FR 4201 Requirements

The commenters requested additional information on the purpose and presentation of the FR 4200 and FR 4201 information collection requirements. The FR 4200 and FR 4201 requirements are the information collections that are embedded within the regulatory capital requirements, and do not impose reporting, recordkeeping, or disclosure requirements beyond those already applicable to IHCs under Regulation YY. These information collections are categorized separately from Regulation YY to facilitate compliance with the Paperwork Reduction Act and its implementing regulations, which require the Board to ensure that approved collections of information are reviewed not less frequently than once every three years.[5] Specifically, the FR 4200 requirement reflects the reporting, recordkeeping and disclosure requirements applicable to advanced approaches banking organizations, and the FR 4201 requirement reflects the reporting, recordkeeping, and disclosure requirements of the market risk rule.

Given that the FR 4201 and FR 4200 requirements do not impose new requirements on these institutions in addition to the requirements applicable under Regulation YY, the Board is adopting these information collection requirements as proposed.

4. Requests for Clarification

The commenters also requested guidance on how IHCs should report formation of the IHC for purposes of the FR Y–9C and FR Y–11 reports. Specifically, the commenters asked whether the issuance of the stock should be treated as a ''sale'' on Schedule HI–A, Changes in Holding Company Equity Capital, and how the firm should report net income for the first six months of the year for a U.S. entity that will become part of the IHC on July 1, 2016. In addition, the commenters asked for guidance on how to report equity capital and changes in equity capital for purposes of the FR Y–11 report.

Each IHC's reporting of these items will depend on the structure of the FBO parent's U.S. operations prior to the effective date of the IHC requirement. For example, an FBO with an existing BHC that it designates as the IHC should reflect any issuance of the stock to be treated as a sale for purposes of the FR Y–9C report. However, an FBO that creates a new IHC above an existing BHC should treat the creation of the U.S. top-tier holding company as a reorganization for purposes of line item 6a on Schedule HI–A of the FR Y–9C report, and an IHC without an insured depository institution should treat the item as though it were a de novo filer. With respect to line item 1 of Schedule IS–A of the FR Y–11 report, the IHC should carry forward the entry from the

[5] 44 U.S.C. 3501; 12 CFR 1320.10, appendix A.1(a)(3)(iii).

line item reported for the end of the previous calendar year on the FR Y–7N report, Schedule IS–A, including, for example, adjustments from amended income statements.

In addition, commenters requested that the Board advise on the current status of the FFIEC 009, FFIEC 009a, FFIEC 102, and the FR Y–10 reports. The FFIEC 009, FFIEC 009a reports are currently out for comment with a period ending on June 13, 2016. The FFIEC Task Force on Reports intends to seek notice and comment to add IHCs to the reporting panels for the FFIEC 102 report. Board staff does not intend to modify the reporting panel for the FR Y–10 report, however, a proposal is currently out for public comment that would add items to the FR Y–10 form and instructions to identify IHCs.

Board of Governors of the Federal Reserve System, May 26, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–12867 Filed 5–31–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 3:00 p.m. on Friday, June 3, 2016.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Streets NW., Washington, DC 20551.

STATUS: Open.

On the day of the meeting, you will be able to view the meeting via webcast from a link available on the Board's public Web site. *You do not need to register to view the webcast of the meeting.* A link to the meeting documentation will also be available approximately 20 minutes before the start of the meeting. Both links may be accessed from the Board's public Web site at *www.federalreserve.gov.*

If you plan to attend the open meeting in person, we ask that you notify us in advance and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling 202–452–2474 or you may *register online.* You may pre-register until close of business on Thursday, June 2, 2016. You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras; please call 202–452–2955 for further information. If you need an accommodation for a disability, please contact Penelope Beattie on 202–452–3982. For the hearing impaired only, please use the Telecommunication Device for the Deaf (TDD) on 202–263–4869.

Privacy Act Notice: The information you provide will be used to assist us in prescreening you to ensure the security of the Board's premises and personnel. In order to do this, we may disclose your information consistent with the routine uses listed in the Privacy Act Notice for BGFRS–32, including to appropriate federal, state, local, or foreign agencies where disclosure is reasonably necessary to determine whether you pose a security risk or where the security or confidentiality of your information has been compromised. We are authorized to collect your information by 12 U.S.C §§ 243 and 248, and Executive Order 9397. In accordance with Executive Order 9397, we collect your SSN so that we can keep accurate records, because other people may have the same name and birth date. In addition, we use your SSN when we make requests for information about you from law enforcement and other regulatory agency databases. Furnishing the information requested is voluntary; however, your failure to provide any of the information requested may result in disapproval of your request for access to the Board's premises. You may be subject to a fine or imprisonment under 18 U.S.C § 1001 for any false statements you make in your request to enter the Board's premises.

Matters To Be Considered

Discussion Agenda

1. Advance Notice of Proposed Rulemaking Regarding Capital Requirements for Supervised Institutions Significantly Engaged in Insurance Activities.

2. Notice of Proposed Rulemaking To Apply Enhanced Prudential Standards for Systemically Important Insurance Companies.

Notes: 1. The staff memo to the Board will be made available to attendees on the day of the meeting in paper and the background material will be made available on a compact disc (CD). If you require a paper copy of the entire document, please call Penelope Beattie on 202–452–3982. The documentation will not be available until about 20 minutes before the start of the meeting.

2. This meeting will be recorded for the benefit of those unable to attend. The webcast recording and a transcript of the meeting will be available after the meeting on the Board's public Web site *http://www.federalreserve.gov/aboutthefed/boardmeetings/* or if you prefer, a CD recording of the meeting will be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $4 per disc by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FOR MORE INFORMATION PLEASE CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may access the Board's public Web site at *www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: May 27, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–13004 Filed 5–27–16; 4:15 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice-MG–2016–02; Docket No. 2016–0002; Sequence No. 13]

Office of Federal High-Performance Green Buildings; Green Building Advisory Committee; Notification of Upcoming Teleconferences

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Meeting notice.

SUMMARY: Notice of these teleconferences is being provided according to the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 10(a)(2). This notice provides the schedule for a teleconference/web meeting of the full Committee, and separately for a series of teleconferences/web meetings for two task groups of the Committee. These teleconferences are open for the public to listen in. Interested individuals must register to attend as instructed below under Supplementary Information.

DATES: *Committee teleconference date:* The Committee will hold a teleconference on Wednesday, July 27, 2016, from 1:00 p.m. to 2:30 p.m., Eastern Daylight Time (EDT).

Task group teleconference dates: The task group teleconferences will be held according to the following schedule:

The *Green Leasing task group* will hold recurring, weekly teleconferences on Tuesdays, beginning June 21, 2016 through September 27, 2016, from 2:00 p.m. to 3:00 p.m., EDT.

The *Energy Use Intensity (EUI) task group* will hold recurring, biweekly teleconferences on Wednesdays, beginning June 22, 2016 through September 28, 2016, from 3:00 p.m. to 4:00 p.m., EDT.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Sandler, Designated Federal Officer, Office of Federal High-Performance Green Buildings, OGP, GSA, 1800 F Street NW., Washington, DC 20405, telephone 202–219–1121 (note: this is not a toll-free number). Additional information about the Committee, including meeting materials and updates on the task groups, will be available on-line at *http://www.gsa.gov/gbac.*

SUPPLEMENTARY INFORMATION:

Procedures for Attendance: Contact Mr. Ken Sandler at *ken.sandler@gsa.gov* to register to listen in to any or all of these teleconferences. To attend the teleconference(s), submit your full name, organization, email address, and phone number, and indicate which calls you would like to attend. Requests to listen in to the calls must be received by 5:00 p.m., EDT, Friday, June 24, 2016 (GSA will be unable to provide technical assistance to any listener experiencing technical difficulties. Testing access to the Web meeting site in advance of calls is recommended).

Background: The Administrator of GSA established the Committee on June 20, 2011 (**Federal Register**/Vol. 76, No. 118) pursuant to Section 494 of the Energy Independence and Security Act of 2007 (EISA, 42 U.S.C. 17123). Under this authority, the Committee advises GSA on the rapid transformation of the Federal building portfolio to sustainable technologies and practices. The Committee reviews strategic plans, products and activities of the Office of Federal High-Performance Green Buildings and provides advice regarding how the Office can accomplish its mission most effectively.

The *Green Leasing task group* will propose recommendations in support of GSA's development of model commercial leasing provisions, a requirement of the Energy Efficiency Improvement Act of 2015 (42 U.S.C. 17062).

The *Energy Use Intensity (EUI)* task group will propose recommendations following the motion of a committee member to ''develop guidelines for creating a new energy intensity metric [to reflect impacts of] densified facilities, centrally located workplace sites . . . and expansion of telework and hoteling.''

The teleconferences will allow the task groups to coordinate the development of consensus recommendations to the full Committee, which will in turn decide whether to proceed with formal advice to GSA based upon these recommendations. Additional background information and updates will be posted on GSA's Web site at *http://www.gsa.gov/gbac.*

July 27, 2016 Committee Teleconference/Web Meeting Agenda:

- Committee business
- Energy Use Intensity (EUI) study results
- GSA Greening the Supply Chain
- Wrap-up and Next Steps
- Adjourn

Detailed agendas, relevant background information and updates for the teleconferences will be posted on GSA's Web site at *http://www.gsa.gov/gbac.*

Kevin Kampschroer,

Federal Director, Office of Federal High-Performance Green Buildings, General Services Administration.

[FR Doc. 2016–12836 Filed 5–31–16; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.568]

Final Notice of Reallotment of FY 2014 Funds for the Low Income Home Energy Assistance Program (LIHEAP)

AGENCY: Office of Community Services, ACF, HHS.

ACTION: Final notice of determination concerning fiscal year (FY) 2014 funds available for reallotment.

SUMMARY: The Administration for Children and Families (ACF), Office of Community Services (OCS), Division of Energy Assistance (DEA) announces the final reallotment of $4,324,422 of FY 2014 funds for the Low Income Home Energy Assistance Program (LIHEAP).

DATES: Realloted funds were awarded on September 30, 2015.

FOR FURTHER INFORMATION CONTACT: Lauren Christopher, Director, Division of Energy Assistance, Office of Community Services, 333 C Street SW., 5th Floor, Mail Room 5425, Washington, DC 20201; Telephone (202) 401–4870; email: *lauren.christopher@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: In accordance with section 2607(b)(1) of the Low Income Home Energy Assistance Act (the Act), Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 8626(b)(1)), as amended, ACF published a notice in the **Federal Register** on June 29, 2015, announcing the preliminary determination of the Secretary of the Department of Health and Human Services that $4,352,881 of FY 2014 funds for LIHEAP may be available for reallotment. No comments were received on this notice, nor did any grantees report additional funds for reallotment. However, after such publication, ACF discovered that $28,459 of these funds had already been drawn down from the ACF Payment Management System and would not be available for reallotment. Thus, a final total of $4,324,422 was available for reallotment from FY 2014.

These funds became available from the following grantees in the following amounts:

REALLOTMENT AMOUNTS OF FFY 2014 LIHEAP FUNDS

Grantee name	FY 2014 Reallotment amount
Delaware Tribe of Indians	$8,090
Colorado River Indian Tribes of the Colorado River Indian Reservation	12,667
Five Sandoval Indian Pueblos, INC.	13,243
Kodiak Area Native Association	1,070
West Virginia	4,289,352
Total	4,324,422

Pursuant to the statute cited, these funds were reallotted on September 30, 2015, to all current LIHEAP grantees by distributing them under the formula Congress set for FY 2015 funding. The only exception is that grantees whose allocations would have been less than $25 did not receive an award.

The reallotted funds may be used for any purpose authorized under LIHEAP. Grantees must add these funds to their total LIHEAP funds payable for FY 2015 for purposes of calculating statutory caps on administrative costs, carryover, assurance 16 activities, and weatherization assistance.

Statutory Authority: 45 CFR 96.81 and 42 U.S.C. 8626(b)(1).

Mary M.Wayland,

Senior Grants Policy Specialist, Division of Grants Policy, Office of Administration.

[FR Doc. 2016–12806 Filed 5–31–16; 8:45 am]

BILLING CODE 4184–80–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Comment Request; Chronic Disease Self-Management Education Program Standardized Data Collection

AGENCY: Administration on Aging (AoA), Administration for Community Living (ACL), HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL), Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written or electronic comments on the collection of information by July 1, 2016.

ADDRESSES: Submit electronic comments on the collection of information to: Submit written comments on the collection of information to by fax 202.395.5806 or by email to *OIRA_submission@omb.eop.gov,* Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Kristie Kulinski (*kristie.kulinski@acl.hhs.gov).*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, the Administration for Community Living has submitted the following proposed collection of information to OMB for review and clearance.

The ''Empowering Older Adults and Adults with Disabilities through Chronic Disease Self-Management Education (CDSME) Programs'' cooperative agreement program has been financed through Prevention and Public Health Funds (PPHF), most recently by FY2015 PPHF funds. The proposed data collection is necessary for monitoring grant program operations and outcomes. AoA proposes to gather information to monitor grantee progress, record location of sites where workshops are held which will allow mapping of the delivery infrastructure, and document participant attendance and demographic and health characteristics.

The proposed data collection tools may be found on the AoA Web site at: *http://www.aoa.acl.gov/AoA_Programs/Tools_Resources/collection_tools.aspx.* ACL estimates the burden of this collection of information as 128 hours for grantee staff, 220 hours for local agency staff and volunteers, and 92 hours for individuals—total burden is 440 hours per year. This assumes a data collection sample of 386 workshops.

Dated: May 25, 2016.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2016–12866 Filed 5–31–16; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1254]

Assessing Adhesion With Transdermal Delivery Systems and Topical Patches for Abbreviated New Drug Applications; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Assessing Adhesion with Transdermal Delivery Systems and Topical Patches for ANDAs.'' This draft guidance is intended to provide recommendations for the design and conduct of studies evaluating the adhesive performance of a Transdermal Delivery System or a topical patch (collectively, TDS). This guidance, once finalized, is intended to provide updated recommendations for the design and conduct of adhesion studies submitted in support of an Abbreviated New Drug Application (ANDA) for a TDS.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by August 1, 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–D–1254 for ''Assessing Adhesion with Transdermal Delivery Systems and Topical Patches for ANDAs.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential

with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft 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 draft guidance document.

FOR FURTHER INFORMATION CONTACT: Kris Andre, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4726, Silver Spring, MD 20993–0002, 240–402–7959.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Assessing Adhesion with Transdermal Delivery Systems and Topical Patches for ANDAs.'' This draft guidance provides recommendations for the design and conduct of clinical studies evaluating the adhesive performance of a TDS submitted in support of an ANDA. The recommendations in this guidance relate exclusively to TDS adhesion studies submitted in support of an ANDA.

The amount of drug delivered into and through the skin from a TDS is dependent, in part, on the surface area dosed. It is expected that the entire surface area of a TDS should remain consistently and uniformly adhered to the skin throughout the duration of wear under the conditions of use included in the product label. Under circumstances in which a TDS loses its adherence during wear, the amount of drug delivered to the patient may be reduced.

During the course of the product's labeled wear period, a TDS is reasonably expected to encounter torsional strains arising from anatomical movements, changes in environmental temperature or humidity such as the daily exposure to water (*e.g.,* during routine showering), and contact with clothing, bedding or other surfaces. TDS products that do not maintain consistent and uniform adhesion with the skin under the range of conditions experienced during the labeled wear period for the TDS can result in varying degrees of TDS detachment, including complete detachment, at different times during the course of product wear.

When the adhesion characteristics of a TDS are not sufficiently robust, as evaluated against its labeled conditions of use, the TDS may exhibit variability in the area that is in contact with the skin. In such situations where a TDS is partially detached, there may be uncertainty about the resulting drug delivery profile and, hence, uncertainty about the rate and extent of drug absorption from the TDS. In addition, as the potential for complete detachment of the TDS increases, so does the risk of unintentional exposure of the drug product to an unintended recipient (*e.g.,* a household member who may potentially be a child).

This guidance describes the recommended approach to the adhesion clinical study design and, therefore, will supersede the recommendations related to adhesion studies provided in individual product-specific guidances published prior to the date of publication of this guidance. This guidance, once finalized, is intended to provide updated recommendations for the design and conduct of adhesion studies submitted in support of an ANDA for a TDS. FDA recommends that applicants consult this guidance in conjunction with any relevant product-specific guidance documents when considering other studies (*e.g.* irritation, sensitization) that may be necessary to support the bioequivalence (BE) of a proposed generic TDS drug product to its RLD.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Assessing Adhesion with Transdermal Delivery Systems and Topical Patches for ANDAs.'' 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 draft guidance at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: May 26, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–12822 Filed 5–31–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–E–1235]

Determination of Regulatory Review Period for Purposes of Patent Extension; OSPHENA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for OSPHENA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by August 1, 2016. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence

during the regulatory review period by November 28, 2016. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2014–E–1235 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; OSPHENA.'' 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: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product OSPHENA (ospemifene). OSPHENA is indicated for treatment of moderate to severe dyspareunia, a symptom of vulvar and vaginal atrophy due to menopause. Subsequent to this approval, the USPTO received a patent term restoration application for OSPHENA (U.S. Patent No. 6,245,819) from Hormos Medical Ltd., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 11, 2015, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of OSPHENA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for OSPHENA is 3,585 days. Of this time, 3,278 days occurred during the testing phase of the regulatory review period, while 307 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* May 7, 2003. FDA has verified the Hormos Medical Ltd. claim that May 7, 2003, is

the date the investigational new drug application (IND) became effective.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* April 26, 2012. FDA has verified the applicant's claim that the new drug application (NDA) for OSPHENA (NDA 203505) was initially submitted on April 26, 2012.

3. *The date the application was approved:* February 26, 2013. FDA has verified the applicant's claim that NDA 203505 was approved on February 26, 2013.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: May 25, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–12823 Filed 5–31–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–E–2340]

Determination of Regulatory Review Period for Purposes of Patent Extension; MEKINIST

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for MEKINIST and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by August 1, 2016. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 28, 2016. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2014–E–2340 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; MEKINIST.'' 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: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product MEKINIST (trametinib dimethyl sulfoxide solvate). MEKINIST is indicated for treatment of patients with unresectable or metastatic melanoma with BRAF V600E mutations as detected by an FDA-approved test. Subsequent to this approval, the USPTO received a patent term restoration application for MEKINIST (U.S. Patent No. 7,378,423) from Japan Tobacco, Inc., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 11, 2015, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of MEKINIST represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for MEKINIST is 1,842 days. Of this time, 1,542 days occurred during the testing phase of the regulatory review period, while 300 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* May 15, 2008. FDA has verified the Japan Tobacco, Inc., claim that May 15, 2008, is the date the investigational new drug application became effective.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* August 3, 2012. The applicant claims August 2, 2012, as the date the new drug application (NDA) for MEKINIST (NDA 204–114) was initially submitted. However, FDA records indicate that NDA 204–114 was submitted on August 3, 2012.

3. *The date the application was approved:* May 29, 2013. FDA has verified the applicant's claim that NDA 204–114 was approved on May 29, 2013.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 623 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: May 26, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–12859 Filed 5–31–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–E–0861]

Determination of Regulatory Review Period for Purposes of Patent Extension; OTEZLA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for OTEZLA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by August 1, 2016. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 28, 2016. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your

comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–E–0861 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; OTEZLA.'' 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: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product OTEZLA (apremilast). OTEZLA is indicated for treatment of adult patients with active psoriatic arthritis. Subsequent to this approval, the USPTO received a patent term restoration application for OTEZLA (U.S. Patent No. 7,427,638) from Celgene Corporation, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 11, 2015, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of OTEZLA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for OTEZLA is 3,494 days. Of this time, 3,128 days occurred during the testing phase of the regulatory review period, while 366 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* August 28, 2004. FDA has verified the Celgene Corporation claim that August 28, 2004, is the date the investigational new drug application (IND) became effective.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* March 21, 2013. FDA has verified the applicant's claim that the new drug application (NDA) for OTEZLA (NDA 205437) was initially submitted on March 21, 2013.

3. *The date the application was approved:* March 21, 2014. FDA has verified the applicant's claim that NDA 205437 was approved on March 21, 2014.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension,

this applicant seeks 1,186 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: May 25, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–12829 Filed 5–31–16; 8:45 am]

BILLING CODE 4161–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

OpenFDA Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop entitled: OpenFDA Public Workshop. The purpose of the public workshop is to provide a forum for the openFDA system user community to engage in a robust interactive discussion and provide feedback to FDA regarding openFDA's platform, application programming interfaces (APIs), downloadable harmonized datasets, and possible enhancements to the openFDA platform, as well as to view the demonstration of various applications (apps) specifically developed for utilization of openFDA data.

DATES: The public workshop will be held on June 20, 2016, from 9 a.m. to 12 p.m. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be held at FDA's White Oak campus, 10903 New Hampshire Ave., Building 31 (The Great Room 1503A), Silver Spring, MD 20993. For information regarding ground transportation, airports, lodging, driving, and parking, please refer to: *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.* Entrance for the public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

FOR FURTHER INFORMATION CONTACT: Lonnie Smith, Office of Health Informatics, Office of Chief Scientist, Office of Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–8503, email: *lonnie.smith@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: OpenFDA, an FDA Office of Health Informatics initiative launched in June 2014, is making it easier for researchers, scientists, web developers, and other FDA regulatory stakeholders to access and use datasets in an open standard format.

The project aims to create easy access to public data and a new level of openness and accountability, ensure the privacy and security of public FDA data, educate the public, and save lives.

Members of the scientific community can use openFDA to have their applications automatically query the data through APIs. OpenFDA increases the efficiency and speed of accessing datasets by using cutting-edge, open-source code modules in a cloud-based environment.

Requests for openFDA app demonstrations: This public workshop includes demonstrations of mobile apps specifically developed for utilization of openFDA data. During registration you may indicate if you wish to provide a demonstration of an app which you have created that utilizes openFDA data. FDA will do its best to accommodate requests to demonstrate openFDA-based apps. The openFDA app demonstrations should not include any presentation slides and, due to FDA internet firewall restrictions, will be limited to only information and displays accessible via apps which can be accessed via internet browsers Internet Explorer version 11 and Firefox versions 6 or higher. All requests to make app demonstrations must be received by 5 p.m., June 6, 2016. FDA will determine the amount of time allotted to each presenter and the approximate time each app demonstration is to begin, and will select and notify participants by 5 p.m., June 10, 2016. If selected for an app demonstration, any demonstration materials must be emailed to Lonnie Smith (see **FOR FURTHER INFORMATION CONTACT**) no later than 5 p.m., June 16, 2016. No commercial or promotional material will be permitted to be presented or distributed at the public workshop.

Registration: There is no registration fee to attend the public workshop. Early registration is recommended because seating is limited, and registration will be on a first-come, first-served basis. There will be no onsite registration. Persons interested in attending this workshop must register by sending the attendee's full name and email address via email message to *openFDA@fda.hhs.gov* before June 10, 2016. For those without Internet access, please contact Lonnie Smith (see **FOR FURTHER INFORMATION CONTACT**) to register.

Streaming Webcast of the Public Workshop: This public workshop will also be Webcast. Persons interested in viewing the Webcast must register by 4 p.m., June 10, 2016. Early registration is recommended because Webcast connections are limited. Organizations are requested to register all participants, but to view using one connection per location. Webcast participants will be sent technical system requirements after registration and will be sent connection access information after June 10, 2016.

If you need special accommodations due to a disability, please contact Lonnie Smith (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance.

Dated: May 26, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–12826 Filed 5–31–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1159]

Food and Drug Administration Categorization of Investigational Device Exemption Devices To Assist the Centers for Medicare and Medicaid Services With Coverage Decisions; Draft Guidance for Sponsors, Clinical Investigators, Industry, Institutional Review Boards, and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled ''FDA Categorization of Investigational Device Exemption (IDE) Devices to Assist the Centers for Medicare and Medicaid Services (CMS) with Coverage Decisions.'' This guidance modifies FDA's current policy on categorization of IDE devices, which assists CMS in determining whether or not an IDE device should be covered (reimbursed) by CMS. On December 2, 2015, FDA's Center for Devices and Radiological Health (CDRH) and CMS's Coverage and Analysis Group (CAG) executed a Memorandum of Understanding (MOU) to streamline and facilitate the efficient categorization of investigational medical devices in order to support CMS's ability to make Medicare coverage (reimbursement) determinations for those investigational devices. The MOU noted the need for FDA and CMS to revise their shared understanding regarding categorization. This guidance document is intended to implement the MOU by further explaining the framework that FDA (both CDRH and the Center for Biologics Evaluation and Research) intends to follow for such decisions. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment of this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by August 1, 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–D–1159 for ''FDA Categorization of Investigational Device Exemption (IDE) Devices to Assist the Centers for Medicare and Medicaid Services (CMS) with Coverage Decisions.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single copies of the guidance to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002 or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Program Operations Staff, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1522, Silver Spring, MD 20993–0002, 301–796–5640; or Stephen Ripley, Center for Biologics Evaluation and Research,

Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for sponsors, clinical investigators, industry, institutional review boards, and FDA staff, entitled ''FDA Categorization of Investigational Device Exemption (IDE) Devices to Assist the Centers for Medicare and Medicaid Services (CMS) with Coverage Decisions.'' When finalized, this draft guidance would modify FDA's current policy on categorization of IDE devices. In September 1995, the Health Care Financing Administration (now known as CMS) published a final rule and entered into an Interagency Agreement (IA) with FDA regarding reimbursement categorization of investigational devices. (60 FR 48417, September 19, 1995.) The rule at 42 CFR part 405, subpart B established that certain devices with an IDE approved by FDA (and certain services related to those devices) may be covered under Medicare, and set forth the process by which FDA would assist CMS in identifying such devices. FDA would assign a device with an FDA approved IDE to one of two categories: Experimental/Investigational (Category A) devices or Non-experimental/Investigational (Category B) devices based on the level of risk the device presented to patients. The IA set forth criteria, agreed upon by CMS and FDA, which FDA would use to categorize devices. The categorization would then be used by CMS as part of its determination of whether or not devices met the requirements for Medicare coverage under section 1862(a)(1)(A) of the Social Security Act (42 U.S.C. 1385y). CMS and FDA both recognized that experience in categorizing devices might require changes to the Interagency Agreement.

In the more than 20 years since the IA was signed, FDA has received a number of IDEs which do not easily fit into any of the eight subcategories identified in the IA. There have been several developments, such as: The publication of the guidance document entitled ''Investigational Device Exemptions (IDEs) for Early Feasibility Medical Device Clinical Studies, Including Certain First in Human (FIH) Studies;'' (Ref. 1) and a subsequent increase in submission of early feasibility studies to FDA, as well as modifications to CMS's regulation regarding IDEs (42 CFR part 405, subpart B), which have prompted FDA and CMS to revise their shared understanding regarding the categorization of IDE devices.

On December 2, 2015, FDA's CDRH and CMS's CAG executed an MOU to streamline and facilitate the efficient categorization of investigational medical devices. The MOU will become effective June 2, 2016. This guidance document is intended to implement the MOU and describes the criteria that FDA intends to use to help determine the appropriate category for a device to be studied. This guidance document also describes a pathway for changing the device category from Category A to Category B.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''FDA Categorization of Investigational Device Exemption (IDE) Devices to Assist the Centers for Medicare and Medicaid Services (CMS) with Coverage Decisions.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.* Persons unable to download an electronic copy of ''FDA Categorization of Investigational Device Exemption (IDE) Devices to Assist the Centers for Medicare and Medicaid Services (CMS) with Coverage Decisions'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 16001 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA and CMS regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078. The collections of information in 42 CFR part 405, subpart B have been approved under OMB control number 0938–1250.

V. Reference

The following reference is on display in the Division of Dockets Management (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it are also available electronically at *http://www.regulations.gov.* FDA has verified the Web site address, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. Investigational Device Exemptions (IDEs) for Early Feasibility Medical Device Clinical Studies, Including Certain First in Human (FIH) Studies, available at *http://www.fda.gov/downloads/medicaldevices/deviceregulationandguidance/guidancedocuments/ucm279103.pdf.*

Dated: May 25, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–12828 Filed 5–31–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Health Resources and Services Administration (HRSA) has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than July 1, 2016.

ADDRESSES: Submit your comments, including the Information Collection Request Title, to the desk officer for

HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Rural Opioid Overdose Reversal Grant Program OMB No. 0906–xxxx—New.

Abstract: This program is authorized by Section 711(b) of the Social Security Act (U.S.C. 912(b), as amended and the Consolidated and Further Continuing Appropriations Act (P.L. 113–235). The purpose of this grant program is to reduce the incidences of morbidity and mortality related to opioid overdoses in rural communities through the purchase and placement of emergency devices used to rapidly reverse the effects of opioid overdose and training of licensed healthcare professionals and emergency responders on their use.

Need and Proposed Use of the Information: For this program, performance measures were drafted to provide data useful to the program and to enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Act (GPRA) of 1993 (Public Law 103–62). These measures cover the principal topic areas of interest to the Federal Office of Rural Health Policy, including: (a) The number of counties served by the program; (b) the number and type of devices purchased and distributed and the location of the distribution; (c) the number of training sessions and the number of individuals trained; and (d) the number of individuals who were administered Narcan and the outcome. These measures will speak to the Office's progress toward meeting the set goals.

Likely Respondents: Rural Opioid Overdose Reversal Grant Program award recipients.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Rural Opioid Overdose Reversal Grant Program Performance Measures	18	1	18	4	72
Total	18		18		72

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–12745 Filed 5–31–16; 8:45 am]

BILLING CODE 4165–15–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; Clinical Trials Review Committee.

Date: June 23–24, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Keary A. Cope, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892–7924, 301–435–2222, *copeka@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 25, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12756 Filed 5–31–16; 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: Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Clinical and Basic Science Review Committee.

Date: June 23–24, 2016.

Time: 10:30 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Keith A. Mintzer, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892–7924, 301–594–7947, *mintzerk@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: May 25, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12755 Filed 5–31–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.samhsa.gov/workplace.*

FOR FURTHER INFORMATION CONTACT: Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N03A, Rockville, Maryland 20857; 240–276–2600 (voice).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs,'' as amended in the revisions listed above, requires strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following HHS-certified laboratories and IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

HHS-Certified Instrumented Initial Testing Facilities

Dynacare
6628 50th Street NW.
Edmonton, AB Canada T6B 2N7
780–784–1190
(Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories

ACM Medical Laboratory, Inc.
160 Elmgrove Park
Rochester, NY 14624
585–429–2264

Aegis Analytical Laboratories, Inc.
345 Hill Ave.
Nashville, TN 37210
615–255–2400
(Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc., Aegis Analytical Laboratories)

Alere Toxicology Services
1111 Newton St.
Gretna, LA 70053
504–361–8989/800–433–3823
(Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services
450 Southlake Blvd.
Richmond, VA 23236
804–378–9130
(Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory
11401 I–30
Little Rock, AR 72209–7056
501–202–2783
(Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab
8433 Quivira Road
Lenexa, KS 66215–2802
800–445–6917

DrugScan, Inc.
200 Precision Road, Suite 200
Horsham, PA 19044
800–235–4890

Dynacare*
245 Pall Mall Street
London, ONT, Canada N6A 1P4
519–679–1630
(Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc.
5 Industrial Park Drive
Oxford, MS 38655
662–236–2609

Fortes Laboratories, Inc.
25749 SW Canyon Creek Road, Suite 600
Wilsonville, OR 97070
503–486–1023

Laboratory Corporation of America Holdings
7207 N. Gessner Road
Houston, TX 77040
713–856–8288/800–800–2387

Laboratory Corporation of America Holdings
69 First Ave.
Raritan, NJ 08869
908–526–2400/800–437–4986
(Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings
1904 Alexander Drive
Research Triangle Park, NC 27709
919–572–6900/800–833–3984
(Formerly: LabCorp Occupational Testing Services, Inc., CompuChem

Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings
1120 Main Street
Southaven, MS 38671
866–827–8042/800–233–6339
(Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics
10101 Renner Blvd.
Lenexa, KS 66219
913–888–3927/800–873–8845
(Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

MedTox Laboratories, Inc.
402 W. County Road D
St. Paul, MN 55112
651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services
1225 NE 2nd Ave.
Portland, OR 97232
503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center
Forensic Toxicology Laboratory
1 Veterans Drive
Minneapolis, MN 55417
612–725–2088
Testing for Veterans Affairs (VA) Employees Only

National Toxicology Laboratories, Inc.
1100 California Ave.
Bakersfield, CA 93304
661–322–4250/800–350–3515

One Source Toxicology Laboratory, Inc.
1213 Genoa-Red Bluff
Pasadena, TX 77504
888–747–3774
(Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Pacific Toxicology Laboratories
9348 DeSoto Ave.
Chatsworth, CA 91311
800–328–6942
(Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories
110 West Cliff Dr.
Spokane, WA 99204
509–755–8991/800–541–7891 x7

Phamatech, Inc.
15175 Innovation Drive
San Diego, CA 92128
888–635–5840

Quest Diagnostics Incorporated
1777 Montreal Circle
Tucker, GA 30084
800–729–6432
(Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated
400 Egypt Road
Norristown, PA 19403
610–631–4600/877–642–2216
(Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated
8401 Fallbrook Ave.
West Hills, CA 91304
818–737–6370
(Formerly: SmithKline Beecham Clinical Laboratories)

Redwood Toxicology Laboratory
3700650 Westwind Blvd.
Santa Rosa, CA 95403
800–255–2159

Southwest Laboratories
4625 E. Cotton Center Boulevard
Suite 177
Phoenix, AZ 85040
602–438–8507/800–279–0027

STERLING Reference Laboratories
2617 East L Street
Tacoma, WA 98421
800–442–0438

US Army Forensic Toxicology Drug Testing Laboratory
2490 Wilson St.
Fort George G. Meade, MD 20755–5235
301–677–7085
Testing for Department of Defense (DoD) Employees Only

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Summer King,
Statistician.

[FR Doc. 2016–12809 Filed 5–31–16; 8:45 am]
BILLING CODE 4160–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

National Park Service

[FWS–R6–R–2015–N091; FF06R06000–FXRS12610600000–167]

Niobrara Confluence and Ponca Bluffs Conservation Areas, NE and SD; Withdrawal of Draft Environmental Impact Statement and Land Protection Plan

AGENCY: Fish and Wildlife Service, National Park Service, Interior.

ACTION: Notice of withdrawal.

SUMMARY: This notice advises the public that we, the U.S. Fish and Wildlife Service (FWS) and the National Park Service (NPS), as lead agencies, are withdrawing our proposal to establish the Niobrara Confluence and Ponca Bluffs Conservation Areas in Nebraska and South Dakota.

DATES: This action will become effective with this notice.

FOR FURTHER INFORMATION CONTACT: Toni Griffin, Acting Chief of Refuge Planning, U.S. Fish and Wildlife Service, P.O. Box 25486, DFC, Denver, CO 80225. Telephone (303) 236–4378.

SUPPLEMENTARY INFORMATION: On February 15, 2012, the FWS and the NPS, as lead agencies, published a notice of intent (77 FR 8892) to prepare an environmental impact statement (EIS) for the proposed Niobrara Confluence Conservation Area and Ponca Bluffs Conservation Area in Nebraska and South Dakota. On April 8, 2013, a draft EIS and land protection plan (LPP) were made available for public review and comment (78 FR 20942). In these documents, we described alternatives, including our proposed action, for implementing conservation actions along the Missouri River and its tributaries.

However, after considering the public comments received and analyzing other priorities for each agency, the FWS and NPS are hereby withdrawing the DEIS

and LPP from further consideration. The FWS and NPS will continue to support locally driven conservation efforts along the Missouri River in northeast Nebraska and southeast South Dakota. The FWS and NPS will continue to work with interested landowners on other conservation options in the area.

Authority: We provide this notice in accordance with the requirements of NEPA as amended (42 U.S.C. 4321 *et seq.*), its implementing regulations set forth by the Council on Environmental Quality (40 CFR 1500 *et seq.*), the Department of Interior's NEPA implementing regulations (43 CFR part 46) and other appropriate Federal laws, regulations and administrative materials.

Dated: May 6, 2016.

Matt Hogan,

Acting Regional Director, Mountain-Prairie Region, U.S. Fish and Wildlife Service.

Dated: May 16, 2016.

Cameron H. Sholly

Regional Director, Midwest Region, National Park Service.

[FR Doc. 2016–12799 Filed 5–31–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2016–N087; FXES11120200000–167–FF02ENEH00]

Receipt of Incidental Take Permit Applications for Participation in the Amended Oil and Gas Industry Conservation Plan for the American Burying Beetle in Oklahoma

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: Under the Endangered Species Act, as amended (Act), we, the U.S. Fish and Wildlife Service, invite the public to comment on incidental take permit applications for take of the federally listed American burying beetle resulting from activities associated with the geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning of oil and gas well field infrastructure within Oklahoma. If approved, the permits would be issued under the approved *Amended Oil and Gas Industry Conservation Plan Associated with Issuance of Endangered Species Act Section 10(a)(1)(B) Permits for the American Burying Beetle in Oklahoma* (ICP).

DATES: To ensure consideration, written comments must be received on or before July 1, 2016.

ADDRESSES: You may obtain copies of all documents and submit comments on the applicant's ITP application by one of the following methods. Please refer to the permit number when requesting documents or submitting comments.

○ *U.S. Mail:* U.S. Fish and Wildlife Service, Division of Endangered Species—HCP Permits, P.O. Box 1306, Room 6034, Albuquerque, NM 87103.

○ *Electronically: fw2_hcp_permits@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Marty Tuegel, Branch Chief, by U.S. mail at: U.S. Fish and Wildlife Service, Environmental Review Division, P.O. Box 1306, Room 6034, Albuquerque, NM 87103; or by telephone at 505–248–6651.

SUPPLEMENTARY INFORMATION:

Introduction

Under the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.;* Act), we, the U.S. Fish and Wildlife Service, invite the public to comment on incidental take permit (ITP) applications for take of the federally listed American burying beetle (*Nicrophorus americanus*) resulting from activities associated with geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning of oil and gas well field infrastructure, as well as construction, maintenance, operation, repair, decommissioning, and reclamation of oil and gas gathering, transmission, and distribution pipeline infrastructure within Oklahoma. If approved, the permit would be issued to the applicant under the *Amended Oil and Gas Industry Conservation Plan Associated with Issuance of Endangered Species Act Section 10(a)(1)(B) Permits for the American Burying Beetle in Oklahoma* (ICP). The original ICP was approved on May 21, 2014 (publication of the FONSI notice was on July 25, 2014; 79 FR 43504). The draft amended ICP was made available for comment on March 8, 2016 (81 FR 12113), and approved on April 13, 2016. The ICP and the associated environmental assessment/finding of no significant impact are available on the Web site at *http://www.fws.gov/southwest/es/oklahoma/ABBICP.* However, we are no longer taking comments on these finalized, approved documents.

Applications Available for Review and Comment

We invite local, State, Tribal, and Federal agencies, and the public to comment on the following application under the ICP, for incidental take of the federally listed ABB. Please refer to the appropriate permit number (*e.g.,* TE–123456) when requesting application documents and when submitting comments. Documents and other information the applicants have submitted with this application 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 TE40328B

Applicant: ScissorTail Energy, LLC & Subsidiaries, Lakewood, CO

Applicant requests an amended permit for oil and gas upstream and midstream production, including geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning of oil and gas well field infrastructure, as well as construction, maintenance, operation, repair, decommissioning, and reclamation of oil and gas gathering, transmission, and distribution pipeline infrastructure within Oklahoma.

Permit TE43609B

Applicant: ONEOK, LP, Tulsa, OK

Applicant requests an amended permit for oil and gas upstream and midstream production, including geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning of oil and gas well field infrastructure, as well as construction, maintenance, operation, repair, decommissioning, and reclamation of oil and gas gathering, transmission, and distribution pipeline infrastructure within Oklahoma.

Permit TE97011B

Applicant: Marketlink, LLC, Houston, TX

Applicant requests a new permit for oil and gas upstream and midstream production, including geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning of oil and gas well field infrastructure, as well as construction, maintenance, operation, repair, decommissioning, and reclamation of oil and gas gathering, transmission, and distribution pipeline infrastructure within Oklahoma.

Permit TE97022B

Applicant: Calyx Energy III, LLC, Tulsa, OK

Applicant requests a new permit for oil and gas upstream and midstream production, including geophysical exploration (seismic) and construction,

maintenance, operation, repair, and decommissioning of oil and gas well field infrastructure, as well as construction, maintenance, operation, repair, decommissioning, and reclamation of oil and gas gathering, transmission, and distribution pipeline infrastructure within Oklahoma.

Permit TE49749B

Applicant: MarkWest Oklahoma Gas Company, LLC

Applicant requests an amended permit for oil and gas upstream and midstream production, including geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning of oil and gas well field infrastructure, as well as construction, maintenance, operation, repair, decommissioning, and reclamation of oil and gas gathering, transmission, and distribution pipeline infrastructure within Oklahoma.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. 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.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Joy E. Nicholopoulos,

Acting Regional Director, Southwest Region.

[FR Doc. 2016–12856 Filed 5–31–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[16X L1109AF LLUT980300–L01000000.XZ0000–24–1A]

Utah Resource Advisory Council Meeting/Conference Call

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting/conference call.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the Bureau of Land Management's (BLM) Utah Resource Advisory Council (RAC) will host a meeting/conference call.

DATES: The BLM-Utah RAC will host a meeting/conference call on Wednesday, June 29, 2016, from 9:00 a.m.–noon, Mountain Daylight Time.

ADDRESSES: Those attending in person must meet at the BLM-Utah State Office, Monument Conference Room, 440 West 200 South, Fifth Floor, Salt Lake City, Utah 84101.

FOR FURTHER INFORMATION CONTACT: If you wish to listen to the teleconference, orally present material during the teleconference, or submit written material for the RAC to consider during the teleconference, please notify Lola Bird, Public Affairs Specialist, Bureau of Land Management, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101; phone (801) 539–4033; or, *lbird@blm.gov* no later than Wednesday, June 22, 2016.

SUPPLEMENTARY INFORMATION: Agenda topics will consist of reports from the following three RAC subcommittees: Eastern Lake Mountains Target Shooting Plan Amendment, Three Creeks Grazing Allotment Environmental Assessment and the Planning 2.0 Proposed Rule. The subcommittees will present recommendations to RAC members for their approval.

A half-hour public comment period will take place from 11:30 a.m.–noon, Mountain Daylight Time. The meeting is open to the public; however, transportation, lodging, and meals are the responsibility of the participating individuals.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to leave a message or question for the above individual. The FIRS is available 24 hours a day, seven days a week. Replies are provided during normal business hours.

Authority: 43 CFR 1784.4–1.

Jenna Whitlock,

Acting State Director.

[FR Doc. 2016–12863 Filed 5–31–16; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORW00000.L16100000.DF0000. LXSSH1080000.16XL1109AF. HAG16–0145]

Notice of Public Meeting for the San Juan Islands National Monument Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the Bureau of Land Management's (BLM) San Juan Islands National Monument Advisory Committee (MAC) will meet as indicated below.

DATES: The MAC will meet on Friday, June 10th, 2016 from 8:30 a.m. to 4:00 p.m. at the San Juan Island Grange, 152 N 1st Street, Friday Harbor, Washington 98250. Meeting topics include a question and answer session, discussion of the analysis of the management situation, and a report out on how public input, including from the MAC, has been incorporated into the preliminary range of alternatives for the management of human use within the Monument.

FOR FURTHER INFORMATION CONTACT: Marcia deChadenèdes, San Juan Islands National Monument Manager, P.O. Box 3, 37 Washburn Ave., Lopez Island, Washington 98261, (360) 468–3051, or *mdechade@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: The twelve-member San Juan Islands MAC was chartered to provide information and advice regarding the development of the San Juan Islands National Monument's RMP. Members represent an array of stakeholder interests in the land and resources from within the local area and statewide. All advisory committee meetings are open to the public. During the meeting, at 12:30

p.m. and 3:30 p.m., members of the public will have the opportunity to make comments to the MAC during one-hour public comment periods. Persons wishing to make comments during the public comment period should register in person with the BLM by 12:00 noon or 3:00 p.m. (depending on the desired comment period) on that meeting day, at the meeting location. Depending on the number of persons wishing to comment, the length of comments may be limited. The public may send written comments to the MAC at San Juan Islands National Monument, Attn. MAC, P.O. Box 3, 37 Washburn Ave., Lopez Island, Washington 98261. The BLM appreciates all comments.

Linda Clark,

Spokane District Manager.

[FR Doc. 2016–12864 Filed 5–31–16; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAN01000 L10200000.XZ0000 16X LXSIOVHD0000]

Notice of Public Meeting: Northern California Resource Advisory Council Resource Management Plan Subcommittee; Postponed

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of postponed public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northern California Resource Advisory Council meeting is postponed.

DATES: The postponed meeting was to be held Thursday, June 23rd, 2016, at the Bureau of Land Management Arcata and Redding Field Offices.

FOR FURTHER INFORMATION CONTACT: Todd Forbes, Northern California District Manager, (530) 224–2160; or Leisyka Parrott, Acting Public Affairs Officer, (707) 825–2313

SUPPLEMENTARY INFORMATION: The 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management on BLM-administered lands in northern California and far northwest Nevada. This meeting was postponed because the results from public envisioning meetings will not be ready for review by the meeting date.

Chris Rocker-Heppe,

Arcata Assistant Field Office Manager.

[FR Doc. 2016–12854 Filed 5–31–16; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOF02000 L12200000.DU0000]

Notice of Proposed Supplementary Rules for Guffey Gorge in Park County, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) is proposing supplementary rules to regulate certain activities on public lands within Guffey Gorge in Park County, Colorado. These proposed supplementary rules would implement decisions found in the Guffey Gorge Management Plan Environmental Assessment (EA), approved on June 29, 2015, to provide for the protection of persons, property, and public lands resources located within an 80-acre site. These proposed supplementary rules will result in changes to some currently authorized activities related to possession or use of alcohol, amplified music, vehicle parking, and visitors with dogs.

DATES: Please send comments to the following address by August 1, 2016. Comments postmarked or received in person or by electronic mail after this date may not be considered in the development of the final supplementary rules.

ADDRESSES: You may send comments by mail or hand delivery to Linda Skinner, Outdoor Recreation Planner, BLM Royal Gorge Field Office, 3028 E. Main Street, Cañon City, CO 81212. You may also send comments via email to *rgfo_comments@blm.gov* (include ''Proposed Supplementary Rules-Guffey Gorge'' in the subject line).

FOR FURTHER INFORMATION CONTACT: Linda Skinner, Outdoor Recreation Planner; see address above; telephone (719) 269–8732. Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 800–877–8339 to contact Linda Skinner 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:

I. Public Comment Procedures

You may mail, hand-deliver, or email comments to Linda Skinner at the addresses above. Written comments on the proposed supplementary rules should be specific, confined to issues pertinent to the proposed supplementary rules, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the rules that the comment is addressing. The BLM will consider comments received before the end of the comment period (see **DATES** section), including those that are postmarked or electronically dated before the deadline and delivered to the addresses listed above. Comments, including names, street addresses, and other contact information of respondents, will be available for public review at the BLM Royal Gorge Field Office (see address above). 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.

II. Background

Guffey Gorge is an 80-acre tract of public land in Park County, Colorado. It is surrounded by private land with Park County Road 102 providing legal public access. Until ten years ago, recreational use of this area was light, and the area was used primarily by local residents for picnicking, hiking, and swimming. Recreational use of the area has increased significantly over the past five years, resulting in resource damage, user conflicts, and safety hazards for visitors and surrounding private landowners. In 2013, the BLM began the public input process for developing a management plan for the 80-acre parcel to manage the increasing visitor use and associated issues. This process included presentations and site tours with the Front Range Resource Advisory Council (RAC) and collaboration with stakeholders and concerned citizens. On August 11, 2014, the BLM initiated a 30-day public scoping period. Based on feedback received during this process, the BLM developed a proposed action and released a preliminary EA for a 30-day public review on November 20, 2014. The BLM incorporated comments

into the Final EA and corresponding Decision Record signed on June 29, 2015.

III. Discussion of the Proposed Supplementary Rules

These proposed supplementary rules would implement certain decisions from the Guffey Gorge Management Plan, which was approved on June 29, 2015, on lands administered by the Royal Gorge Field Office. The planning area consists of approximately 80 acres of public lands within Park County, Colorado, described below:

Park County, Colorado, Sixth Principal Meridian

T. 15 S., R. 71 W.
Sec. 4: SE¼SE¼
Sec. 9: NE¼NE¼
Containing 80 acres, more or less.

These proposed supplementary rules are needed to address significant public safety concerns and resource protection issues resulting from increased and unsafe public use on public lands known as Guffey Gorge. The authority for these proposed supplementary rules is set forth at section 303 of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1740, and 43 CFR 8365.1–6. This notice, with a detailed map, will be posted at the Royal Gorge Field Office.

Proposed supplementary rule number one would prohibit possession and consumption of alcoholic beverages. As visitation at Guffey Gorge has increased, alcohol and drug use has also increased, leading to public health and safety concerns. The proposed supplementary rule would help reduce disruptive behavior associated with alcohol use, improve public safety, and reduce litter in the area.

Proposed supplementary rule number two would prohibit visitors from parking a motor vehicle outside of designated parking areas. Visitor parking is limited at Guffey Gorge and frequently overflows onto the shoulder of Park County Road 102. Park County Road 102 is a narrow, two lane road with limited visibility near the Guffey Gorge trailhead. Restricting parking to designated parking areas only is essential for public health and safety.

Proposed supplementary rule number three would require animals brought into the area to be on a leash and under the control of a person, or otherwise physically restricted. This rule would help reduce problems associated with unrestrained dogs observed by staff in recent years. Currently, BLM regulations only require dogs to be restrained in developed recreation sites. Guffey Gorge is not a developed site, so existing BLM regulations do not apply. The proposed supplementary rule would reduce conflicts between visitors; reduce conflicts between domestic animals and wildlife; and would help control domestic animal waste. Proposed supplementary rule number four would prohibit the operation of any device producing amplified sound, such as stereos, speakers, and public address systems. This proposed supplementary rule would help restore opportunities for quiet recreational activities recognized as one of Guffey Gorge's attributes.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These proposed supplementary rules are not significant regulatory actions and are not subject to review by the Office of Management and Budget under Executive Order 12866. These proposed supplementary rules would not have an annual effect of $100 million or more on the economy. They would not adversely affect in a material way the economy; productivity; competition; jobs; environment; public health or safety; or State, local, or tribal governments, or communities. These proposed supplementary rules would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The proposed supplementary rules would not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor would they raise novel legal or policy issues. These proposed supplementary rules would merely establish rules of conduct for public use of a limited area of public lands.

Clarity of the Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make these proposed supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed supplementary rules clearly stated?

(2) Do the proposed supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the proposed supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

(4) Would the proposed supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the proposed supplementary rules in the **SUPPLMENTARY INFORMATION** section of this preamble helpful in understanding the proposed supplementary rules? How could this description be more helpful in making the proposed supplementary rules easier to understand?

Please send any comments you may have on the clarity of the proposed supplementary rules to one of the addresses specified in the **ADDRESSES** section.

National Environmental Policy Act

During the National Environmental Policy Act (NEPA) review for the Guffey Gorge Management Plan, the BLM fully analyzed the substance of these supplementary rules in EA, DOI–BLM–CO–200–2013–040. The BLM signed the Decision Record for the EA on June 29, 2015, and found that the proposed supplementary rules implementing the plan decisions would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of NEPA, 42 U.S.C. 4332(2)(C). The proposed supplementary rules would merely establish rules of conduct for public use of a limited area of public lands in order to protect natural resources and public health and safety. Although some activities would be prohibited in the area, the area would still be open to other recreation uses. A detailed statement under NEPA is not required. The BLM has placed the EA and Finding of No Significant Impact on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These proposed supplementary rules would have no effect on business entities of any size. They would merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources and the environment and human health and safety. Therefore, the BLM has determined under the RFA that these supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These supplementary rules are not a ''major rule'' as defined at 5 U.S.C. 804(2). These supplementary rules would merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources and the environment and human health and safety. These supplementary rules would not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local agencies; or geographic regions; or

(3) Have significant adverse effects on competition, employment, investment, productivity, or innovation; or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

These proposed supplementary rules would not impose an unfunded mandate on the private sector; or State, local, or tribal governments of more than $100 million per year; nor would these proposed supplementary rules have a significant or unique effect on State, local, or tribal governments or the private sector. The proposed supplementary rules would merely establish rules of conduct for public use of a limited selection of public lands. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

These proposed supplementary rules do not constitute a Government action capable of interfering with constitutionally protected property rights. The proposed supplementary rules would not address property rights in any form, and would not cause the impairment of constitutionally protected property rights. Therefore, the BLM has determined that these proposed supplementary rules would not cause a ''taking'' of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The proposed supplementary rules would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the BLM has determined that the proposed supplementary rules would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM Colorado State Director has determined that these proposed supplementary rules would not unduly burden the judicial system and that they meet the requirements of Sections 3(a) and 3(b) (2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that these proposed supplementary rules do not include policies that have tribal implications, and would have no bearing on trust lands or on lands for which title is held in fee status by Indian Tribes or U.S. Government-owned lands managed by the Bureau of Indian Affairs.

Information Quality Act

In developing these proposed supplementary rules, the BLM did not conduct or use a study, experiment or survey requiring peer review under the Information Quality Act (Section 515 of Pub. L. 106–554).

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These proposed supplementary rules do not comprise a significant energy action. These proposed supplementary rules would not have an adverse effect on energy supply, production, or consumption and have no connection with energy policy.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that the proposed supplementary rules would not impede facilitating cooperative conservation; would take appropriate account of and consider the interests of persons with ownership or other legally recognized interests in land or other natural resources; would properly accommodate local participation in the Federal decision-making process; and would provide that the programs, projects and activities are consistent with protecting public health and safety.

Paperwork Reduction Act

These proposed supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

V. Proposed Supplementary Rules

Author

The principal author of these final supplementary rules is Linda Skinner, Outdoor Recreation Planner, BLM, Royal Gorge Field Office.

For the reasons stated in the preamble, and under the authorities for Supplementary Rules found at 43 U.S.C. 1740 and 43 CFR 8365.1–6, the BLM Colorado State Director proposes supplementary rules for approximately 80 acres of public lands in Guffey Gorge, to read as follows:

PROPOSED SUPPLEMENTARY RULES FOR GUFFEY GORGE

Prohibited Acts

Unless otherwise authorized, the following acts are prohibited on all public lands, roads, trails, and waterways administered by the BLM within the Guffey Gorge Management Area:

(1) Possession or consumption of alcoholic beverages;

(2) Parking a motor vehicle outside of designated parking areas;

(3) Bringing an animal into the area unless the animal is on a leash not longer than six feet and secured to a fixed object or under control of a person, or is otherwise physically restricted at all times; and

(4) Operating any device producing amplified sound such as a stereo, speaker, public address system, or other similar device.

Exemptions

The following persons are exempt from these supplementary rules: Any Federal, State, local and/or military persons acting within the scope of their duties; or members of any organized rescue or fire-fighting force in performance of an official duty; or individuals expressly authorized by the BLM.

Enforcement

Any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8560.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Colorado law.

Ruth Welch,

BLM Colorado State Director.

[FR Doc. 2016–12939 Filed 5–31–16; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[16X L1109AF LLUT980300–L12200000.XZ0000–24–1A]

Utah Resource Advisory Council Subcommittee Meetings/Conference Calls

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meetings/conference calls.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the Bureau of Land Management's (BLM) Utah Resource Advisory Council (RAC) subcommittees will host meetings/conference calls.

DATES: The BLM-Utah RAC Planning 2.0 Proposed Rule subcommittee will host a meeting/conference call on Monday, June 13, 2016, from 9 a.m. to 11 a.m., Mountain Daylight Time.

The BLM-Utah RAC Three Creeks Grazing Allotment Environmental Assessment (EA) subcommittee will host a meeting/conference call on Monday, June 13, 2016, from 1 p.m. to 3 p.m., Mountain Daylight Time.

The BLM-Utah RAC Eastern Lake Mountains Target Shooting Plan Amendment subcommittee will host a meeting/field visit on Tuesday, June 21, 2016, from 9 a.m. to 5 p.m., Mountain Daylight Time.

ADDRESSES: Those wishing to attend the Planning 2.0 Proposed Rule subcommittee conference call or the Three Creeks Grazing Allotment Environmental Assessment (EA) subcommittee conference call in person must meet at the BLM-Utah State Office, Dixie Conference Room, 440 West 200 South, Salt Lake City, Utah 84101 on Monday June 13, 2016.

If you wish to attend the Eastern Lake Mountains Target Shooting Plan Amendment meeting/field visit, meet at the east end of the Saratoga Springs Walmart parking lot, 136 W. State Road 73, Saratoga Springs, Utah, on Tuesday, June 21 at 9 a.m.

FOR FURTHER INFORMATION CONTACT: If you wish to listen to the Planning 2.0 Proposed Rule or Three Creeks Grazing Allotment EA teleconferences, orally present material during the teleconferences, or submit written material to be considered during the teleconferences, please notify Lola Bird, Public Affairs Specialist, Bureau of Land Management, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101; phone (801) 539–4033; or, *lbird@blm.gov* no later than Wednesday, June 8, 2016.

SUPPLEMENTARY INFORMATION: The BLM-Utah RAC Planning 2.0 Proposed Rule subcommittee will develop feedback on the BLM's proposed planning rule. A half-hour public comment period will take place from 10:30 to 11 a.m., Mountain Daylight Time.

The BLM-Utah RAC Three Creeks Grazing Allotment Environmental Assessment (EA) subcommittee will develop feedback on the Three Creeks Grazing Allotment EA proposed alternatives. A half-hour public comment period will take place from 2:30 to 3 p.m., Mountain Daylight Time.

The BLM-Utah RAC Eastern Lake Mountains Target Shooting Plan Amendment subcommittee will develop feedback on the Eastern Lake Mountains Target Shooting Plan Amendment proposed alternatives. A half-hour public comment period will take place from 12 to 12:30 p.m., Mountain Daylight Time, during the field visit. For those attending the field visit, a high-clearance vehicle with good tires is highly recommended. Participants should bring food, water, sunscreen, sturdy footwear, a fluorescent safety vest, and a hat.

All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating individuals.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to leave a message or question for the above individual. The FIRS is available 24 hours a day, seven days a week. Replies are provided during normal business hours.

Authority: 43 CFR 1784.4–1.

Jenna Whitlock,

Acting State Director.

[FR Doc. 2016–12862 Filed 5–31–16; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[16X LLAK980600.L1820000.XX0000 .LXSIARAC0000]

Notice of Public Meeting, BLM Alaska Resource Advisory Council

AGENCY: Bureau of Land Management, Alaska State Office, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 as amended (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the Bureau of Land Management (BLM) Alaska Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held June 28–30, 2016, at the Arctic Interagency Visitor Center, Dalton Highway, Coldfoot, Alaska 99701. The RAC members will gather at the BLM Fairbanks District Office on June 28 and travel to Coldfoot via a chartered bus. The meeting on June 29 and 30 starts at 8:30 a.m. The council will accept comments from the public on June 29 from 9:30 to 10:30 a.m.

FOR FURTHER INFORMATION CONTACT: June Lowery, RAC Coordinator, BLM Alaska State Office, 222 W. 7th Avenue #13, Anchorage, AK 99513; *jlowery@blm.gov;* 907–271–3130. 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 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Alaska. At this meeting, the council will discuss the Central Yukon Resource Management Plan during visits to several points of interest in the area to observe mining and mine reclamation, landscape connectivity, recreation, invasive species, and other issues considered during the land-use planning process. An agenda will be posted to the BLM Alaska RAC Web site (*www.blm.gov/ak/rac*) by June 1, 2016.

All meetings are open to the public. During the public comment period, a teleconference line will be set up for individuals who cannot attend the meeting to provide comments. Individuals who wish to provide a public comment by phone must RSVP to the contact listed in this Notice to obtain the call in number. Depending upon the number of people wishing to comment, time for individual oral comments may be limited. Please be prepared to submit written comments. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you 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. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM RAC Coordinator listed above.

Dated: May 24, 2016.

Bud C. Cribley,

State Director.

[FR Doc. 2016–12865 Filed 5–31–16; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVL05000.L17110000. DO0000. LXSSF2300000 MO# 4500090967]

Notice of Intent To Prepare a Resource Management Plan for Basin and Range National Monument, Nevada, and an Associated Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Ely District Office, Ely, Nevada intends to prepare a Resource Management Plan (RMP) with an associated Environmental Impact Statement (EIS) for the Basin and Range National Monument (BARNM) and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues. The new, stand-alone RMP will tier to and may incorporate by reference portions of the existing Ely District Record of Decision and Approved Resource Management Plan (2008), as amended by the Greater Sage-Grouse Approved Resource Management Plan Amendment signed in 2015.

DATES: This notice initiates the public scoping process for the RMP with associated EIS. Comments on issues may be submitted in writing until July 1, 2016. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers and the BLM Web site at: *http://www.blm.gov/nv/st/en/prog/nlcs_new/Basin_and_Range_National_Monument.htm.*

In order to be included in the Draft EIS, all comments must be received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. Additional opportunities for public participation will be provided for upon publication of the Draft EIS.

ADDRESSES: You may submit comments on issues and planning criteria related to Basin and Range National Monument Resource Management Plan and associated Environmental Impact Statement by any of the following methods:

- *Email: blm_nv_basin_range@blm.gov*
- *Fax:* 775–726–8111
- *Mail:* BLM Basin and Range National Monument, PO Box 237, Caliente, NV 89008

Documents pertinent to this proposal may be examined at the Basin and Range National Monument Office, located at BLM Caliente Office.

FOR FURTHER INFORMATION CONTACT: Alicia Styles, Monument Manger; telephone: 775–726–8100; address: P.O. Box 237, Caliente, NV 89008; email: *blm_nv_basin_range@blm.gov.* Contact Ms. Styles to add your name to our mailing list. 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: This document provides notice that the BLM District Office, Ely, Nevada, intends to prepare an RMP with an associated EIS for the Basin and Range National Monument, announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The planning area is located in Lincoln and Nye Counties, Nevada and encompasses approximately 704,000 acres of public land.

As the Proclamation indicates, the President established the Monument to ''preserve its cultural, prehistoric, and historic legacy and maintain its diverse array of natural and scientific resources, ensuring that the prehistoric, historic and scientific values of this area remain for the benefit of all Americans.'' The Proclamation further states: ''For purposes of the care and management of the objects identified above, the Secretary, through BLM, shall, within 3 years of the date of this proclamation prepare and maintain a management plan for the monument and shall provide for maximum public involvement in the development of that plan including, but not limited to, consultation with State, tribal, and local governments.''

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. A number of preliminary issues for the planning area have been identified by BLM personnel; Federal, State, and local agencies; and other stakeholders. The issues include: Cultural and historic resources; tribal use; vegetation resources; wild horse and burros; social and economic values; climate change; special areas (Worthington Mountains Wilderness, Shooting Gallery Area of Environmental Concern (ACEC), and Mt. Irish ACEC); visual resources; lands and realty; outdoor recreation; livestock grazing; minerals; paleontological resources; research; wildland fire; and military uses. Preliminary planning criteria will conform to 43 CFR 1610.4–2.

You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments by the close of the 30-day scoping period or within 15 days after the last public meeting, whichever is later. 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. The BLM will evaluate identified issues to be addressed in the plan, and will place them into one of three categories:

1. Issues to be resolved in the plan;
2. Issues to be resolved through policy or administrative action; or
3. Issues beyond the scope of this plan.

The BLM will provide an explanation in the Draft RMP/Draft EIS as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will utilize and coordinate NEPA scoping process to help fulfil the

public involvement process under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470(f)) pursuant to 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

The BLM will use an interdisciplinary approach to develop the plan in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: archaeology, paleontology, outdoor recreation, wildlife and fisheries, rangeland management, lands and realty, hydrology, soils, minerals and geology, sociology and economics, wildland fire, and public affairs.

Authority: 40 CFR 1501.7, 43 CFR 1610.2.

John F. Ruhs,

State Director, Nevada.

[FR Doc. 2016–12938 Filed 5–31–16; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21131; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Canyon de Chelly National Monument, Chinle, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Canyon de Chelly National Monument has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Canyon de Chelly National Monument. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Canyon de Chelly National Monument at the address in this notice by July 1, 2016.

ADDRESSES: Lyn Carranza, Superintendent, Canyon de Chelly National Monument, P.O. Box 588, Chinle, AZ 86503, telephone (928) 674–5500 ext. 224, email *lyn_carranza@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the U.S. Department of the Interior, National Park Service, Canyon de Chelly National Monument, Chinle, AZ. The human remains and associated funerary objects were removed from sites in Apache County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Canyon de Chelly National Monument.

Consultation

A detailed assessment of the human remains was made by Canyon de Chelly National Monument professional staff in consultation with representatives of the Apache Tribe of Oklahoma; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Ute Tribe (previously listed as the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah); White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Consulted Tribes'').

The following tribes were invited to consult but did not participate in the face-to-face consultation meeting: Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Zia, New Mexico (hereafter referred to as ''The Invited Tribes'').

History and Description of the Remains

Canyon de Chelly National Monument was established in 1931 on lands that were then, and continue to be, held in trust by the United States for the Navajo Nation, Arizona, New Mexico & Utah. Removal of human remains and associated funerary objects from lands within the monument boundary after October 31, 1979, was done with the prior consent of the Navajo Nation, Arizona, New Mexico & Utah, as required by the Archaeological Resources Protection Act.

At an unknown date, human remains representing, at minimum, one individual were removed from Big Cave in Apache County, AZ, by David DeHarport working on behalf of the Museum of Northern Arizona. No known individuals were identified. No associated funerary objects are present.

Between 1924 and 1970, human remains representing, at minimum, three individuals were removed from Big Cave in Apache County, AZ, by unknown persons. No known individuals were identified. No associated funerary objects are present.

Before 1960, human remains representing, at minimum, one individual were removed from Big Cave in Apache County, AZ. No known individuals were identified. The one associated funerary object is a projectile point with shaft.

Big Cave is a large alcove with an expansive overhang that protects habitation, ceremonial, and storage facilities representing multiple occupations. Overlain by later Puebloan and historic Navajo components, the Basketmaker component represents the earliest occupation. Later Puebloan components include small villages with multistory structures, small courtyards, and public architecture. Rock art from early Basketmaker through historic Navajo is located across the back of the alcove.

At an unknown date, human remains representing, at minimum, three individuals were removed from Battle Cove in Apache County, AZ, by David DeHarport from Harvard University. No known individuals were identified. No associated funerary objects are present.

Prior to 1966, human remains representing, at minimum, one individual were removed from Battle Cove in Apache County, AZ. No known individuals were identified. The 14 associated funerary objects are 12 cordage pieces and 2 textile fragments.

From 1970 to 1973, human remains representing, at minimum, four individuals were removed from Battle Cove in Apache County, AZ, during an authorized National Park Service excavation. No known individuals were identified. No associated funerary objects are present.

Ceramics, rock art elements, burials, and architecture indicate that Battle Cove was occupied during Basketmaker III (A.D. 400–750) and Pueblo II–Pueblo III (A.D. 900–1300). Historic site components dating from the 18th through 20th centuries include rock art imagery and cultural refuse.

In 1903, human remains representing, at minimum, three individuals were removed from unknown cliff dwellings, in Apache County, AZ, by Charles and Samuel Day. In 1906, the Days sold a large collection of archeological materials to Stewart Culin of the Brooklyn Museum. Later de-accessioned by the Brooklyn Museum, the human remains were rescued by Dick Gould of the American Museum of Natural History and then given to William Lipe of the State University of New York-Binghampton. Finally, the human remains were gifted to Canyon de Chelly National Monument. No known individuals were identified. No associated funerary objects are present.

Between 1938 and 1973, human remains representing, at minimum, one individual were removed from Massacre Cave in Apache County, AZ, under unknown circumstances. No known individuals were identified. No associated funerary objects are present.

Architecture, ceramics, and rock art imagery suggest that Massacre Cave was utilized at various times from Basketmaker III to Pueblo I (A.D. 400–900) and again during historic times.

In 1946, human remains representing, at minimum, one individual were removed from Standing Cow in Apache County, AZ, by the National Park Service. No known individuals were identified. The 12 associated funerary objects are 1 blanket and 11 basketry fragments.

In 1951, human remains representing, at minimum, one individual were removed from Standing Cow in Apache County, AZ, by David DeHarport of Harvard University. No known individuals were identified. No associated funerary objects are present.

In 1955, human remains representing, at minimum, three individuals were removed from Standing Cow in Apache County, AZ, by the National Park Service. No known individuals were identified. The 78 associated funerary objects are 1 burden basket, 1 jar, 1 basketry bowl, 12 cordage fragments, 41 pieces of unworked plant material, 1 scraper, 1 soil sample, 3 corncobs, 1 unworked piece of wood, 1 flake, 13 unworked reed fragments, and 2 sherds.

Standing Cow dates to as early as Basketmaker III (A.D. 400–750) and to as late as Pueblo III (A.D. 1100–1300) prehistorically. Historic site components dating from the 19th through 20th centuries include rock art imagery, architecture, and refuse.

In 1947, human remains representing, at minimum, one individual were removed from Tse-Ta'a in Apache County, AZ, by David DeHarport of Harvard University. No known individuals were identified. No associated funerary objects are present.

From 1949 to 1950, human remains representing, at minimum, 22 individuals were removed from Tse-Ta'a in Apache County, AZ, during emergency excavations sponsored by the National Park Service. No known individuals were identified. The 224 associated funerary objects are 3 jars, 4 pitchers, 3 ladles, 4 bowls, 2 flakes, 1 awl, and 207 sherds.

In 1987, human remains representing, at minimum, one individual were removed from Tse-Ta'a in Apache County, AZ, by the National Park Service. No known individuals were identified. No associated funerary objects are present.

Ceramics, textiles, and architecture indicate that Tse-Ta'a contains Pueblo I (A.D. 750–900), late Pueblo II to early Pueblo III (A.D. 1000–1150), and Pueblo IV (A.D. 1300–1600) components.

From 1948 to 1951, human remains representing, at minimum, one individual were removed from an unnamed site (CC–84) in Apache County, AZ, by David DeHarport from Harvard University. No known individuals were identified. No associated funerary objects are present.

The site's petroglyphs and ceramic assemblage date the occupation of CC–84 to Pueblo II (A.D. 900–1100).

From 1948 to 1951, human remains representing, at minimum, one individual were removed from an unnamed site (CC–268) in Apache County, AZ, by David DeHarport from Harvard University. No known individuals were identified. No associated funerary objects are present.

Prior to 1960, human remains representing, at minimum, one individual were removed from an unnamed site (CC–268) in Apache County, AZ, under unknown circumstances. No known individuals were identified. No associated funerary objects are present.

The site's ceramic assemblage dates the occupation of CC–268 to Pueblo I (A.D. 750–900) and Pueblo III (A.D. 1100–1300).

In 1954, human remains representing, at minimum, one individual were removed from Antelope House in Apache County, AZ, during excavation for a post hole. No known individuals were identified. The 104 associated funerary objects are 1 slab, 4 bound sticks, 81 sticks, 1 corncob, 6 cordage fragments, and 11 basketry fragments. Most of the objects appear to have been part of a cradleboard.

From 1970 to 1973, human remains representing, at minimum, 188 individuals were removed from Antelope House in Apache County, AZ, during an authorized National Park Service excavation. No known individuals were identified. The 811 associated funerary objects are 6 bowls, 5 pieces of worked wood, 24 sherds, 248 pieces of cordage, 1 chain, 1 sandal, 10 bundles, 4 cactus plants, 2 hair bundles, 70 beads, 5 ladles, 2 plant artifacts, 4 fragments of basketry, 1 projectile point, 2 sticks, 1 wood artifact, 2 fragments of worked hair, 2 basketry bowls, 3 mats, 1 matting, 3 pieces of unworked wood, 1 miniature jar, 4 blankets, 1 whistle, 1 figurine, 3 pitchers, 3 jars, 1 flake, 19 knots, 6 ties, 1 burden basket, 1 fragment of leather/hide, 1 brush, 16

pieces of plant material, 2 tumplines, 1 basket, 1 pot rest, 2 digging sticks, 1 miniature vessel, 1 cordage artifact, 1 necklace, 1 bracelet, 1 cylinder, 1 cradleboard, 1 cradleboard hood, 77 pieces of architectural wood, 4 grass plants, 3 textiles, 1 cup, and 258 gourd/squash seeds.

Architecture, ceramics, and dendrochronology indicate that Antelope House was occupied from Basketmaker III (A.D. 400–750) through Pueblo III (A.D. 1100–1300).

In 1957, human remains representing, at minimum, one individual were removed from an unnamed site (CC–55) in Apache County, AZ, by David DeHarport from Harvard University. No known individuals were identified. The one associated funerary object is a miniature vessel.

Slab-lined architecture and pictographs date CC–55 to Basketmaker II (A.D. 1–400). The vessel and burial are likely intrusive and representative of a later pueblo phase.

Between 1959 and 1972, human remains representing, at minimum, one individual were removed from White House in Apache County, AZ, by the Museum of Northern Arizona. No known individuals were identified. No associated funerary objects are present.

In 1962, human remains representing, at minimum, seven individuals were removed from Mummy Cave in Apache County, AZ, by the National Park Service. No known individuals were identified. The eight funerary objects are five textiles and three cordage fragments.

Prior to 1967, human remains representing, at minimum, one individual were removed from Mummy Cave in Apache County, AZ, under unknown circumstances. No known individuals were identified. No associated funerary objects are present.

In 1987, human remains representing, at minimum, seven individuals were removed from Mummy Cave in Apache County, AZ, by the National Park Service. No known individuals were identified. No associated funerary objects are present.

Architectural remnants, ceramics, rock art, and dendrochronology indicate Mummy Cave was occupied from Basketmaker II (A.D. 1–400) through Pueblo III (A.D. 1100–1300).

Prior to 1964, human remains representing, at minimum, one individual were removed from an unknown site in Apache County, AZ, under unknown circumstances. No known individuals were identified. The one associated funerary object is a fragment of feather wrapped cordage.

In 1969, human remains representing, at minimum, 11 individuals were removed from an unnamed site in Apache County, AZ, during salvage excavations by the National Park Service conducted in advance of a proposed relocation of the Spider Rock overlook road. No known individuals were identified. The 12 associated funerary objects are 1 jar, 1 ladle, 2 pitchers, and 8 ceramic sherds.

Architecture and ceramics indicate that the unnamed site was occupied during Pueblo II–Pueblo III (A.D. 900–1300).

In 1971, human remains representing, at minimum, six individuals were removed from Ute Raid Pueblo in Apache County, AZ, by the National Park Service. No known individuals were identified. The 24 associated funerary objects are 23 sherds and 1 clothing fragment.

Architecture, rock art imagery, and ceramics date the occupation and use of Ute Raid Pueblo to Pueblo I (A.D. 750–900) through Pueblo III (A.D. 1100–1300). An historic component consists primarily of a charcoal drawing panel that depicts a Ute raid.

In 1984, human remains representing, at minimum, one individual were removed from Sleeping Duck in Apache County, AZ, by the National Park Service. No known individuals were identified. No associated funerary objects are present.

Architecture, ceramics, and rock art imagery date Sleeping Duck to Basketmaker III to Pueblo II (A.D. 400–1100). A 19th century historic component is present as well.

In 1987, human remains representing, at minimum, one individual were removed from Dead Horse in Apache County, AZ, by the National Park Service. No known individuals were identified. No associated funerary objects are present.

Architecture and ceramics date the primary occupation at Dead Horse to late Pueblo I to early Pueblo II (A.D. 850–950).

In 1987, human remains representing, at minimum, four individuals were removed from Black Shirt Cave in Apache County, AZ, by the National Park Service. No known individuals were identified. The one associated funerary object is a soil sample.

Architectural remnants, rock art, and burial features indicate that Black Shirt Cave was inhabited during Basketmaker II–III (A.D. 1–750) and used as a mortuary site historically (post 1863). The remains were recovered from surface material rather than historic rock cairns so they likely date to Basketmaker II–III.

The individuals and associated funerary objects described above represent an earlier identifiable group that archeologists generally refer to as the Ancestral Puebloan or Anasazi. This classification is based in observed material culture and geographic context. More specifically, the individuals were recognized as Ancestral Puebloan or Anasazi through their funerary clothing and offerings, mortuary context and setting, and/or overall site context. Shared group identity can be reasonably traced between the identifiable earlier group and several present-day tribes.

Evidence demonstrating continuity between the Ancestral Puebloan people of Canyon de Chelly and the Hopi Tribe of Arizona, includes similarities in material culture and mortuary practices. Oral tradition, historic accounts, geographical proximity, anthropological data, and expert opinion also support this shared group identity. Hopi oral tradition, historic accounts, and ethnographic studies reference Hopi clan-specific migrations through Canyon de Chelly.

Evidence demonstrating continuity between the Ancestral Puebloan people of Canyon de Chelly and the Navajo Nation of Arizona, New Mexico, & Utah includes geographical proximity, kinship, anthropological data, oral tradition, historical accounts, and expert opinion. Ethnographic studies and oral tradition describe the Navajo ethnogenesis as an accretion and assimilation of various ethnic groups including Anasazi and Puebloan peoples from Canyon de Chelly.

Evidence demonstrating continuity between the Ancestral Puebloan people of Canyon de Chelly and the Zuni Tribe of the Zuni Reservation, New Mexico, includes similarities in material culture and mortuary practices. Oral tradition, historic accounts, geographical proximity, and anthropological data also support this shared group identity.

Determinations Made by Canyon de Chelly National Monument

Officials of Canyon de Chelly National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 279 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 1,291 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico, & Utah; and Zuni Tribe of the Zuni Reservation, New Mexico.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Lyn Carranza, Superintendent, Canyon de Chelly National Monument, P.O. Box 588, Chinle, AZ 86503, telephone (928) 674–5500 ext. 224, email *lyn_carranza@nps.gov,* by July 1, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico, & Utah; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed.

Canyon de Chelly National Monument is responsible for notifying The Consulted Tribes and The Invited Tribes that this notice has been published.

Dated: May 20, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–12748 Filed 5–31–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21048; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Wupatki National Monument, Flagstaff, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Wupatki National Monument, has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Wupatki National Monument. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Wupatki National Monument at the address in this notice by July 1, 2016.

ADDRESSES: Kayci Cook Collins, Superintendent, Wupatki National Monument, 6400 N. Hwy 89, Flagstaff, AZ 86004, telephone: (928) 526–1157 ext. 227, email *kayci_cook@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the U.S. Department of the Interior, National Park Service, Wupatki National Monument, Flagstaff, AZ and in the physical custody of the Museum of Northern Arizona, Flagstaff, AZ. The human remains were removed from within the boundaries of Wupatki National Monument, Coconino County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the Superintendent, Wupatki National Monument.

Consultation

A detailed assessment of the human remains was made by Wupatki National Monument professional staff in consultation with representatives of the Fort McDowell Yavapai Nation, Arizona; Havasupai Tribe of the Havasupai Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Jicarilla Apache Nation, New Mexico; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; San Juan Southern Paiute Tribe of Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona); Ysleta Del Sur Pueblo (previously listed as the Ysleta del Sur Pueblo of Texas); and Zuni Tribe of the Zuni Reservation, New Mexico. The Pueblo of San Felipe, New Mexico was invited to consult but did not participate. Hereafter, all tribes listed above are referred to as ''The Consulted and Invited Tribes.''

History and Description of the Remains

In 1940, human remains representing, at minimum, one individual were removed from site NA557 in Coconino County, AZ during an authorized excavation by the National Park Service and Museum of Northern Arizona. No known individuals were identified. No associated funerary objects are present.

Determinations Made By Wupatki National Monument

Officials of Wupatki National Monument have determined that:

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on osteological analysis.

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.

• According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Fort McDowell Yavapai Nation, Arizona; Havasupai Tribe of the Havasupai Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation,

Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Navajo Nation, Arizona, New Mexico & Utah; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; San Juan Southern Paiute Tribe of Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; and Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona).

• Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Havasupai Tribe of the Havasupai Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Jicarilla Apache Nation, New Mexico; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; San Juan Southern Paiute Tribe of Arizona; Tonto Apache Tribe of Arizona; and White Mountain Apache Tribe of the Fort Apache Reservation, Arizona.

• Other credible lines of evidence, including relevant and authoritative governmental determinations and information gathered during government-to-government consultation from subject matter experts, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Zuni Tribe of the Zuni Reservation, New Mexico.

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Fort McDowell Yavapai Nation, Arizona; Havasupai Tribe of the Havasupai Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Jicarilla Apache Nation, New Mexico; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; San Juan Southern Paiute Tribe of Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona); and Zuni Tribe of the Zuni Reservation, New Mexico.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Kayci Cook Collins, Superintendent, Wupatki National Monument, 6400 N. Hwy 89, Flagstaff, AZ 86004, telephone: (928) 526–1157 ext. 227, email *kayci_cook@nps.gov,* by July 1, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Fort McDowell Yavapai Nation, Arizona; Havasupai Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Jicarilla Apache Nation, New Mexico; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; San Juan Southern Paiute Tribe of Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona); and Zuni Tribe of the Zuni Reservation, New Mexico may proceed.

Wupatki National Monument is responsible for notifying The Consulted and Invited Tribes that this notice has been published.

Dated: May 6, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–12747 Filed 5–31–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21134; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Canyon de Chelly National Monument, Chinle, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Canyon de Chelly National Monument has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Canyon de Chelly National Monument. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Canyon de Chelly National Monument at the address in this notice by July 1, 2016.

ADDRESSES: Lyn Carranza, Superintendent, Canyon de Chelly National Monument, P.O. Box 588, Chinle, AZ 86503, telephone (928) 674–5500 ext. 224, email *lyn_carranza@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the U.S. Department of the Interior, National Park Service, Canyon de Chelly National Monument, Chinle, AZ. The human remains were removed from sites in Apache County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the Superintendent, Canyon de Chelly National Monument.

Consultation

Canyon de Chelly National Monument professional staff in consultation with representatives of the Apache Tribe of Oklahoma; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Mescalero Apache

Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Ute Tribe (previously listed as the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah); White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Consulted Tribes'').

The following tribes were invited to consult but did not participate in the face-to-face consultation meeting: Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Zia, New Mexico (hereafter referred to as ''The Invited Tribes'').

History and Description of the Remains

Canyon de Chelly National Monument was established in 1931 on lands that were then, and continue to be, held in trust by the United States for the Navajo Nation, Arizona, New Mexico & Utah.

Between 1938 and 1973, human remains representing, at minimum, two individuals were removed from an unknown location within the boundaries of Canyon de Chelly National Monument in Apache County, AZ. No known individuals were identified. No associated funerary objects are present.

In 1950, human remains representing, at minimum, one individual were removed from an unknown site in Deer Trail Canyon within the boundaries of Canyon de Chelly National Monument in Apache County, AZ. No known individuals were identified. No associated funerary objects are present.

Prior to 1956, human remains representing, at minimum, two individuals were removed from unknown locations ''near NPS 7'' within the boundaries of Canyon de Chelly National Monument in Apache County, AZ. No known individuals were identified. No associated funerary objects are present.

Prior to 1960, human remains representing, at minimum, four individuals were removed from unknown locations, three of whom were from within monument boundaries and one likely from within monument boundaries, in Apache County, AZ. No known individuals were identified. No associated funerary objects are present.

Prior to 1960, human remains representing, at minimum, two individuals were removed from an unknown location along the south rim of Canyon de Chelly within the boundaries of Canyon de Chelly National Monument in Apache County, AZ. No known individuals were identified. No associated funerary objects are present.

Prior to 1960, human remains representing, at minimum, one individual were removed from a ''high shallow cave'' site in Canyon del Muerto within the boundaries of Canyon de Chelly National Monument in Apache County, AZ. No known individuals were identified. No associated funerary objects are present.

Prior to 1966, human remains representing, at minimum, two individuals were removed from a site outside monument boundaries in Salinas Springs in Apache County, AZ. No known individuals were identified. No associated funerary objects are present.

Prior to 1967, human remains representing, at minimum, four individuals were removed from an unknown site within the boundaries of Canyon de Chelly National Monument in Apache County, AZ. No known individuals were identified. No associated funerary objects are present.

Prior to 1967, human remains representing, at minimum, two individuals were removed from an unknown location likely within the boundaries of Canyon de Chelly National Monument in Apache County, AZ. No known individuals were identified. No associated funerary objects are present.

Prior to 1969, human remains representing, at minimum, one individual were removed from an unknown location in Canyon del Muerto Wash within the boundaries of Canyon de Chelly National Monument in Apache County, AZ. No known individuals were identified. No associated funerary objects are present.

Determinations Made by Canyon de Chelly National Monument

Officials of Canyon de Chelly National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on osteological analysis and the known archeological context of Canyon de Chelly National Monument.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 21 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- Pursuant to 25 U.S.C. 3001(15), the land from which the Native American human remains were removed is the tribal land of the Navajo Nation, Arizona, New Mexico & Utah.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Navajo Nation, Arizona, New Mexico & Utah.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Lyn Carranza, Superintendent, Canyon de Chelly National Monument, P.O. Box 588, Chinle, AZ 86503, telephone (928) 674–5500 ext. 224, email *lyn_carranza@nps.gov,* by July 1, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Navajo Nation, Arizona, New Mexico & Utah may proceed.

Canyon de Chelly National Monument is responsible for notifying The Consulted Tribes and The Invited Tribes that this notice has been published.

Dated: May 20, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–12746 Filed 5–31–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21132; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Canyon de Chelly National Monument, Chinle, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Canyon de Chelly National Monument has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Canyon de Chelly National Monument. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Canyon de Chelly National Monument at the address in this notice by July 1, 2016.

ADDRESSES: Lyn Carranza, Superintendent, Canyon de Chelly National Monument, P.O. Box 588, Chinle, AZ 86503, telephone (928) 674–5500 ext. 224, email *lyn_carranza@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the U.S. Department of the Interior, National Park Service, Canyon de Chelly National Monument, Chinle, AZ. The human remains and associated funerary objects were removed from a site in Apache County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Canyon de Chelly National Monument.

Consultation

A detailed assessment of the human remains was made by Canyon de Chelly National Monument professional staff in consultation with representatives of the Apache Tribe of Oklahoma; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Ute Tribe (previously listed as the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah); White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Consulted Tribes'').

The following tribes were invited to consult but did not participate in the face-to-face consultation meeting: Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Zia, New Mexico (hereafter referred to as ''The Invited Tribes'').

History and Description of the Remains

Canyon de Chelly National Monument was established in 1931 on lands that were then, and continue to be, held in trust by the United States for the Navajo Nation, Arizona, New Mexico & Utah.

Between 1970 and 1973, human remains representing, at minimum, one individual were removed from Antelope House in Apache County, AZ, during a National Park Service sponsored excavation. No known individuals were identified. The 12 associated funerary objects are 1 bead, 1 set of unworked hair, 8 textiles, 1 dress, and 1 blanket. The funerary objects are consistent with historic Navajo burials.

Determinations Made by Canyon de Chelly National Monument

Officials of Canyon de Chelly National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 12 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Navajo Nation, Arizona, New Mexico & Utah.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Lyn Carranza, Superintendent, Canyon de Chelly National Monument, P.O. Box 588, Chinle, AZ 86503, telephone (928) 674–5500 ext. 224, email *lyn_carranza@nps.gov,* by July 1, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Navajo Nation, Arizona, New Mexico & Utah may proceed.

Canyon de Chelly National Monument is responsible for notifying The Consulted Tribes and The Invited Tribes that this notice has been published.

Dated: May 20, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–12749 Filed 5–31–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWRO–TUSK–21087; PPPWTUSK00, PPMPSPD1Z.YM0000]

Notice of June 16, 2016, Meeting of the Tule Springs Fossil Beds National Monument Advisory Council

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: This notice sets forth the date of the first meeting of the Tule Springs Fossil Beds National Monument Advisory Council.

DATES: The meeting of the Tule Springs Fossil Beds National Monument Advisory Council will be held on Thursday, June 16, 2016, at 6:00 p.m. (PACIFIC).

ADDRESSES: The first meeting of the Tule Springs Fossil Beds National Monument Advisory Council will take place on Thursday, June 16, 2016, at 6:00 p.m., in the Community Center of Sun City Aliante, 7394 Aliante Parkway, North Las Vegas, Nevada 89084, to discuss the following:

1. Introduction of Designated Federal Officer (DFO) and Council Members
2. Roles and Responsibilities of DFO and Council Members
3. Review of Legislation Relative to the Tule Springs Fossil Beds National Monument Advisory Council
4. State of the Park (Superintendent's Update)
5. Selection Process for the Chairperson
6. Setting of Future Meeting Dates
7. Public Input Activity
8. Adjournment

FOR FURTHER INFORMATION CONTACT: Further information concerning the meeting may be obtained from Jon Burpee, Superintendent and Designated Federal Officer, Tule Springs Fossil Beds National Monument, 601 Nevada Way, Boulder City, Nevada 89005, telephone at (702) 902–0431 or email *tusk_information@nps.gov.*

SUPPLEMENTARY INFORMATION: The Council was established pursuant to section 3092(a)(6) of Public Law 113–291 and in accordance with the provisions of the Federal Advisory Management Act (5 U.S.C. Appendix 1–16). The purpose of the Council is to advise the Secretary of the Interior, or her designee, with respect to the preparation and implementation of the management plan.

The meeting is open to the public. It is expected that 60 persons will be able to attend the meeting in addition to Council members. Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent prior to the meeting. Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2016–12801 Filed 5–31–16; 8:45 am]

BILLING CODE 4310–EE–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21133; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Canyon de Chelly National Monument, Chinle, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Canyon de Chelly National Monument has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has identified a lineal descendant of the human remains and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Canyon de Chelly National Monument. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Canyon de Chelly National Monument at the address in this notice by July 1, 2016.

ADDRESSES: Lyn Carranza, Superintendent, Canyon de Chelly National Monument, P.O. Box 588, Chinle, AZ 86503, telephone (928) 674–5500 ext. 224, email *lyn_carranza@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the U.S. Department of the Interior, National Park Service, Canyon de Chelly National Monument, Chinle, AZ. The human remains were removed from a site in Apache County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Canyon de Chelly National Monument.

Consultation

A detailed assessment of the human remains was made by Canyon de Chelly National Monument professional staff in consultation with representatives of the Apache Tribe of Oklahoma; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Ute Tribe (previously listed as the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah); White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Consulted Tribes'').

The following tribes were invited to consult but did not participate in the face-to-face consultation meeting: Kewa

Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Zia, New Mexico (hereafter referred to as ''The Invited Tribes'').

History and Description of the Remains

Canyon de Chelly National Monument was established in 1931 on lands that were then, and continue to be, held in trust by the United States for the Navajo Nation, Arizona, New Mexico & Utah.

In 1972, human remains representing, at minimum, one individual were removed from an unnamed site (NRM 020) just outside the boundaries of Canyon de Chelly National Monument in Apache County, AZ, by the Museum of Northern Arizona (MNA) during excavations in advance of road construction along a North Rim spur road. This individual has been identified as Ned Bia. No associated funerary objects are present.

The site is a historic Navajo habitation site that dates from the 1930s to shortly after World War II. Like other historic Navajo sites located in close proximity, this habitation site was abandoned after the death of an individual. The occupant of the site, Ned Bia, who was interviewed by the MNA archeologist in 1972, indicated that the tooth was his. Direct lineal descendant, David Bia, who is the son of Ned Bia, confirmed their relationship and the site location.

Determinations Made by Canyon de Chelly National Monument

Officials of Canyon de Chelly National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 43 CFR 10.6 (a) David Bia can trace his ancestry directly and without interruption to Ned Bia.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Navajo Nation, Arizona, New Mexico & Utah.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Lyn Carranza, Superintendent, Canyon de Chelly National Monument, P.O. Box 588, Chinle, AZ 86503, telephone (928) 674–5500 ext. 224, email *lyn_carranza@nps.gov,* by July 1, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to the lineal descendant David Bia or the Navajo Nation, Arizona, New Mexico & Utah may proceed.

Canyon de Chelly National Monument is responsible for notifying David Bia, The Consulted Tribes, and The Invited Tribes that this notice has been published.

Dated: May 20, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–12750 Filed 5–31–16; 8:45 am]

BILLING CODE 4312–50–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–663 (Fourth Review)]

Paper Clips From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on paper clips from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is July 1, 2016. Comments on the adequacy of responses may be filed with the Commission by August 15, 2016.

DATES: *Effective Date:* June 1, 2016.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.— On November 25, 1994, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of paper clips from China (59 FR 60606). Following five-year reviews by Commerce and the Commission, effective August 15, 2000, Commerce issued a continuation of the antidumping duty order on imports of paper clips from China (65 FR 49784). Following second five-year reviews by Commerce and the Commission, effective February 7, 2006, Commerce issued a continuation of the antidumping duty order on imports of paper clips from China (71 FR 6269). Following the third five-year reviews by Commerce and the Commission, effective July 26, 2011, Commerce issued a continuation of the antidumping duty order on imports of paper clips from China (76 FR 44575). The Commission is now conducting a fourth review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, Subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 16–5–357, expiration date June 30, 2017. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited first, second, and third five-year review determinations, the Commission defined the *Domestic Like Product* as certain wire paper clips, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited first, second, and third five-year review determinations, the Commission defined the *Domestic Industry* to consist of all domestic producers of paper clips.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding 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 the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 1, 2016. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is August 15, 2016. 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. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2010.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2015, except as noted (report quantity data in units and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2015 (report quantity data in units and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2015 (report quantity data in units and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2010, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: May 23, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–12434 Filed 5–31–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–562 and 731–TA–1329 (Preliminary)]

Ammonium Sulfate From China; Institution of Antidumping and Countervailing Duty; Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–562 and 731–TA–1329 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of ammonium sulfate from China, provided for in subheading 3102.21.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of China. Unless the Department of Commerce extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by July 11, 2016. The Commission's views must be transmitted to Commerce within five business days thereafter, or by July 18, 2016.

DATES: *Effective Date:* May 25, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187, *fred.ruggles@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on May 25, 2016, by Pasadena Commodities International, Nitrogen LLC (Pasadena, Texas).

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on Wednesday, June 15, 2016, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be emailed to *William.bishop@usitc.gov* and *Sharon.bellamy@usitc.gov* (DO NOT FILE ON EDIS) on or before June 13, 2016. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 20, 2016, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference. 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.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: May 25, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–12815 Filed 5–31–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–385 (Fourth Review)]

Granular Polytetrafluoroethylene Resin From Italy; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on granular polytetrafluoroethylene resin from Italy would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is July 1, 2016. Comments on the adequacy of responses may be filed with the Commission by August 15, 2016.

DATES: *Effective Date:* June 1, 2016.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On August 24, 1988, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of granular polytetrafluoroethylene resin from Japan (53 FR 32267). On August 30, 1988, Commerce issued an antidumping duty order on imports of granular polytetrafluoroethylene resin from Italy (53 FR 33163). Following first five-year reviews by Commerce and the Commission, effective January 3, 2000, Commerce issued a continuation of the antidumping duty orders on imports of granular polytetrafluoroethylene resin from Italy and Japan (65 FR 6147, February 8, 2000). Following second five-year reviews by Commerce and the Commission, effective December 22, 2005, Commerce issued a continuation of the antidumping duty orders on imports of granular polytetrafluoroethylene resin from Italy and Japan (70 FR 76026). On January 20, 2011, Commerce published a notice that it was revoking the antidumping duty order on granular polytetraflourethylene from Japan because the domestic industry did not participate in the third review of that order (76 FR 3614). Following the third five-year reviews by Commerce and the Commission, effective July 18, 2011, Commerce issued a continuation of the antidumping duty order on imports of granular polytetrafluoroethylene resin from Italy (76 FR 42114). The Commission is now conducting a fourth review of the antidumping duty order on imports of granular polytetrafluoroethylene resin from Italy pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Italy.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, its expedited first five-year review determinations, its full second five-year review determinations, and its expedited third five-year review determinations, the Commission defined the *Domestic Like Product* as granular polytetrafluoroethylene resin, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, its expedited first five-year review determinations, its full second five-year review determinations, and its expedited third five-year review determinations, the Commission defined the *Domestic Industry* to include all U.S. producers of granular polytetrafluoroethylene resin.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding 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 the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 16–5–358, expiration date June 30, 2017. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 1, 2016. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is August 15, 2016. 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. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2009.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2015, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating

income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2015 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2015 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2009, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: May 23, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–12435 Filed 5–31–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–933]

Certain Stainless Steel Products, Certain Processes for Manufacturing or Relating to Same, and Certain Products Containing Same Commission's Final Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and Cease and Desist Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in this investigation and has issued a limited exclusion order prohibiting importation of certain stainless steel products manufactured by or on behalf of respondent Viraj Profiles Limited (''Viraj Profiles'') using the complainant's misappropriated trade secrets. The Commission has also issued a cease and desist order directed to Viraj Profiles. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Lucy Grace D. Noyola, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3438. Copies of non-confidential documents filed in connection with this investigation are or 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 (*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.* 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 instituted this investigation on October 10, 2014, based on a complaint filed by Valbruna Slater Stainless, Inc. of Fort Wayne, Indiana; Valbruna Stainless Inc., of Fort Wayne, Indiana; and Acciaierie Valbruna S.p.A. of Italy (collectively, ''Valbruna''). 79 *FR* 61339 (Oct. 10, 2014). The complaint alleges violations of section 337 of the

Tariff Act of 1930, as amended, 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 stainless steel products, certain processes for manufacturing or relating to same, and certain products containing same by reason of the misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States. *Id.* The notice of investigation names as respondents (1) Viraj Profiles of Mumbai, India; Viraj Holdings P. Ltd. of Mumbai, India; Viraj—U.S.A., Inc. of Garden City, New York; (2) Flanschenwerk Bebitz GmbH of Könnern, Germany; Bebitz Flanges Works Pvt. Ltd. of Maharashtra, India; Bebitz U.S.A. of Garden City, New York; and Ta Chen Stainless Pipe Co., Ltd. of Tainan, Taiwan and Ta Chen International, Inc. of Long Beach, California. *Id.* The Office of Unfair Import Investigations also was named as a party to the investigation. *Id.*

On December 8, 2015, the administrative law judge (''ALJ'') issued an initial determination (''ID'') (Order No. 17) granting in part Valbruna's motion for default and other relief. The ALJ found that Viraj Profiles acted in bad faith in spoliating evidence and that a sanction of default against Viraj Profiles was warranted. On February 8, 2016, the Commission determined to review Order No. 17, and, in that notice of review, determined to affirm the default finding against Viraj Profiles, noting that supplemental reasoning would be provided in a forthcoming opinion. 81 *FR* 7584 (Feb. 12, 2016). The Commission also requested briefing from the parties on certain issues on review, and requested briefing from the parties, interested government agencies, and any other interested persons on the issues of remedy, the public interest, and bonding. *Id.*

On February 18, 2016, the parties filed initial written submissions addressing the Commission's questions and remedy, the public interest, and bonding. Also, on February 18, 2016, several non-parties filed responses to the Commission's February 8, 2016 notice, including Forging Industry Association, Central Wire Inc., Sumiden Wire Products Corporation, Tree Island Steel, Tri Star Metals, LLC, Carpenter Technology Corporation, Crucible Industries LLC, Electralloy (G.O. Carlson Inc., Co.), North American Stainless, Outokumpu Stainless USA, LLC, and Universal Stainless & Alloy Products, Inc. On February 24, 2016, U.S. Representatives Tim Murphy and Peter J. Visclosky, the respective Chairman and Vice Chairman of the Congressional Steel Caucus, also filed a response to the Commission's February 8, 2016 notice. On February 25, 2016, the parties filed reply submissions. Also, on February 25, 2016, several non-parties filed reply submissions, including American Wire Producers Association, Alloy Screen Works, Inc., Cincinnati Metals Inc., Kerkau Mfg., Carpenter Technology Corporation, Crucible Industries LLC, Electralloy (G.O. Carlson Inc., Co.), North American Stainless, Outokumpu Stainless USA, LLC, and Universal Stainless & Alloy Products, Inc. On February 25, 2016, U.S. Senator Joe Donnelly of Indiana also filed a response to the Commission's February 8, 2016 notice.

On March 3, 2016, the ALJ issued an ID (Order No. 19) granting Valbruna's motion for partial termination of the investigation based on withdrawal of the complaint against all respondents except Viraj Profiles. On April 4, 2016, the Commission determined not to review Order No. 19. Notice (Apr. 4, 2016).

Having examined the record of this investigation, including the various IDs and the parties' submissions, the Commission has determined to vacate the portions of Order No. 17 with respect to (1) disgorgement and (2) denial of Valbruna's request for leave to assert additional operating practices.

The Commission has determined the appropriate remedy is a limited exclusion order prohibiting, for 16.7 years from the date of the order, the entry of stainless steel products manufactured by or on behalf of Viraj Profiles using any of the misappropriated trade secrets identified in Valbruna's complaint (*see* Compl. ¶¶ 27–33, 51 and accompanying exhibits). The Commission has also determined to issue a cease and desist order prohibiting Viraj Profiles from, *inter alia,* importing or selling the subject products. The Commission has determined that the public interest factors enumerated in section 337(d) and (f), 19 U.S.C. 1337(d), (f), do not preclude the issuance of the limited exclusion order or the cease and desist order. The Commission has determined to apply a bond in the amount of 13.4 percent of the entered value of excluded products imported or sold during the period of Presidential review (19 U.S.C. 1337(j)).

The Commission's order and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 25, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–12814 Filed 5–31–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–669 (Fourth Review)]

Cased Pencils From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on cased pencils from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is July 1, 2016. Comments on the adequacy of responses may be filed with the Commission by August 15, 2016.

DATES: Effective June 1, 2016.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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://*

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 16–5–356, expiration date June 30, 2017. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

www.usitc.gov). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.— On December 28, 1994, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of cased pencils from China (59 FR 66909). Following first five-year reviews by Commerce and the Commission, effective August 10, 2000, Commerce issued a continuation of the antidumping duty order on imports of cased pencils from China (65 FR 48960). Following second five-year reviews by Commerce and the Commission, effective December 20, 2005, Commerce issued a second continuation of the antidumping duty order on imports of cased pencils from China (70 FR 75450). Following the third five-year reviews by Commerce and the Commission, effective July 12, 2011, Commerce issued a continuation of the antidumping duty order on imports of cased pencils from China (76 FR 40880). The Commission is now conducting a fourth review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, Subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited first, second, and third five-year review determinations, the Commission defined the *Domestic Like Produ*ct as all cased pencils, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited first, second, and third five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of cased pencils. In its original determination, the Commission excluded one domestic producer from the *Domestic Industry* under the related parties provision. In its third five-year review determination, the Commission excluded one domestic producer, Dixon Ticonderoga, from the *Domestic Industry* under the related parties provision. Certain Commissioners defined the *Domestic Industry* differently in the third five-year review determination.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding 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 the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 1, 2016. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is August 15, 2016. 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. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information To Be Provided In Response To This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2009.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2015, except as noted (report quantity data in gross and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2015 (report quantity data in gross and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2015 (report quantity data in gross and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2009, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: May 23, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–12433 Filed 5–31–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0026]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Report of Theft or Loss of Explosives

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until August 1, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jason Lynch, United States Bomb Data Center, 3750 Corporal Road, Redstone Arsenal, AL 35898, at email: *Jason.Lynch@ATF.gov.* Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; 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.

Overview of This Information Collection

1. *Type of Information Collection* (check justification or form 83): Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Report of Theft or Loss of Explosives.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF F 5400.5.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other (if applicable): Individuals or households, Not-for-profit institutions, Farms, Federal Government, and State, Local, or Tribal Government.

Abstract: According to 27 CFR 555.30 (a) Any licensee or permittee who has knowledge or theft or loss of any explosive materials from his stock shall, within 24 hours of discovery, report the theft or loss by telephoning 1–800–800–3855 (nationwide toll free number) and on ATF F 5400.5, Report of Theft or Loss of Explosives, in accordance with the instructions on the form.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 300 respondents will take 1 hour and 48 minutes to complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 540 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–12758 Filed 5–31–16; 8:45 am]

BILLING CODE 4410–FY–P

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting and Hearing Notice No. 5–16]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

Wednesday, June 1, 2016

10:00 a.m.—Issuance of Proposed Decisions in claims against Libya.
10:45 a.m.—Issuance of Proposed Decisions in claims against Iraq.
Status: Open

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 600 E Street, NW., Suite 6002, Washington, DC 20579. Telephone: (202) 616–6975.

Brian M. Simkin,
Chief Counsel.

[FR Doc. 2016–12943 Filed 5–27–16; 11:15 am]
BILLING CODE 4410–BA–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0029]

Hawaii State Plan for Occupational Safety and Health; Operational Status Agreement Revisions

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice.

SUMMARY: This document announces revisions to the Operational Status Agreement between the Occupational Safety and Health Administration (OSHA) and the Hawaii State Plan, which specifies the respective areas of Federal and State authority, and under which Hawaii has reassumed additional coverage.

DATES: Effective June 1, 2016.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Francis Meilinger, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general and technical information: Douglas J. Kalinowski, Director, OSHA Directorate of Cooperative and State Programs, Room N–3700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington DC 20210; telephone: (202) 693–2200; email: *kalinowski.doug@dol.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Hawaii Occupational Safety and Health Division (HIOSH) administers an OSHA-approved State Plan to develop and enforce occupational safety and health standards for public-sector and private-sector employers pursuant to the provisions of section 18 of the Occupational Safety and Health Act (the Act), 29 U.S.C. 667. Pursuant to section 18(e) of the Act, 29 U.S.C. 667(e), OSHA granted Hawaii final approval effective April 30, 1984 (49 FR 19182).

From 2009–2012, the Hawaii State Plan faced major budgetary and staffing restraints that significantly affected its program. Therefore, the Hawaii Director of Labor and Industrial Relations requested a temporary modification of the State Plan's approval status from final approval to initial approval to permit supplemental federal enforcement activity and to allow Hawaii sufficient time and assistance to strengthen its State Plan. On September 21, 2012, OSHA published a Final Rule in the **Federal Register** (77 FR 58488) that modified the Hawaii State Plan's ''final approval'' determination under section 18(e) of the Act, transitioned the Plan to ''initial approval'' status under section 18(b) of the Act, and reinstated concurrent federal enforcement authority over occupational safety and health issues in the private sector. That **Federal Register** notice also provided notice of the Operational Status Agreement (OSA) between OSHA and HIOSH, which specified the respective areas of federal and state authority.

During its developmental period under initial approval, Hawaii's Department of Labor and Industrial Relations has taken several steps in rebuilding the capacity of HIOSH. Hawaii is committed to redeveloping its State Plan, has increased its staff recruitment to reach its staffing benchmark, and has exceeded the OSA's goal for the number of inspections in Fiscal Year 2015. HIOSH and OSHA have worked together to strengthen the State Plan. Since 2012, OSHA and HIOSH have agreed to several addenda to the OSA to return greater responsibility to HIOSH. Accordingly, this notice provides information about the revisions to the OSA made in Fiscal Years 2015 and 2016.

Notice of Revisions to the Operational Status Agreement

Federal OSHA and HIOSH will exercise their respective enforcement authority according to the terms of the 2012 OSA between OSHA and HIOSH, which specifies the respective areas of federal and state authority, with revisions agreed to in September 2015. Under the 2012 OSA, Federal OSHA obtained and still retains coverage over all Federal employees and sites (including the United States Postal Service (USPS), USPS contract employees, and contractor-operated facilities engaged in USPS mail operations), private-sector maritime activities, and private-sector employees within the secured borders of all military installations where access is controlled. Under the 2012 OSA, Federal OSHA assumed coverage over agriculture and most of general industry, including facilities that include processes covered by the process safety management standard (29 CFR 1910.119), as well as provisions of the general industry and construction standards (29 CFR parts 1910 and 1926) appropriate to hazards found in that employment. Hawaii retained coverage over the construction industry, transportation and warehousing, and state and local government employment. In the Fiscal Year 2014 addendum to the OSA, Hawaii regained authority over manufacturing (NAICS 31 through 33) (except refineries (NAICS 324) and any other private-sector facilities that include processes covered by the process safety management standard (29 CFR 1910.119)). The FY 2014 addendum also provided a mechanism for the most-available agency to respond to life-threatening situations on neighbor islands (79 FR 8855, February 14, 2014).

The Fiscal Year 2015 addendum to the OSA returned coverage over agriculture and general industry (except refineries (NAICS 324) and any other private-sector facilities that include processes covered by the process safety management standard (29 CFR 1910.119)) to HIOSH. Federal OSHA continues to cover refineries (NAICS 324) and any other private-sector facilities that include processes covered by the process safety management standard (29 CFR 1910.119) and enforces provisions of the Act and of the general industry and construction standards appropriate to hazards found in facilities with processes that are covered by the process safety management standard.

All terms of the 2012 OSA, as amended, remain in effect. The FY 2016

addendum updates the OSA's plan of action and milestones for HIOSH to work towards regaining section 18(e) final approval status. OSHA will continue to work with, and provide assistance to, HIOSH.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC, authorized the preparation of this notice. OSHA is issuing this notice under the authority specified by section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), Secretary of Labor's Order No. 1–2012 (76 FR 3912), and 29 CFR part 1902.

Signed in Washington, DC, on May 25, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2016–12821 Filed 5–31–16; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Astronomy and Astrophysics Advisory Committee (#13883).

Date and time: June 6, 2016; 12:00 p.m.–4:00 p.m. EDT (via Teleconference).

Place: National Science Foundation, Room 1060, Stafford I Building, 4201 Wilson Blvd., Arlington, VA 22230.

Dial-in Information (June 2016 Meeting Only)

To join via Browser: *https://bluejeans.com/996692403/browser.*

To join via phone:

(1) Dial: +1.408.740.7256; +1.888.240.2560; or +1.408.317.9253 (see all numbers—*http://bluejeans.com/numbers?ll=en*).

(2) Enter Conference ID: 996692403.

Type of meeting: Open.

Contact person: Dr. James Ulvestad, Division Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–7165.

Purpose of meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

Agenda: To hear presentations of current programming by representatives from NSF, NASA, DOE and other agencies relevant to astronomy and astrophysics; to discuss current and potential areas of cooperation between the agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them.

Reason for late notice: Due to unforeseen scheduling complications and the necessity to proceed with the meeting.

Dated: May 25, 2016.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2016–12736 Filed 5–31–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–027 and 52–028; NRC–2008–0441]

Virgil C. Summer Nuclear Station, Units 2 and 3; South Carolina Electric & Gas Company, South Carolina Public Service Authority; Compressed and Instrument Air System High Pressure Air Subsystem Changes

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a change to the certification information of Tier 1 of the generic design control document (DCD) and issuing License Amendment No. 44 to Combined Licenses (COL), NPF–93 and NPF–94. The COLs were issued to South Carolina Electric & Gas Company (SCE&G), and South Carolina Public Service Authority (together called the licensee) in March 2012, for the construction and operation of the Virgil C. Summer Nuclear Station (VCSNS), Units 2 and 3, located in Fairfield County, South Carolina.

DATES: June 1, 2016.

ADDRESSES: Please refer to Docket ID NRC–2008–0441 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–2008–0441. 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 it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by the letter dated October 30, 2014 (ADAMS Accession No. ML14303A635). The licensee supplemented this request by letter dated July 13, 2015 (ADAMS Accession No. ML15194A314), and April 21, 2016, (ADAMS Accession No. ML16112A272).
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Specific information on NRC's PDR is available at *http://www.nrc.gov/reading-rm/pdr.html.*

FOR FURTHER INFORMATION CONTACT: William (Billy) Gleaves, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5848; email: *Bill.Gleaves@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from Tier 1 information in the certified DCD incorporated by reference in part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), appendix D, ''Design Certification Rule for the AP1000 Design,'' and issuing License Amendment No. 44 to COLs, NPF–93 and NPF–94, to the licensee. The exemption is required by Paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' appendix D to 10 CFR part 52 to allow the licensee to change Tier 1 information. With the requested amendment, the licensee sought

proposed changes related to the plant-specific Tier 1 information. The Tier 1 information for which a plant-specific exemption is being requested includes changes to remove a supply line from the Compressed and Instrument Air System (CAS) to the generator breaker package. The proposed license amendment describes changes to plant-specific Tier 1 text, COL Appendix C, and UFSAR Tier 2 text and a figure related to the removal of a supply line from the CAS to the main generator breaker package.

The granting of the exemption allows the changes to Tier 1 information requested in the license amendment request. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and 10 CFR 52.63(b)(1). The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML16076A430.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VCSNS Units 2 and 3 (COLs NPF–93 and NPF–94). These documents can be found in ADAMS under Accession Nos. ML16076A420 and ML16076A427, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–93 and NPF–94 are available in ADAMS under Accession Nos. ML16076A411 and ML16076A418, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VCSNS, Units 2 and 3. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated October 30, 2014, supplemented July 13, 2015, and April 21, 2016, the South Carolina Electric & Gas Company (SC&G/licensee) requested from the Nuclear Regulatory Commission (NRC/Commission) an exemption to allow departures from Tier 1 information in the certified Design Control Document (DCD) incorporated by reference in title 10 of the *Code of Federal Regulations* (10 CFR) part 52, appendix D, ''Design Certification Rule for the AP1000 Design,'' as part of license amendment request (LAR) 15–14, ''Compressed and Instrument Air System High Pressure Air Subsystem Changes.''

For the reasons set forth in Section 3.1 of the NRC staff's Safety Evaluation that supports this license amendment, which can be found at Agencywide Documents Access and Management System (ADAMS) Accession No. ML16076A430, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption, and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified AP1000 DCD Tier 1 information, as described in the licensee's request dated October 30, 2014, supplemented July 13, 2015. This exemption is related to, and necessary for, the granting of License Amendment No. 44, which is being issued concurrently with this exemption.

3. As explained in Section 5 of the NRC staff's Safety Evaluation that supports this license amendment (ADAMS Accession No. ML16076A430), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

The request for the amendment and exemption was submitted by the letter dated October 30, 2014. The licensee supplemented this request by the letter dated July 13, 2015, and April 21, 2016. The proposed amendment is described in Section I, above.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on February 17, 2015 (80 FR 8355). No comments were received during the 30-day comment period.

The NRC staff has found that the amendment involves no significant hazards consideration. The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. The supplement dated July 13, 2015, and April 21, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on October 30, 2014, and supplemented by letters dated July 13, 2015, and April 21, 2016. The exemption and amendment were issued on April 27, 2016, as part of a combined package to the licensee (ADAMS Accession No. ML16076A396).

Dated at Rockville, Maryland, this 24th day of May 2016.

For the Nuclear Regulatory Commission.

John McKirgan,

Acting Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2016–12916 Filed 5–31–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Vogtle Electric Generating Station, Units 3 and 4; Southern Nuclear Operating Company; Reclassification of Tier 2* Information on Fire Area Figures

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption from certain Tier 2* information in the generic design control document (DCD) and is issuing License Amendment No. 44 to Combined Licenses (COLs) NPF–91 and NPF–92. The COLs were issued to Southern Nuclear Operating Company, Inc. (SNC); Georgia Power Company; Oglethorpe Power Corporation; MEAG Power SPVM, LLC; MEAG Power SPVJ, LLC; MEAG Power SPVP, LLC; and the City of Dalton, Georgia (together ''the licensee'') for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 2* information requested in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: June 1, 2016.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 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–2008–0252. 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 it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letter dated March 6, 2015 (ADAMS Accession No. ML15065A362).
- *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: Chandu Patel, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3025; email: *Chandu.Patel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from Section VIII.B.6.b, Item (4), ''Processes for Changes and Departures,'' of Appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and is issuing License Amendment No. 44 to COLs NPF–91 and NPF–92 to the licensee. The exemption is required by paragraph VIII.B.6.b of Section VIII, ''Processes for Changes and Departures,'' Appendix D to 10 CFR part 52 to allow the licensee to change the designation of Tier 2* information. Specifically, with the requested amendment, the licensee sought to redesignate the Fire Area Figures, designated as Tier 2* in Appendix D, as Tier 2. This requires an exemption, rather than the departure that would be required for changes to the figures that preserve the Tier 2* designation, because it has been established that departures do not alter the change control process applicable to specific sections of a design certification rule.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, 10 CFR 52.63(b)(1) and Appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML15191A194.

Identical exemption documents (except as needed to reflect the unique unit numbers and license numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML15191A185 and ML15191A190, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML15191A158 and ML15191A176, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to Vogtle Units 3 and 4 makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated March 6, 2015, Southern Nuclear Operating Company (licensee) requested from the Commission an exemption from the provisions of 10 CFR part 52, Appendix D, Section VIII.B.6.b, Item (4), ''Design Certification Rule for the AP1000 Design, Processes for Changes and Departures,'' to allow a departure from the certified information as part of license amendment request (LAR) 15–007, ''Reclassification of Tier 2* Information on Fire Area Figures.''

For the reasons set forth in Section 3.1, ''Evaluation of Exemption,'' of the NRC staff's Safety Evaluation that supports this license amendment, which can be found in ADAMS under Accession No. ML15191A194, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result

from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 2* information, as described in the licensee's request dated March 6, 2015. This exemption is related to, and necessary for, the granting of License Amendment No. 44, which is being issued concurrently with this exemption.

3. As explained in Section 5, ''Environmental Consideration,'' of the NRC staff's Safety Evaluation that supports this license amendment (ADAMS Accession No. ML15191A194), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated March 6, 2015, the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on April 14, 2015 (80 FR 20020).

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on February 1, 2016. The exemption and amendment were issued to the licensee as part of a combined package (ADAMS Accession No. ML15191A128).

Dated at Rockville, Maryland, this 13th day of May 2016.

For the Nuclear Regulatory Commission.

John McKirgan,

Acting Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2016–12918 Filed 5–31–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–027 and 52–028; NRC–2008–0441]

Virgil C. Summer Nuclear Station, Units 2 and 3; South Carolina Electric & Gas Company, South Carolina Public Service Authority, Addition of Instruments to Design Reliability Assurance Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a change to the certification information of Tier 1 of the generic design control document (DCD) and issuing License Amendment No. 45 to Combined Licenses (COL), NPF–93 and NPF–94. The COLs were issued to South Carolina Electric & Gas Company (SCE&G), and South Carolina Public Service Authority (Santee Cooper) (together called the licensee) in March 2012, for the construction and operation of the Virgil C. Summer Nuclear Station (VCSNS), Units 2 and 3, located in Fairfield County, South Carolina.

DATES: June 1, 2016.

ADDRESSES: Please refer to Docket ID NRC–2008–0441 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–2008–0441. 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 it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by the letter dated July 6, 2015 (ADAMS Accession No. ML15188A275). The licensee supplemented this request by letter dated March 24, 2016 (ADAMS Accession No. ML16084A765).
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Specific information on NRC's PDR is available at *http://www.nrc.gov/reading-rm/pdr.html.*

FOR FURTHER INFORMATION CONTACT: William (Billy) Gleaves, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5848; email: *Bill.Gleaves@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from Tier 1 information in the certified DCD incorporated by reference in part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), appendix D, ''Design Certification Rule for the AP1000 Design,'' and issuing License Amendment No. 45 to COLs, NPF–93 and NPF–94, to the licensee. The exemption is required by paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' appendix D to 10 CFR part 52 to allow the licensee to change Tier 1 information. With the requested amendment, the licensee sought proposed changes related to the plant-specific Tier 1 tables related to the Class 1E DC and uninterruptible power supply system. The Tier 1 tables contain ITAAC and specifically, the licensee sought proposed changes to Tier 1 ITAAC Table 2.6.3–1 contains lists Category I equipment and Tier 1 ITAAC Table 2.6.3–4 contains component locations for this system. The proposed changes to plant-specific Tier 1 information also contain corresponding

COL Appendix C and UFSAR Tier 2 information that would facilitate the replacement of four Class 1E DC and uninterruptible power supply system (IDS) spare termination boxes with a single spare battery termination box.

The granting of the exemption allows the changes to Tier 1 information requested in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and 10 CFR 52.63(b)(1). The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML16075A107.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VCSNS Units 2 and 3 (COLs NPF–93 and NPF–94). These documents can be found in ADAMS under Accession Nos. ML16075A126 and ML16075A133, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–93 and NPF–94 are available in ADAMS under Accession Nos. ML16068A113 and ML16068A115, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VCSNS, Units 2 and 3. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated July 6, 2015, supplemented March 24, 2016, the South Carolina Electric & Gas Company acting on behalf of the South Carolina Public Service Authority (hereafter referred to as the licensees) requested from the Nuclear Regulatory Commission (NRC or Commission) an exemption to allow changes to Tier 1 information in the certified Design Control Document (DCD) incorporated by reference in Title 10 of the *Code of Federal Regulations* (10 CFR) part 52, appendix D, ''Design Certification Rule for the AP1000 Design,'' as part of license amendment request (LAR) 14–10, ''Addition of Instruments to Design Reliability Assurance Program (D–RAP).''

For the reasons set forth in Section 3.1 of the NRC staff's Safety Evaluation that supports this license amendment, which can be found at Agencywide Documents Access and Management System (ADAMS) Accession No. ML16075A107, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption, and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensees are granted an exemption from the certified AP1000 DCD Tier 1 information, as described in the licensee's request dated July 6, 2015, supplemented by letter dated March 24, 2016. This exemption is related to, and necessary for, the granting of License Amendment No. 45, which is being issued concurrently with this exemption.

3. As explained in Section 5.0 of the NRC staff's Safety Evaluation that supports this license amendment (ADAMS Accession No. ML16075A107), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

The request for the amendment and exemption was submitted by the letter dated July 6, 2015. The licensee supplemented this request by the letter dated March 24, 2016. The proposed amendment is described in Section I, above.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on September 1, 2015 (80 FR 52806). No comments were received during the 30-day comment period.

The NRC staff has found that the amendment involves no significant hazards consideration. The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. The supplement dated March 24, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on July 6, 2015, and supplemented by the letter dated March 24, 2016. The exemption and amendment were issued on May 2, 2016, as part of a combined package to the licensee (ADAMS Accession No. ML16095A290).

Dated at Rockville, Maryland, this 24th day of May 2016.

For the Nuclear Regulatory Commission.

John McKirgan,

Acting Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2016–12915 Filed 5–31–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0001]

Sunshine Act Meeting Notice

DATES: May 30, June 6, 13, 20, 27, July 4, 2016.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of May 30, 2016

Wednesday, June 1, 2016

9:00 a.m. Briefing on Security Issues (Closed—Ex. 1)

Thursday, June 2, 2016

8:55 a.m. Affirmation Session (Public Meeting) (Tentative)

a. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2); Appeal of LBP–15–27 (Tentative)

b. Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Units 2 and 3)—Petitions for Review of LBP–11–17 and LBP–10–13 (Tentative)

c. Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), NRC Staff's Motion to Vacate LBP–15–24 (Tentative)

d. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Petitions for Review (Tentative)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, June 2, 2016

9:00 a.m. Briefing on Results of the Agency Action Review Meeting (Public Meeting) (Contact: Andrew Waugh: 301–415–5601)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

2:00 p.m. Discussion of Management and Personnel Issues (Closed—Ex. 2 & 6)

Week of June 6, 2016—Tentative

There are no meetings scheduled for the week of June 6, 2016.

Week of June 13, 2016—Tentative

There are no meetings scheduled for the week of June 13, 2016.

Week of June 20, 2016—Tentative

Monday, June 20, 2016

9:00 a.m. Meeting with Department of Energy Office of Nuclear Energy (Public Meeting) (Contact: Albert Wong: 301–415–3081)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, June 23, 2016

9:00 a.m. Discussion of Security Issues (Closed—Ex. 3)

Week of June 27, 2016—Tentative

Tuesday, June 28, 2016

9:30 a.m. Briefing on Human Capital and Equal Opportunity Employment (Public Meeting) (Contact: Kristin Davis: 301–287–0707)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of July 4, 2016—Tentative

Thursday, July 7, 2016

9:30 a.m. Strategic Programmatic Overview of the Reactors Operating Business Line (Public Meeting) (Contact: Trent Wertz: 301–415–1568)

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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.*

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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: May 26, 2016.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2016–12941 Filed 5–27–16; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Planning and Procedures; Cancellation of the June 8, 2016, ACRS Subcommittee Meeting

The ACRS Subcommittee meeting on Planning and Procedures scheduled for June 8, 2016, 12:00 p.m. until 1:00 p.m., has been cancelled.

The notice of this meeting was previously published in the **Federal Register** on Tuesday, May 23, 2016, (81 FR 32355).

Information regarding this meeting can be obtained by contacting Quynh Nguyen, Designated Federal Official (DFO) (Telephone 301–415–5844 or Email: *Quynh.Nguyen@nrc.gov*) between 7:30 a.m. and 5:15 p.m. (EST)).

Dated: May 24, 2016.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016–12920 Filed 5–31–16; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77915; File No. SR–BatsBZX–2016–19]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.24, Opening Process for Non-BZX-Listed Securities

May 25, 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 May 13, 2016, Bats BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

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 Rule 11.24, Opening Process for Non-BZX-Listed Securities, to await a two-sided quotation from the listing exchange prior to opening a security for trading during Regular Trading Hours.[5]

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.24, Opening Process for Non-BZX-Listed Securities, to await a two-sided quotation from the listing exchange prior to opening a non-BZX-Listed security for trading during Regular Trading Hours.[6]

Exchange Rule 11.24 describes the Exchange's current opening process for non-BZX-Listed securities. Subparagraph (a) to Rule 11.24 states that prior to the beginning of the Regular Trading Hours, Users[7] who wish to participate in the Opening Process may enter orders to buy or sell.[8] Subparagraph (a)(2) to Rule 11.24 provides that, with certain exceptions,[9] all orders with a time-in-force instruction of Regular Hours Only may participate in the Opening Process. Subparagraph (b) to Rule 11.24 states that the Exchange will open by performing the Opening Process in which the System will attempt to match buy and sell orders that are executable at the midpoint of the National Best Bid and Offer (''NBBO''). Subparagraph (c) to Exchange Rule 11.24 sets forth the process by which the System sets the opening price of the Opening Process. Currently, the System[10] sets the price of the Opening Process at the midpoint of the first NBBO after 9:30:00 a.m. Eastern Time. However, for securities listed on either the New York Stock Exchange, Inc. (''NYSE'') or NYSE MKT LLC (''NYSE MKT''), the System currently sets the price of the Opening Process at the midpoint of the first NBBO subsequent to the first reported trade on the listing exchange after 9:30:00 a.m. Eastern Time. The Exchange may alternatively set the price of the Opening Process for securities listed on either the NYSE or NYSE MKT at the midpoint of the then prevailing NBBO when the first two-sided quotation published by the relevant listing exchange after 9:30:00 a.m. Eastern Time, but before 9:45:00 a.m. Eastern Time if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange. The System waits to set the price at the midpoint of the first NBBO as set forth above because securities listed on the NYSE or NYSE MKT may not open at precisely 9:30:00 a.m. Eastern Time.

Pursuant to subparagraph (b) of Rule 11.24, all orders executable at the midpoint of the NBBO will continue to be processed in time sequence, beginning with the order with the oldest time stamp. Matches occur until there are no remaining contra-side orders or there is an imbalance of orders. An imbalance of orders may result in orders that cannot be executed in whole or in part. Any unexecuted orders may then be placed by the System on the BZX Book,[11] cancelled, executed, or routed to away Trading Centers in accordance with the Users' instructions pursuant to Exchange Rule 11.13(a)(2).

The Exchange proposes to amend subparagraph (c) to Rule 11.24 to now await a two-sided quotation from the listing exchange prior to opening a security for trading during Regular Trading Hours. As amended, subparagraph (c)(2) to Rule 11.24 would state that the System would set the price of the Opening Process at the midpoint of the first NBBO *subsequent to the first two-sided quotation* published by the listing exchange after 9:30:00 a.m. Eastern Time. For securities listed on either the NYSE or NYSE MKT, subparagraph (c)(1)(i) to Rule 11.24 would state that the System would set the price of the Opening Process at the midpoint of the first NBBO subsequent to the first reported trade *and first reported quotation* on the listing exchange after 9:30:00 a.m. Eastern Time. Pursuant to subparagraph (c)(1)(i) to Rule 11.24, the Exchange will utilize the existing NBBO to calculate each securities' [sic] opening price once a trade and two-sided quotation are received from the listing exchange, regardless of the order in which the trade or quotation are received. The Exchange believes the proposed rule change will enable the listing market's quotation to be incorporated into the NBBO, which the Exchange would, in turn, utilize in its calculation of the midpoint of the NBBO. The Exchange believes doing so would result in an opening price that more closely reflect the opening market prices and conditions for that security. Under subparagraph (c)(1)(ii) to Rule 11.24, the Exchange will continue to alternatively set the price of the Opening Process for securities listed on either the NYSE or NYSE MKT at the midpoint of the then prevailing NBBO when the first two-sided quotation published by the relevant listing exchange after 9:30:00 a.m. Eastern Time, but before 9:45:00 a.m. Eastern Time if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(5) of the Act[13] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in

[5] *See* Exchange Rule 1.5(w).

[6] The opening process for BZX-Listed Securities is set forth under Exchange Rule 11.24(b).

[7] *See* Exchange Rule 1.5(cc).

[8] Orders cancelled prior to the Opening Process will not participate in the Opening Process.

[9] The following order types and instruction may not participate in the opening process: (i) BZX Post Only Orders, Partial Post Only at Limit Orders, ISOs not modified by Rule 11.24(a)(1) above, and Minimum Quantity Orders. *See* Exchange Rule 11.24(a)(2). Limit orders with a Reserve Quantity may participate to the full extent of their displayed size and Reserve Quantity. *Id.* Discretionary Orders may participate only up to their ranked price for buy orders or down to their ranked price for sell orders. *Id.* The discretionary range of such orders will not be eligible for participation in the Opening Process. *Id.* All Pegged Orders and Mid-Point Peg Orders, as defined in Rule 11.9(c)(8) and (9), will be eligible for execution in the Opening Process based on their pegged prices. *Id.*

[10] *See* Exchange Rule 1.5(aa).

[11] The term ''BZX Book'' is defined as ''the System's electronic file of orders.'' *See* Exchange Rule 1.5(e).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change will promote just and equitable principles of trade, removes impediments to, and perfect the mechanism of, a free and open market and a national market system because it enables the System to execute the Opening Process at a price that is objectively established by the market for the security. The proposal would enable the listing market's quotation to be incorporated into the NBBO, which the Exchange would, in turn, utilize in its calculation of the midpoint of the NBBO. The Exchange believes doing so would result in an opening price that more closely reflect the opening market prices and conditions for that security. Therefore, the Exchange believes the proposed rule change promotes just and equitable principles of trade because it ensures a midpoint price that the Exchange believes would accurately reflect the market for the security.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will enable the Exchange to incorporate the listing market's quotation into its calculation of the midpoint of the NBBO, resulting in an opening price that would more closely reflect the opening market prices and conditions for that security. Therefore, the Exchange believes the proposed rule change will promote competition by enhancing the quality of the Exchange's opening process.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [16] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [17] permits the Commission to 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 Exchange states that waiver of the 30-day operative delay would allow market participants to immediately realize the benefits of what may be more accurate opening prices. Based on the foregoing, the Commission believes the waiver of the 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.[18]

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 change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BatsBZX–2016–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BatsBZX–2016–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the 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 No. SR–BatsBZX–2016–19, and should be submitted on or before June 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Brent J. Fields,

Secretary.

[FR Doc. 2016–12777 Filed 5–31–16; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] 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).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77917; File No. 4–668]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment No. 3 to the National Market System Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail by BATS Exchange, Inc., BATS–Y Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, ISE Gemini, LLC, Miami International Securities Exchange LLC, 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.

May 25, 2016.

I. Introduction

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 608 thereunder,[2] notice is hereby given that, on March 29, 2016, BATS Exchange, Inc., BATS–Y Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, ISE Gemini, LLC, Miami International Securities Exchange LLC, 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. (collectively, ''SROs'' or ''Participants''), filed with the Securities and Exchange Commission (the ''Commission'') a proposal to amend the Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail (the ''Selection Plan'').[3]

The SROs propose to amend the Selection Plan to add ISE Mercury, LLC (''ISE Mercury'') as a Participant to the Selection Plan, and replace references to ''Topaz Exchange, LLC'' with references to ''ISE Gemini, LLC.'' A copy of the proposed amendment to the Selection Plan (''Amendment No. 3'') is attached as Exhibit A hereto. The Commission is publishing this notice to solicit comments from interested persons on proposed Amendment No. 3 to the Selection Plan.

II. Description of the Plan

Set forth in this Section II is the statement of the purpose of Amendment No. 3 to the Selection Plan, along with the information required by Rule 608(a)(4) and (5) under the Exchange Act,[4] as prepared and submitted by the SROs to the Commission.[5]

* * * * *

Background

The Selection Plan was initially filed with the Commission on September 4, 2013,[6] approved on February 21, 2014,[7] and subsequently amended on June 17, 2015 and September 24, 2015.[8] The Selection Plan governs the process for how the Participants will evaluate and select a Plan Processor and develop the National Market System Plan Governing the Consolidated Audit Trail Pursuant to Rule 613 of Regulation NMS under the Exchange Act (''CAT NMS Plan'').

Requirements Pursuant to Rule 608(a)

A. Description of the Amendments to the Selection Plan

On January 29, 2016, the Commission approved ISE Mercury's registration as a national securities exchange pursuant to Section 6 of the Exchange Act.[9] Pursuant to Section II(B) of the Selection Plan, the Participants propose amending the Selection Plan to add ISE Mercury as a Participant thereto. Section II(B) of the Selection Plan states:

> Any entity approved by the SEC as a national securities exchange or national securities association under the Exchange Act after the effectiveness of the Plan shall become a Participant by satisfying each of the following requirements: (1) Effecting an amendment to the Plan by executing a copy of the Plan as then in effect (with the only change being the addition of the new Participant's name in Section II of the Plan) and submitting such amendment to the SEC for approval; and (2) providing each then-current Participant with a copy of such executed Plan. The amendment shall be effective when it is approved by the SEC in accordance with SEC Rule 608 or otherwise becomes effective pursuant to SEC Rule 608.[10]

Accordingly, ISE Mercury has executed a copy of the Selection Plan as currently in effect, with the addition of ISE Mercury's name to Section II of the Selection Plan, and provided each existing Participant a copy of the executed Selection Plan. With this submission, the Participants submit the executed Selection Plan to the Commission for approval on behalf of ISE Mercury. A copy of the executed version of the Selection Plan is attached hereto.[11]

The Participants also propose to amend the Selection Plan to replace references to ''Topaz Exchange, LLC'' with references to ''ISE Gemini, LLC.'' On February 20, 2014, the Commission approved a proposed rule change that authorized Topaz Exchange, LLC to amend its Constitution, Certificate of Formation, Limited Liability Company Agreement, Rules and Schedule of Fees to change its name to ''ISE Gemini, LLC.'' [12]

The proposed amendments to the text of the Selection Plan are set forth in Exhibit A to this letter.[13]

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

The terms of the proposed amendment will become effective upon filing pursuant to Rule 608(b)(3)(iii) of the Exchange Act because it involves solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (b)(1) of Rule 608,[14] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] In this filing, the SROs withdrew the amendment to the Selection Plan filed with the Commission on March 11, 2016. *See* Letter from the Participants to Brent J. Fields, Secretary, Commission, dated March 11, 2016.

[4] *See* 17 CFR 242.608(a)(4) and (a)(5).

[5] *See* Letter from the Participants to Brent J. Fields, Secretary, Commission, dated March 29, 2016.

[6] *See* Securities Exchange Act Release No. 70892 (November 15, 2013), 78 FR 69910 (November 21, 2013) (Notice of the Selection Plan).

[7] *See* Securities Exchange Act Release No. 71596 (February 21, 2014), 79 FR 11152 (February 27, 2014) (Order Approving Selection Plan).

[8] *See* Securities Exchange Act Release No. 75192 (June 17, 2015), 80 FR 36028 (June 23, 2015); Securities Exchange Act Release No. 75980 (September 24, 2015), 80 FR 58796 (September 30, 2015).

[9] *See* Securities Exchange Act Release No. 76998 (January 29, 2016), 81 FR 6066 (February 4, 2016).

[10] *See* Selection Plan, Section II(B), *available at www.catnmsplan.com.*

[11] *See* Exhibit B.

[12] *See* Securities Exchange Act Release No. 71586 (February 20, 2014), 79 FR 10861 (February 26, 2014).

[13] *See* Exhibit A.

[14] The Commission notes that if it abrogated an amendment, the Commission could require the amendment to be refiled in accordance with subparagraph (a)(1) of Rule 608. *See* 17 CFR 242.608(b)(3)(iii).

or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Exchange Act.

D. Development and Implementation Phases

Not applicable.

E. Analysis of Impact on Competition

Not applicable.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

G. Statement That the Amendments Have Been Approved by the Plan Sponsors

The Selection Plan provides that, except with respect to the addition of new Participants, amendments to the Selection Plan shall be effected by means of a written amendment that: (1) Sets forth the change, addition, or deletion; (2) is executed by over two-thirds of the Participants; and (3) is approved by the SEC pursuant to Rule 608, or otherwise becomes effective under Rule 608.[15] The proposed amendment has been executed by all of the Participants and has consequently been approved by the SROs.

With respect to new Participants, an amendment to the Selection Plan may be effected by the new national securities exchange or national securities association in accordance with Section II of the Selection Plan. As discussed above, ISE Mercury has executed the existing version of the Selection Plan, with ISE Mercury's name added to Section II, provided each existing Participant a copy of the executed Selection Plan, and is providing the Commission with a copy of the executed version with this submission.

H. Terms and Conditions of Access

Not applicable.

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

Not applicable.

[15] *See* Notice of Selection Plan, *supra* note 5.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Amendment No. 3 to the Selection Plan 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 4–668 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number 4–668. 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 Amendment to the Plan that are filed with the Commission, and all written communications relating to the Amendment 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 10:00 a.m. and 3:00 p.m. Copies of the submission will also 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 4–668 and should be submitted on or before June 22, 2016.

By the Commission.

Brent J. Fields,

Secretary.

EXHIBIT A

Additions italicized; deletions bracketed

Plan Processor Evaluation and Selection Plan

II. Participants

(A) List of Participants

The Participants are as follows:

(1) BATS Exchange, Inc.
(2) BATS Y–Exchange, Inc.
(3) BOX Options Exchange LLC
(4) C2 Options Exchange, Incorporated
(5) Chicago Board Options Exchange, Incorporated
(6) Chicago Stock Exchange, Inc.
(7) EDGA Exchange, Inc.
(8) EDGX Exchange, Inc.
(9) Financial Industry Regulatory Authority, Inc.
(10) International Securities Exchange, LLC
(11) ISE Gemini, LLC
(12) ISE Mercury, LLC
([11]*13*) Miami International Securities Exchange LLC
([12]*14*) NASDAQ OMX BX, Inc.
([13]*15*) NASDAQ OMX PHLX LLC
([14]*16*) The Nasdaq Stock Market LLC
([15]*17*) National Stock Exchange, Inc.
([16]*18*) New York Stock Exchange LLC
([17]*19*) NYSE MKT LLC
([18]*20*) NYSE Arca, Inc.
[(19) Topaz Exchange, LLC]

* * * * *

BATS EXCHANGE, INC.
BY: _____
BATS Y–EXCHANGE, INC.
BY: _____
BOX OPTIONS EXCHANGE LLC
BY: _____
C2 OPTIONS EXCHANGE, INCORPORATED
BY: _____
CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED
BY: _____
CHICAGO STOCK EXCHANGE, INC.
BY: _____
EDGA EXCHANGE, INC.
BY: _____
EDGX EXCHANGE, INC.
BY: _____
FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.
BY: _____
INTERNATIONAL SECURITIES EXCHANGE, LLC
BY: _____
ISE GEMINI, LLC
BY: _____
ISE MERCURY, LLC
BY: _____
MIAMI INTERNATIONAL SECURITIES EXCHANGE LLC
BY: _____
NASDAQ OMX BX, INC.
BY: _____
NASDAQ OMX PHLX LLC
BY: _____
THE NASDAQ STOCK MARKET LLC
BY: _____
NATIONAL STOCK EXCHANGE, INC.

BY: _____

NEW YORK STOCK EXCHANGE LLC

BY: _____

NYSE ARCA, INC.

BY: _____

NYSE MKT LLC

BY: _____

[TOPAZ EXCHANGE, LLC

BY: _____]

[FR Doc. 2016–12779 Filed 5–31–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77916; File No. SR–Phlx–2016–38]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 900.1, 910, and 921

May 25, 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 May 12, 2016, NASDAQ PHLX LLC (''Phlx'' or ''Exchange'') 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 proposes to amend the following Rules: 900.1, General Powers and Duties of Membership Department; 910, Qualifications [sic] as Member Organization; and 921, Qualifications [sic]; Designation of Executive Representative.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify certain Phlx membership rules in order to harmonize them with Nasdaq and BX rules and to modernize the Exchange's Rulebook. Specifically, Exchange proposes to amend Rule 900.1 entitled, ''General Powers and Duties of Membership Department'' by eliminating sections (b) and (d) which are the provisions regarding partnerships as distinct membership classifications. The exchange also proposes to eliminate the provisions regarding partnerships from Rule 910(j), Qualifications [sic] as Member Organization. The Exchange will reserve those sections of the rules in order to allow for future membership needs. Sections of each of these Rules were more relevant to the Phlx membership review process prior to demutualization in 2004 and specifically related to the review of partnerships and no longer reflect the information needed as part of the membership review. These provisions were retained following changes to the Exchange Bylaws in 2009, yet no longer were relevant to the regulatory needs of the Exchange. The proposed changes related to ownership structures of partnerships that the Exchange no longer needs as discussed in greater detail below. An additional amendment relates to the organizational changes that occurred following demutualization such that responsibilities that formerly were handled by the Board of Directors are now a responsibility of the Membership Department. The final change to Rule 921 entitled, ''Qualification; Designation of Executive Representative'' is proposed to align Phlx rules with existing NASDAQ and BX rule 1150.

The membership distinctions in Rule 900.1(b) and (d) and Rule 910(j) were applicable when Phlx offered seats to its members, prior to demutualization, yet remained in the rules after this was concluded in 2004. Before demutualization, Phlx seats conveyed ownership of the Exchange, in addition to access, which created a greater obligation on Phlx to gather information on the members' legal business structure. Specifically, Phlx was obligated to maintain a heighted vigilance on the structure, ownership, and change of control in a partnership in order to ensure the financial integrity of its ownership and members ability to honor their trades and obligations. Rule 900.1(b) and 900.1(d) articulates obligations of partners and general partners as they relate to the Exchange that are no longer relevant as the partnership no longer conveys specific obligations that are distinct from any other member organization. Rule 910(j) relates to liabilities that were unique to the partnership, as a member, which are no longer applicable today.

Today, permits are issued to Exchange members and member organizations. The Exchange no longer needs to differentiate among types of entities because the permit structure conveys no ownership to the member. These membership rules related to partnerships are no longer applicable today. The distinctions regarding the admission of a member or member organization as a partnership, as compared to another ownership structure, are no longer relevant.

The Exchange also proposes to replace the references to the ''Board of Directors'' with the ''Membership Department'' as part of Rule 910(h). The responsibilities of the Board of Directors have changed. Consequently, the Board of Directors is no longer actively involved in the membership process, which is now operated in the same way as Nasdaq's and BX's and the review of the qualifications of Member Organizations is handled by the Membership Department, as defined in Rule 1(p). This rule has become outdated and no longer reflects current business practices.

The final change relates to Rule 921(b); Phlx seeks to harmonize 921(b) with the existing Nasdaq and BX Rule 1150 by not requiring an executive representative to provide evidence of their acceptance of designation in writing. The membership form will continue to require the designation of the Executive Representative, but will no longer require the designated person to provide their signature. The elimination of the evidence of acceptance provision of 921(b) does not impose any burden on competition rather it aligns the requirements of PHLX with that of Nasdaq and BX.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

of the Act[3] in general, and furthers the objectives of Section 6(b)(5) of the Act[4] in particular, in that it is designed to protect investors and the public interest by streamlining various aspects of the membership process. The Exchange believes that the provisions identified in Rule 900.1, 910, and 921 are outdated and unnecessary. These rules regarding partnerships and changes to the partnership rules no longer serves the needs of the Exchange.

As described above PHLX's former ownership required the Exchange to be vigilant of the ownership structure of its members in case of financial distress or bankruptcy as the seat structure was vital to the financial condition of the Exchange and the relationships among members. Before demutualization, members had an ownership interest in the Exchange. Today, permits convey no ownership and therefore such vigilance as to the ownership structure of members is no longer warranted.

The removal of Rules 900.1(b) and (d), Rule 910(j) and part of 921(b) will promote just and equitable principles of trade, and foster cooperation and coordination with persons engaged in facilitating transactions in securities by removing burdensome requirements so that members and member organizations may properly focus on other relevant requirements which benefit the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposed amendments seek to delete certain unnecessary rules which today burden partnerships over corporations. The deletions of the Rules 900.1(b) and (d), Rule 910(j) will remove a current burden on competition which requires members and member organizations that are partnerships to disclose unnecessary information as compared to other corporate entities not structured as a partnership.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and subparagraph (f)(6) of Rule 19b–4 thereunder.[6]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2016–38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–38. 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–Phlx–2016–38 and should be submitted on or before June 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Brent J. Fields,

Secretary.

[FR Doc. 2016–12778 Filed 5–31–16; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(a)(iii) [sic].

[6] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77906; File No. SR–BatsEDGA–2016–10]

Self-Regulatory Organizations; Bats EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.7, Opening Process

May 25, 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 May 13, 2016, Bats EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] 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 filed a proposal to amend Rule 11.7, Opening Process, to await a two-sided quotation from the listing exchange prior to opening a security for trading during Regular Trading Hours.[5]

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.7, Opening Process, to await a two-sided quotation from the listing exchange prior to opening a security for trading during Regular Trading Hours.

Exchange Rule 11.7 describes the Exchange's current opening process. Subparagraph (a) to Rule 11.7 states that prior to the beginning of the Regular Session,[6] Users[7] who wish to participate in the Opening Process may enter orders to buy or sell.[8] Subparagraph (a)(2) to Rule 11.7 provides that, with certain exceptions,[9] all orders with a time-in-force instruction of Regular Hours Only may participate in the Opening Process. Subparagraph (b) to Rule 11.7 states that the Exchange will open by performing the Opening Process in which the System will attempt to match buy and sell orders that are executable at the midpoint of the National Best Bid and Offer (''NBBO''). Subparagraph (c) to Exchange Rule 11.7 sets forth the process by which the System sets the opening price of the Opening Process. Currently, the System[10] sets the price of the Opening Process at the midpoint of the first NBBO after 9:30:00 a.m. Eastern Time. However, for securities listed on either the New York Stock Exchange, Inc. (''NYSE'') or NYSE MKT LLC (''NYSE MKT''), the System currently sets the price of the Opening Process at the midpoint of the first NBBO subsequent to the first reported trade on the listing exchange after 9:30:00 a.m. Eastern Time. The Exchange may alternatively set the price of the Opening Process for securities listed on either the NYSE or NYSE MKT at the midpoint of the then prevailing NBBO when the first two-sided quotation published by the relevant listing exchange after 9:30:00 a.m. Eastern Time, but before 9:45:00 a.m. Eastern Time if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange. The System waits to set the price at the midpoint of the first NBBO as set forth above because securities listed on the NYSE or NYSE MKT may not open at precisely 9:30:00 a.m. Eastern Time.

Pursuant to subparagraph (b) of Rule 11.7, all orders executable at the midpoint of the NBBO will continue to be processed in time sequence, beginning with the order with the oldest time stamp and not in accordance with Exchange Rule 11.9(a)(2)(B), which outlines priority at the midpoint of the NBBO. Matches occur until there are no remaining contra-side orders or there is an imbalance of orders. An imbalance of orders may result in orders that cannot be executed in whole or in part. Any unexecuted orders may then be placed by the System on the EDGA Book,[11] cancelled, executed, or routed to away Trading Centers in accordance with the Users' instructions pursuant to Exchange Rule 11.11.

The Exchange proposes to amend subparagraph (c) to Rule 11.7 to now await a two-sided quotation from the listing exchange prior to opening a security for trading during Regular Trading Hours. As amended, subparagraph (c)(2) to Rule 11.7 would state that the System would set the price of the Opening Process at the midpoint of the first NBBO *subsequent to the first two-sided quotation* published by the listing exchange after 9:30:00 a.m. Eastern Time. For securities listed on either the NYSE or NYSE MKT, subparagraph (c)(1)(i) to Rule 11.7 would state that the System would set the price of the Opening Process at the midpoint of the first NBBO subsequent to the first reported trade *and first reported quotation* on the listing exchange after 9:30:00 a.m. Eastern Time. Pursuant to subparagraph (c)(1)(i) to Rule 11.7, the Exchange will utilize the existing NBBO to calculate each securities' [sic] opening price once a trade and two-sided quotation are received from the listing exchange, regardless of the order in which the trade or quotation are received. The Exchange believes the proposed rule change will enable the listing market's quotation to be incorporated into the NBBO, which the Exchange would, in turn, utilize in its calculation of the midpoint of the NBBO. The Exchange believes doing so would result in an opening price that more closely reflect the opening market prices and conditions for that security. Under subparagraph (c)(1)(ii) to Rule 11.7, the Exchange will continue to alternatively set the price of the Opening Process for securities listed on either the NYSE or NYSE MKT at the midpoint of the then prevailing NBBO when the first two-sided quotation published by the relevant listing exchange after 9:30:00 a.m. Eastern Time, but before 9:45:00 a.m. Eastern Time if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Exchange Rule 1.5(y).

[6] *See* Exchange Rule 1.5(hh).

[7] *See* Exchange Rule 1.5(ee).

[8] Orders cancelled prior to the Opening Process will not participate in the Opening Process.

[9] The following order types and instruction may not participate in the opening process: (i) Limit Orders with a Post Only instruction, (ii) the Discretionary Range of Limit Orders, and (iv) Intermarket Sweep Orders (''ISOs'') not modified by Rule 11.7(a)(1), and (iii) orders with a Minimum Execution Quantity instruction. *See* Exchange Rule 11.7(a)(2). Orders that are designated for the Regular Session that cannot participate in the Opening Process will not be accepted by the System until the Opening Process is completed or a Contingent Opening. *Id.* Limit Orders with a Reserve Quantity may participate to the full extent of their displayed size and Reserve Quantity. *Id.* Limit Orders with a Discretionary Range may participate up to their ranked limit price for buy orders and down to their ranked limit price for sell orders. *Id.* All Limit Orders with a Pegged instruction will be eligible for execution in the Opening Process based on their pegged prices at the time the Opening Process is conducted. *Id.*

[10] *See* Exchange Rule 1.5(cc).

[11] The term ''EDGA Book'' is defined as ''the System's electronic file of orders.'' *See* Exchange Rule 1.5(d).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b)(5) of the Act [13] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change will promote just and equitable principles of trade, removes impediments to, and perfect the mechanism of, a free and open market and a national market system because it enables the System to execute the Opening Process at a price that is objectively established by the market for the security. The proposal would enable the listing market's quotation to be incorporated into the NBBO, which the Exchange would, in turn, utilize in its calculation of the midpoint of the NBBO. The Exchange believes doing so would result in an opening price that more closely reflect the opening market prices and conditions for that security. Therefore, the Exchange believes the proposed rule change promotes just and equitable principles of trade because it ensures a midpoint price that the Exchange believes would accurately reflect the market for the security.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will enable the Exchange to incorporate the listing market's quotation into its calculation of the midpoint of the NBBO, resulting in an opening price that would more closely reflect the opening market prices and conditions for that security. Therefore, the Exchange believes the proposed rule change will promote competition by enhancing the quality of the Exchange's opening process.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [16] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [17] permits the Commission to 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 Exchange states that waiver of the 30-day operative delay would allow market participants to immediately realize the benefits of what may be more accurate opening prices. Based on the foregoing, the Commission believes the waiver of the 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.[18]

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 change should be approved or disapproved.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] 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).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BatsEDGA–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 No. SR–BatsEDGA–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 No. SR–BatsEDGA–2016–10, and should be submitted on or before June 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Brent J. Fields,

Secretary.

[FR Doc. 2016–12791 Filed 5–31–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77918; File No. SR–BatsBYX–2016–10]

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees

May 25, 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 May 16, 2016, Bats BYX 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 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 Act [3] 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 Members [5] and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c) (''Fee Schedule'') to reinsert fee code PX, which was inadvertently deleted in its entirety in an earlier proposed rule change.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 5, 2016, the Exchange amended Rule 11.13, Order Execution and Routing, to delete the IOCM and ICMT routing options.[6] At that time, the Exchange also amended its Fee Schedule to delete: (i) References to the IOCM and ICMT routing options under footnote 8; and (ii) fee code PX, which was yielded on orders routed to Bats EDGX Exchange, Inc. (''EDGX'') to execute against MidPoint Peg Orders [7] on EDGX using ICMT or IOCM routing options. Fee code PX is also yielded on orders routed using the RMPT routing option.[8] In that filing, the Exchange inadvertently deleted fee code PX in its entirety when fee code PX should have only been amended to delete references to the IOCM and ICMT routing options.

The Exchange now proposes to reinsert fee code PX, less the references to the ICMT and IOCM routing options. The reinserted langue would state that fee code PX is yielded on orders routing using the RMPT routing option. Orders that yield fee code PX in securities priced at or above $1.00 are charged a fee of $0.00120 per share and orders in securities priced below $1.00 are changed a fee of 0.29% charge of the order's total dollar value. The proposed rates for fee code PX are identical to that which was included in the Fee Schedule prior to May 10, 2016.

The Exchange proposes to implement the proposed rule change immediately.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[9] in general, and furthers the objectives of Section 6(b)(4),[10] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes that its proposed rates represent an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because it is designed to reinsert fee code PX, which was inadvertently deleted in an earlier rule filing. The Exchange does not believe that this change represents a significant departure from previous pricing offered by the Exchange, as fee code PX will continue to be yielded on orders that utilize the RMPT routing option and will be charged the same rates as set forth in the Fe Schedule prior to its mistaken deletion. Furthermore, the Exchange notes that routing through the Exchange and utilizing fee code PX is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does 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 the proposed rule change will impose any burden on competition as it is simply designed to reinsert fee code PX, which was that was inadvertently deleted in an earlier rule filing.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)

[19] 17 CFR 200.30–3(a)(12).

[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).

[6] *See* Securities Exchange Act Release No. 77790 (May 10, 2016), 81 FR 30360 (May 16, 2016) (SR–BatsBYX–2016–06).

[7] See EDGX Rule 11.8(d).

[8] RMPT is a routing option under which a Mid-Point Peg Order checks the System for available shares and any remaining shares are then sent to destinations on the System routing table that support midpoint eligible orders. If any shares remain unexecuted after routing, they are posted on the BYX Book as a MidPoint Peg Order, unless otherwise instructed by the User. *See* Exchange Rule 11.13(b)(3)(Q).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

of the Act [11] and paragraph (f) of Rule 19b–4 thereunder.[12] 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 No. SR–BatsBYX–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 No. SR–BatsBYX–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 No. SR–BatsBYX–2016–10, and should be submitted on or before June 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Brent J. Fields,

Secretary.

[FR Doc. 2016–12780 Filed 5–31–16; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77909; File No. SR–NYSEArca–2016–15]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 6.67(c) by Revising the Clearing Member Requirements for Entering an Order Into the Electronic Order Capture System

May 25, 2016.

On March 22, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') 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 amend Rule 6.67(c) to change the timing for recording the name of the Clearing Member [3] in the Electronic Order Capture system (''EOC''). On March 29, 2016,[4] the Exchange filed Amendment No. 1 to the proposed rule change. The Commission published the proposed rule change, as modified by Amendment No. 1, for comment in the **Federal Register** on April 11, 2016.[5] The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act [6] provides that, within 45 days of the publication of the 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 approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[7] designates July 10, 2016, as the date by which the Commission should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change (File No. SR–NYSEArca–2016–15), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Brent J. Fields,

Secretary.

[FR Doc. 2016–12794 Filed 5–31–16; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 6.1(3) defines ''Clearing Member'' as an Exchange OTP which has been admitted to membership in the Options Clearing Corporation pursuant to the provisions of the Rules of the Options Clearing Corporation.

[4] The Commission notes that the amendment date of March 30, 2016 in the SR–NYSEArca–2016–15 Notice is incorrect and the proper date is March 29, 2016.

[5] *See* Securities Exchange Act Release No. 34–77516 (April 5, 2016), 81 FR 21429 (''Notice''). Amendment No. 1 was included in the Notice and provided the clarification that the CMTA Information and the name of the clearing OTP Holder would be entered into the EOC ''as the events occur and/or during trade reporting procedures which may occur after the representation and execution of the order.''

[6] 15 U.S.C. 78s(b)(2).

[7] *Id.*

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77907; File No. SR–ISE–2016–14]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

May 25, 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 May 12, 2016, the International Securities Exchange, LLC (the ''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission'')

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

ISE proposes to amend the Schedule of Fees as described in more detail below. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.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 self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE currently sells a market data offering comprised of the entire opening and closing trade data of ISE listed options of both customers and firms, referred to by the Exchange as the ISE Open/Close Trade Profile. The ISE Open/Close Trade Profile offering is subdivided by origin code (*i.e.,* customer or firm) and the customer data is then further subdivided by order size. The volume data is summarized by day and series (*i.e.,* symbol, expiration date, strike price, call or put). The ISE Open/Close Trade Profile enables subscribers to create their own proprietary put/call calculations. The data is compiled and formatted by ISE as an end of day file. This market data offering is currently available to both members and non-members on an annual subscription basis. The current subscription rate for both members and non-members is $750 per month.

ISE also sells historical ISE Open/Close Trade Profile data. This market data offering is comprised of the entire opening and closing trade data of both customers and firms that dates back to May 2005. This data is sold to to both members and non-members on an ad-hoc basis or as a complete set that dates back to May 2005. Ad-hoc subscribers can purchase this data for any number of months, beginning from May 2005 through the current month. Alternatively, subscribers can purchase the entire set of this data, beginning from May 2005 through the present month (the ''Complete Set''). The historical ISE Open/Close Trade Profile is compiled and formatted by ISE and sold as a zipped file. ISE charges subscribers $600 per month for ad-hoc requests for each month of data and a discounted fee of $500 per request per month of data for the Complete Set.

The Exchange now proposes to adopt a flat fee for the Complete Set. As each year passes, the cost of the Complete Set rises by $6,000 (12 months * $500). As a result of this continual increase in cost, ISE believes the current cost of a Complete Set is too high to generate customer demand. We now propose to offer this same Complete Set for a price of $27,500.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and Section 6(b)(4) of the Act,[4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes that the proposed fee decrease is reasonable and equitable as the proposed fee is set at a level that the Exchange believes will be attractive to members and non-members because, over time, the fee for a Complete Set has become too high to generate sufficient customer demand and the continuing price increase would ultimately lead to no customer demand and prevent members and non-members from obtaining this data. The proposed fee will ensure that for the foreseeable future members and non-members have access to the data they need for a reasonable fee. The Exchange also notes that the proposed Market Data Fees are not unfairly discriminatory because they apply equally to all members and non-members.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[5] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that current fee for the Complete Set became too high over time to generate sufficient customer demand. ISE believes the current fee is set at a fair price for the data being provided to both members and non-members. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[6] and subparagraph (f)(2) of Rule 19b–4 thereunder,[7] because it establishes a due, fee, or other charge imposed by ISE.

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 to determine whether the proposed rule should be approved or disapproved.

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78f(b)(8).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

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–ISE–2016–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–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 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–ISE–2016–14, and should be submitted on or before June 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Brent J. Fields,

Secretary.

[FR Doc. 2016–12792 Filed 5–31–16; 8:45 am]

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[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77913; File No. SR–NASDAQ–2016–074]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide a Process for an Expedited Suspension Proceeding and Adopt a Rule To Prohibit Disruptive Quoting and Trading Activity

May 25, 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 May 19, 2016, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') 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 proposes to adopt a new equity rule to clearly prohibit disruptive quoting and trading activity on the Exchange, as further described below. Further the Exchange proposes to amend Exchange Rules to permit the Exchange to take prompt action to suspend Members or their clients that violate such rule.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is filing this proposal to adopt a new rule to clearly prohibit disruptive quoting and trading activity on the Exchange for the equities market and to amend Exchange Rules to permit the Exchange to take prompt action to suspend Members or their clients that violate such rule.

Background

As a national securities exchange registered pursuant to Section 6 of the Act, the Exchange is required to be organized and to have the capacity to enforce compliance by its members and persons associated with its members, with the Act, the rules and regulations thereunder, and the Exchange's Rules. Further, the Exchange's Rules are required to 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.''[3] In fulfilling these requirements, the Exchange has developed a comprehensive regulatory program that includes automated surveillance of trading activity that is both operated directly by Exchange staff and by staff of the Financial Industry Regulatory Authority (''FINRA'') pursuant to a Regulatory Services Agreement (''RSA''). When disruptive and potentially manipulative or improper quoting and trading activity is identified, the Exchange or FINRA (acting as an agent of the Exchange) conducts an investigation into the activity, requesting additional information from the Member or Members involved. To the extent violations of the Act, the rules and regulations thereunder, or Exchange Rules have been identified and confirmed, the Exchange or FINRA as its agent will commence the enforcement process, which might result in, among other things, a censure, a requirement to take certain remedial actions, one or more restrictions on future business

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b)(1).

activities, a monetary fine, or even a temporary or permanent ban from the securities industry.

The process described above, from the identification of disruptive and potentially manipulative or improper quoting and trading activity to a final resolution of the matter, can often take several years. The Exchange believes that this time period is generally necessary and appropriate to afford the subject Member adequate due process, particularly in complex cases. However, as described below, the Exchange believes that there are certain obvious and uncomplicated cases of disruptive and manipulative behavior or cases where the potential harm to investors is so large that the Exchange should have the authority to initiate an expedited suspension proceeding in order to stop the behavior from continuing on the Exchange.

In recent years, several cases have been brought and resolved by the Exchange and other SROs that involved allegations of wide-spread market manipulation, much of which was ultimately being conducted by foreign persons and entities using relatively rudimentary technology to access the markets and over which the Exchange and other SROs had no direct jurisdiction. In each case, the conduct involved a pattern of disruptive quoting and trading activity indicative of manipulative layering [4] or spoofing.[5] The Exchange and other SROs were able to identify the disruptive quoting and trading activity in real-time or near real-time; nonetheless, in accordance with Exchange Rules and the Act, the Members responsible for such conduct or responsible for their customers' conduct were allowed to continue the disruptive quoting and trading activity on the Exchange and other exchanges during the entirety of the subsequent lengthy investigation and enforcement process. The Exchange believes that it should have the authority to initiate an expedited suspension proceeding in order to stop the behavior from continuing on the Exchange if a Member is engaging in or facilitating disruptive quoting and trading activity and the Member has received sufficient notice with an opportunity to respond, but such activity has not ceased.

The following two examples are instructive on the Exchange's rationale for the proposed rule change.

In July 2012, Biremis Corp. (formerly Swift Trade Securities USA, Inc.) (the ''Firm'') and its CEO were barred from the industry for, among other things, supervisory violations related to a failure by the Firm to detect and prevent disruptive and allegedly manipulative trading activities, including layering, short sale violations, and anti-money laundering violations.[6] The Firm's sole business was to provide trade execution services via a proprietary day trading platform and order management system to day traders located in foreign jurisdictions. Thus, the disruptive and allegedly manipulative trading activity introduced by the Firm to U.S. markets originated directly or indirectly from foreign clients of the Firm. The pattern of disruptive and allegedly manipulative quoting and trading activity was widespread across multiple exchanges, and the Exchange, FINRA, and other SROs identified clear patterns of the behavior in 2007 and 2008. Although the Firm and its principals were on notice of the disruptive and allegedly manipulative quoting and trading activity that was occurring, the Firm took little to no action to attempt to supervise or prevent such quoting and trading activity until at least 2009. Even when it put some controls in place, they were deficient and the pattern of disruptive and allegedly manipulative trading activity continued to occur. As noted above, the final resolution of the enforcement action to bar the Firm and its CEO from the industry was not concluded until 2012, four years after the disruptive and allegedly manipulative trading activity was first identified.

In September of 2012, Hold Brothers On-Line Investment Services, Inc. (the ''Firm'') settled a regulatory action in connection with the Firm's provision of a trading platform, trade software and trade execution, support and clearing services for day traders.[7] Many traders using the Firm's services were located in foreign jurisdictions. The Firm ultimately settled the action with FINRA and several exchanges, including the Exchange, for a total monetary fine of $3.4 million. In a separate action, the Firm settled with the Commission for a monetary fine of $2.5 million.[8] Among the alleged violations in the case were disruptive and allegedly manipulative quoting and trading activity, including spoofing, layering, wash trading, and pre-arranged trading. Through its conduct and insufficient procedures and controls, the Firm also allegedly committed anti-money laundering violations by failing to detect and report manipulative and suspicious trading activity. The Firm was alleged to have not only provided foreign traders with access to the U.S. markets to engage in such activities, but that its principals also owned and funded foreign subsidiaries that engaged in the disruptive and allegedly manipulative quoting and trading activity. Although the pattern of disruptive and allegedly manipulative quoting and trading activity was identified in 2009, as noted above, the enforcement action was not concluded until 2012. Thus, although disruptive and allegedly manipulative quoting and trading was promptly detected, it continued for several years.

The Exchange also notes the current criminal proceedings that have commenced against Navinder Singh Sarao. Mr. Sarao's allegedly manipulative trading activity, which included forms of layering and spoofing in the futures markets, has been linked as a contributing factor to the ''Flash Crash'' of 2010, and yet continued through 2015.

The Exchange believes that the activities described in the cases above provide justification for the proposed rule change, which is described below.

Rule 9400—Expedited Client Suspension Proceeding

The Exchange proposes to adopt new Rule 9400, which is currently reserved, to set forth procedures for issuing suspension orders, immediately prohibiting a Member from conducting continued disruptive quoting and trading activity on the Exchange. Importantly, these procedures would also provide the Exchange the authority to order a Member to cease and desist from providing access to the Exchange to a client of the Member that is conducting disruptive quoting and trading activity in violation of proposed Rule 2170. Under proposed paragraph (a) of Rule 9400, with the prior written authorization of the Chief Regulatory Officer (''CRO'') or such other senior officers as the CRO may designate, the Office of General Counsel or Regulatory

[4] ''Layering'' is a form of market manipulation in which multiple, non-bona fide limit orders are entered on one side of the market at various price levels in order to create the appearance of a change in the levels of supply and demand, thereby artificially moving the price of the security. An order is then executed on the opposite side of the market at the artificially created price, and the non-bona fide orders are cancelled.

[5] ''Spoofing'' is a form of market manipulation that involves the market manipulator placing non-bona fide orders that are intended to trigger some type of market movement and/or response from other market participants, from which the market manipulator might benefit by trading bona fide orders.

[6] *See Biremis Corp. and Peter Beck,* FINRA Letter of Acceptance, Waiver and Consent No. 2010021162202, July 30, 2012.

[7] *See Hold Brothers On-Line Investment Services, LLC,* FINRA Letter of Acceptance, Waiver and Consent No. 20100237710001, September 25, 2012.

[8] *In the Matter of Hold Brothers On-Line Investment Services, LLC,* Exchange Act Release No. 67924, September 25, 2012.

Department of the Exchange (such departments generally referred to as the ''Exchange'' for purposes of proposed Rule 9400) may initiate an expedited suspension proceeding with respect to alleged violations of Rule 2170, which is proposed as part of this filing and described in detail below. Proposed paragraph (a) would also set forth the requirements for notice and service of such notice pursuant to the Rule, including the required method of service and the content of notice.

Proposed paragraph (b) of Rule 9400 would govern the appointment of a Hearing Panel as well as potential disqualification or recusal of Hearing Officers. The proposed provision is consistent with existing Exchange Rule 9231(b). The Exchange's Rules provide for a Hearing Officer to be recused in the event he or she has a conflict of interest or bias or other circumstances exist where his or her fairness might reasonably be questioned in accordance with Rules 9233(a). In addition to recusal initiated by such a Hearing Officer, a party to the proceeding will be permitted to file a motion to disqualify a Hearing Officer. However, due to the compressed schedule pursuant to which the process would operate under Rule 9400, the proposed rule would require such motion to be filed no later than 5 days after the announcement of the Hearing Panel and the Exchange's brief in opposition to such motion would be required to be filed no later than 5 days after service thereof. Pursuant to existing Rule 9233(c), a motion for disqualification of a Hearing Officer shall be decided by the Chief Hearing Officer based on a prompt investigation. The applicable Hearing Officer shall remove himself or herself and request the Chief Executive Officer to reassign the hearing to another Hearing Officer such that the Hearing Panel still meets the compositional requirements described in Rule 9231(b). If the Chief Hearing Officer determines that the Respondent's grounds for disqualification are insufficient, it shall deny the Respondent's motion for disqualification by setting forth the reasons for the denial in writing and the Hearing Panel will proceed with the hearing.

Under paragraph (c) of the proposed Rule, the hearing would be held not later than 15 days after service of the notice initiating the suspension proceeding, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. In the event of a recusal or disqualification of a Hearing Officer, the hearing shall be held not later than five days after a replacement Hearing Officer is appointed. Proposed paragraph (c) would also govern how the hearing is conducted, including the authority of Hearing Officers, witnesses, additional information that may be required by the Hearing Panel, the requirement that a transcript of the proceeding be created and details related to such transcript, and details regarding the creation and maintenance of the record of the proceeding. Proposed paragraph (c) would also state that if a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel may issue a suspension order without further proceedings. Finally, as proposed, if the Exchange fails to appear at a hearing for which it has notice, the Hearing Panel may order that the suspension proceeding be dismissed.

Under paragraph (d) of the proposed Rule, the Hearing Panel would be required to issue a written decision stating whether a suspension order would be imposed. The Hearing Panel would be required to issue the decision not later than 10 days after receipt of the hearing transcript, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. The Rule would state that a suspension order shall be imposed if the Hearing Panel finds by a preponderance of the evidence that the alleged violation specified in the notice has occurred and that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

Proposed paragraph (d) would also describe the content, scope and form of a suspension order. As proposed, a suspension order shall be limited to ordering a Respondent to cease and desist from violating proposed Rule 2170, and/or to ordering a Respondent to cease and desist from providing access to the Exchange to a client of Respondent that is causing violations of Rule 2170. Under the proposed rule, a suspension order shall also set forth the alleged violation and the significant market disruption or other significant harm to investors that is likely to result without the issuance of an order. The order shall describe in reasonable detail the act or acts the Respondent is to take or refrain from taking, and suspend such Respondent unless and until such action is taken or refrained from. Finally, the order shall include the date and hour of its issuance. As proposed, a suspension order would remain effective and enforceable unless modified, set aside, limited, or revoked pursuant to proposed paragraph (e), as described below. Finally, paragraph (d) would require service of the Hearing Panel's decision and any suspension order consistent with other portions of the proposed rule related to service.

Proposed paragraph (e) of Rule 9400 would state that at any time after the Hearing Officers served the Respondent with a suspension order, a Party could apply to the Hearing Panel to have the order modified, set aside, limited, or revoked. If any part of a suspension order is modified, set aside, limited, or revoked, proposed paragraph (e) of Rule 9400 provides the Hearing Panel discretion to leave the cease and desist part of the order in place. For example, if a suspension order suspends Respondent unless and until Respondent ceases and desists providing access to the Exchange to a client of Respondent, and after the order is entered the Respondent complies, the Hearing Panel is permitted to modify the order to lift the suspension portion of the order while keeping in place the cease and desist portion of the order. With its broad modification powers, the Hearing Panel also maintains the discretion to impose conditions upon the removal of a suspension—for example, the Hearing Panel could modify an order to lift the suspension portion of the order in the event a Respondent complies with the cease and desist portion of the order but additionally order that the suspension will be re-imposed if Respondent violates the cease and desist provisions [sic] modified order in the future. The Hearing Panel generally would be required to respond to the request in writing within 10 days after receipt of the request. An application to modify, set aside, limit or revoke a suspension order would not stay the effectiveness of the suspension order.

Finally, proposed paragraph (f) would provide that sanctions issued under the proposed Rule 9400 would constitute final and immediately effective disciplinary sanctions imposed by the Exchange, and that the right to have any action under the Rule reviewed by the Commission would be governed by Section 19 of the Act. The filing of an application for review would not stay the effectiveness of a suspension order unless the Commission otherwise ordered.

Rule 2170—Disruptive Quoting and Trading Activity Prohibited

The Exchange currently has authority to prohibit and take action against manipulative trading activity, including disruptive quoting and trading activity, pursuant to its general market

manipulation rules, including Rules 2110, 2111 and 2120. The Exchange proposes to adopt new Rule 2170, which would more specifically define and prohibit disruptive quoting and trading activity on the Exchange. As noted above, the Exchange also proposes to apply the proposed suspension rules to proposed Rule 2170.

Proposed Rule 2170 would prohibit Members from engaging in or facilitating disruptive quoting and trading activity on the Exchange, as described in proposed Rule 2170(i) and (ii), including acting in concert with other persons to effect such activity. The Exchange believes that it is necessary to extend the prohibition to situations when persons are acting in concert to avoid a potential loophole where disruptive quoting and trading activity is simply split between several brokers or customers. The Exchange believes, that with respect to persons acting in concert perpetrating an abusive scheme, it is important that the Exchange have authority to act against the parties perpetrating the abusive scheme, whether it is one person or multiple persons.

To provide proper context for the situations in which the Exchange proposes to utilize its proposed authority, the Exchange believes it is necessary to describe the types of disruptive quoting and trading activity that would cause the Exchange to use its authority. Accordingly, the Exchange proposes to adopt Rule 2170(i) and (ii) providing additional details regarding disruptive quoting and trading activity. Proposed Rule 2170(i)(a) describes disruptive quoting and trading activity containing many of the elements indicative of layering. It would describe disruptive quoting and trading activity as a frequent pattern in which the following facts are [sic] present: (i) A party enters multiple limit orders on one side of the market at various price levels (the ''Displayed Orders''); and (ii) following the entry of the Displayed Orders, the level of supply and demand for the security changes; and (iii) the party enters one or more orders on the opposite side of the market of the Displayed Orders (the ''Contra-Side Orders'') that are subsequently executed; and (iv) following the execution of the Contra-Side Orders, the party cancels the Displayed Orders. Proposed Rule 2170(i)(b) describes disruptive quoting and trading activity containing many of the elements indicative of spoofing and would [sic]describe disruptive quoting and trading activity as a frequent pattern in which the following facts are present: (i) A party narrows the spread for a security by placing an order inside the national best bid or offer; and (ii) the party then submits an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the order described in proposed (b)(i) that narrowed the spread. The Exchange believes that the proposed descriptions of disruptive quoting and trading activity articulated in the rule are consistent with the activities that have been identified and described in the client access cases described above. The Exchange further believes that the proposed descriptions will provide Members with clear descriptions of disruptive quoting and trading activity that will help them to avoid engaging in such activities or allowing their clients to engage in such activities.

The Exchange proposes to make clear in proposed Rule 2170(ii), unless otherwise indicated, the descriptions of disruptive quoting and trading activity do not require the facts to occur in a specific order in order for the rule to apply. For instance, with respect to the pattern defined in proposed Rule 2170(i)(a) it is of no consequence whether a party first enters Displayed Orders and then Contra-side Orders or vice-versa. However, as proposed, it is required for supply and demand to change following the entry of the Displayed Orders. The Exchange also proposes to make clear that disruptive quoting and trading activity includes a pattern or practice in which some portion of the disruptive quoting and trading activity is conducted on the Exchange and the other portions of the disruptive quoting and trading activity are conducted on one or more other exchanges. The Exchange believes that this authority is necessary to address market participants who would otherwise seek to avoid the prohibitions of the proposed Rule by spreading their activity amongst various execution venues. In sum, proposed Rule 2170 coupled with proposed Rule 9400 would provide the Exchange with authority to promptly act to prevent disruptive quoting and trading activity from continuing on the Exchange.

Below is an example of how the proposed rule would operate.

Assume that through its surveillance program, Exchange staff identifies a pattern of potentially disruptive quoting and trading activity. After an initial investigation the Exchange would then contact the Member responsible for the orders that caused the activity to request an explanation of the activity as well as any additional relevant information, including the source of the activity. If the Exchange were to continue to see the same pattern from the same Member and the source of the activity is the same or has been previously identified as a frequent source of disruptive quoting and trading activity then the Exchange could initiate an expedited suspension proceeding by serving notice on the Member that would include details regarding the alleged violations as well as the proposed sanction. In such a case the proposed sanction would likely be to order the Member to cease and desist providing access to the Exchange to the client that is responsible for the disruptive quoting and trading activity and to suspend such Member unless and until such action is taken.

The Member would have the opportunity to be heard in front of a Hearing Panel at a hearing to be conducted within 15 days of the notice. If the Hearing Panel determined that the violation alleged in the notice did not occur or that the conduct or its continuation would not have the potential to result in significant market disruption or other significant harm to investors, then the Hearing Panel would dismiss the suspension order proceeding.

If the Hearing Panel determined that the violation alleged in the notice did occur and that the conduct or its continuation is likely to result in significant market disruption or other significant harm to investors, then the Hearing Panel would issue the order including the proposed sanction, ordering the Member to cease providing access to the client at issue and suspending such Member unless and until such action is taken. If such Member wished for the suspension to be lifted because the client ultimately responsible for the activity no longer would be provided access to the Exchange, then such Member could apply to the Hearing Panel to have the order modified, set aside, limited or revoked. The Exchange notes that the issuance of a suspension order would not alter the Exchange's ability to further investigate the matter and/or later sanction the Member pursuant to the Exchange's standard disciplinary process for supervisory violations or other violations of Exchange rules or the Act.

The Exchange reiterates that it already has broad authority to take action against a Member in the event that such Member is engaging in or facilitating disruptive or manipulative trading activity on the Exchange. For the reasons described above, and in light of recent cases like the client access cases described above, as well as other cases

currently under investigation, the Exchange believes that it is equally important for the Exchange to have the authority to promptly initiate expedited suspension proceedings against any Member who has demonstrated a clear pattern or practice of disruptive quoting and trading activity, as described above, and to take action including ordering such Member to terminate access to the Exchange to one or more of such Member's clients if such clients are responsible for the activity.

The Exchange recognizes that its proposed authority to issue a suspension order is a powerful measure that should be used very cautiously. Consequently, the proposed rules have been designed to ensure that the proceedings are used to address only the most clear and serious types of disruptive quoting and trading activity and that the interests of Respondents are protected. For example, to ensure that proceedings are used appropriately and that the decision to initiate a proceeding is made only at the highest staff levels, the proposed rules require the CRO or another senior officer of the Exchange to issue written authorization before the Exchange can institute an expedited suspension proceeding. In addition, the rule by its terms is limited to violations of Rule 2170, when necessary to protect investors, other Members and the Exchange. The Exchange will initiate disciplinary action for violations of Rule 2170, pursuant to Rule 9400. Further, the Exchange believes that the proposed expedited suspension provisions described above that provide the opportunity to respond as well as a Hearing Panel determination prior to taking action will ensure that the Exchange would not utilize its authority in the absence of a clear pattern or practice of disruptive quoting and trading activity.

Notwithstanding the adoption of the proposed rules along with existing disciplinary rules in the 9000 series, the Exchange also notes that that it may impose temporary restrictions upon the automated entry or updating of orders or quotes/orders as the Exchange may determine to be necessary to protect the integrity of the Exchange's systems pursuant to Rule 4611(c).[9] Also, pursuant to Rule 9555(a)(2)[10] if a member, associated person, or other person cannot continue to have access to services offered by the Exchange or a member thereof with safety to investors, creditors, members, or the Exchange, the Exchange's Regulation Department staff may provide written notice to such member or person limiting or prohibiting access to services offered by the Exchange or a member thereof. This ability to impose a temporary restriction upon Members assists the Exchange in maintaining the integrity of the market and protecting investors and the public interest.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] in particular, in that it is designed to 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. Pursuant to the proposal, the Exchange will have a mechanism to promptly initiate expedited suspension proceedings in the event the Exchange believes that it has sufficient proof that a violation of Rule 2170 has occurred and is ongoing.

Further, the Exchange believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,[13] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of the Commission and Exchange rules. The Exchange also believes that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act because the proposal helps to strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where awaiting the conclusion of a full disciplinary proceeding is unsuitable in view of the potential harm to other Members and their customers. Also, the Exchange notes that if this type of conduct is allowed to continue on the Exchange, the Exchange's reputation could be harmed because it may appear to the public that the Exchange is not acting to address the behavior. The proposed expedited process would enable the Exchange to address the behavior with greater speed.

As explained above, the Exchange notes that it has defined the prohibited disruptive quoting and trading activity by modifying the traditional definitions of layering and spoofing[14] to eliminate an express intent element that would not be proven on an expedited basis and would instead require a thorough investigation into the activity. As noted throughout this filing, the Exchange believes it is necessary for the protection of investors to make such modifications in order to adopt an expedited process rather than allowing disruptive quoting and trading activity to occur for several years.

Through this proposal, the Exchange does not intend to modify the definitions of spoofing and layering that have generally been used by the Exchange and other regulators in connection with actions like those cited above. The Exchange believes that the pattern of disruptive and allegedly manipulative quoting and trading activity was widespread across multiple exchanges, and the Exchange, FINRA, and other SROs identified clear patterns of the behavior in 2007 and 2008 in the equities markets.[15] The Exchange believes that this proposal will provide the Exchange with the necessary means to enforce against such behavior in an expedited manner while providing Members with the necessary due process. The Exchange believes that its proposal is consistent with the Act because it provides the Exchange with the ability 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 from such ongoing behavior.

The Exchange further believes that the proposal is consistent with Section 6(b)(7) of the Act,[16] which requires that the rules of an exchange ''provide a fair procedure for the disciplining of members and persons associated with members . . . and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof.'' Finally, the Exchange also believes the proposal is consistent with Sections 6(d)(1) and 6(d)(2) of the Act,[17] which require that the rules of an exchange with respect to a disciplinary proceeding or proceeding that would limit or prohibit access to or membership in the exchange require the exchange to: Provide adequate and specific notice of the charges brought against a member or person associated

[9] For example, such temporary restrictions may be necessary to address a system problem at a particular NASDAQ Market Maker, NASDAQ ECN or Order Entry Firm or at the Exchange, or an unexpected period of extremely high message traffic.

[10] *See* Rule 9555, entitled ''Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services.''

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[14] *See* supra, notes 4 and 5.

[15] *See* Section 3 herein, the Purpose section, for examples of conduct referred to herein.

[16] 15 U.S.C. 78f(b)(7).

[17] U.S.C. 78f(d)(1).

with a member, provide an opportunity to defend against such charges, keep a record, and provide details regarding the findings and applicable sanctions in the event a determination to impose a disciplinary sanction is made. The Exchange believes that each of these requirements is addressed by the notice and due process provisions included within proposed Rule 9400. Importantly, as noted above, the Exchange will use the authority proposed in this filing only in clear and egregious cases when necessary to protect investors, other Members and the Exchange, and even in such cases, the Respondent will be afforded due process in connection with the suspension proceedings.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that each self-regulatory organization should be empowered to regulate trading occurring on their [sic]market consistent with the Act and without regard to competitive issues. The Exchange is requesting authority to take appropriate action if necessary for the protection of investors, other Members and the Exchange. The Exchange also believes that it is important for all exchanges to be able to take similar action to enforce its [sic] rules against manipulative conduct thereby leaving no exchange prey to such conduct.

The Exchange does not believe that the proposed rule change imposes an undue burden on competition, rather this process will provide the Exchange with the necessary means to enforce against violations of manipulative quoting and trading activity in an expedited manner, while providing Members with the necessary due process.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NASDAQ–2016–074 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 No. SR–NASDAQ–2016–074. 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 No. SR–NASDAQ–2016–074, and should be submitted on or before June 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Brent J. Fields,

Secretary.

[FR Doc. 2016–12775 Filed 5–31–16; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(3)(a)(iii).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77920; File No. SR–NYSEArca–2016–46]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the AdvisorShares Cornerstone Small Cap ETF Under NYSE Arca Equities Rule 8.600

May 25, 2016.

I. Introduction

On March 28, 2016, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the AdvisorShares Cornerstone Small Cap ETF (''Fund''), which will be offered by the AdvisorShares Trust (''Trust''). The proposed rule change was published for comment in the **Federal Register** on April 15, 2016.[3] On May 4, 2016, the Exchange filed Amendment No. 1 to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77576 (April 11, 2016), 81 FR 22337.

proposed rule change.[4] On May 19, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.[5] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 2.

II. The Exchange's Description of the Proposal

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the Trust, which is registered with the Commission as an open-end investment company.[6] AdvisorShares Investments LLC will be the investment adviser (''Adviser'') to the Fund. Cornerstone Investment Partners will be the Fund's sub-adviser (''Sub-Adviser'').[7] Foreside Fund Services, LLC will be the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon will serve as the administrator, custodian, and transfer agent for the Fund.[8]

A. The Fund's Principal Investments

According to the Exchange, the investment objective of the Fund will be to seek to provide total return through long-term capital appreciation and current income. Under normal circumstances,[9] the Fund will invest at least 80% of its net assets (plus any borrowings for investment purposes) in common stocks of small cap companies traded on a U.S. or foreign exchange or over-the-counter (''OTC''). [10]

B. The Fund's Other Investments

According to the Exchange, while the Fund, under normal circumstances, will invest at least 80% of its assets in the securities described in the Principal Investments section above, the Fund may invest its remaining assets in the securities and financial instruments described below.

In addition to the common stocks of small cap companies referenced in the Principal Investments section above, the Fund may invest in the following equity securities traded on a U.S. or foreign exchange or OTC: Common stocks, preferred stocks, rights, warrants, convertible securities, and master limited partnerships (''MLPs''). The Fund may invest in issuers located outside the United States directly, or in exchange-traded funds (''ETFs'') [11] or exchange-traded notes (''ETNs'') [12] that are indirectly linked to the performance of foreign issuers; or in ''Depositary Receipts,'' which are the following: American Depositary Receipts (''ADRs''),[13] Global Depositary Receipts, European Depositary Receipts, International Depository Receipts, ''ordinary shares,'' and ''New York shares.'' [14]

The Fund may invest in the securities of other investment companies to the extent that such an investment would be consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation or order of the Commission or interpretation thereof. Consistent with such restrictions discussed above, the Fund may invest in U.S. exchange-listed closed-end funds and business development companies (''BDCs''). Except with respect to ETFs, as described above,[15] the Fund will not invest in inverse, leveraged, or inverse leveraged investment company securities.

The Fund may invest in the securities of exchange-traded pooled vehicles that are not investment companies and, thus, not required to comply with the provisions of the 1940 Act.[16] These

[4] Amendment No. 1 replaced the original filing in its entirety.

[5] In Amendment No. 2, which replaced Amendment No. 1 in its entirety, the Exchange: (1) Clarified the Fund's investment objective; (2) clarified how OTC ADRs (as defined herein) will be valued for computing the Fund's net asset value (''NAV''); (3) clarified where price information can be obtained for OTC ADRs; (4) specified the cutoff time for creation and redemption orders; (5) amended certain surveillance representations; and (6) made other technical amendments. Amendment No. 2 is available at *http://www.sec.gov/comments/sr-nysearca-2016-46/nysearca201646-2.pdf.* Because Amendment No. 2 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 2 is not subject to notice and comment.

[6] The Exchange represents that the Trust is registered under the 1940 Act. According to the Exchange, on January 26, 2016, the Trust filed with the Commission amendments to its registration statement on Form N–1A under the Securities Act of 1933 and under the Investment Company Act of 1940 (''1940 Act'') relating to the Fund (File Nos. 333–157876 and 811–22110) (''Registration Statement''). In addition, the Exchange states that the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 29291 (May 28, 2010) (File No. 812–13677).

[7] The Exchange states that neither the Adviser nor the Sub-Adviser is registered as a broker-dealer, and neither the Adviser nor the Sub-Adviser is affiliated with a broker-dealer. In the event (a) the Adviser or the Sub-Adviser becomes a registered broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or any sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

[8] Additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, calculation of the NAV, distributions, and taxes, among other things, can be found in Amendment No. 2 and the Registration Statement, as applicable. *See* Amendment No. 2, *supra* note 5, and Registration Statement, *supra* note 6.

[9] The term ''under normal circumstances'' means, without limitation, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[10] The Exchange states that the Sub-Adviser generally defines a small cap company as one having a market capitalization less than the market cap of the largest company in the Russell 2000 Index (''Index'') at the time of acquisition. The Exchange states that the Sub-Adviser will create an investable universe of 1,800 companies for the Fund similar to the components of the Index, but excluding the smallest 200 market capitalization securities in the Index. The Sub-Adviser generally intends to select stocks that satisfy three basic criteria: (1) Analysts have positively revised their forward looking estimates of the company's profitability and the company has generated earnings in excess of analyst expectations; (2) balance sheet strength; and (3) financial flexibility, as determined by measuring a company's ability to meet debt and capital expenditure requirements. Sector weights will be constrained relative to Index sector weights and will be determined by the relative attractiveness of the specific sector. Securities will be targeted to be equally weighted within the sectors, but may shift with price movements.

[11] For purposes of this filing, ETFs are Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The ETFs all will be listed and traded in the U.S. on registered exchanges. The Fund will invest in the securities of ETFs registered under the 1940 Act consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation or order of the Commission or interpretation thereof. The Fund will only make such ETF investments in conformity with the requirements of Regulation M of the Internal Revenue Code of 1986, as amended. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged ETFs.

[12] For purposes of this filing, ETNs include Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)). While the Fund may invest in inverse ETNs, the Fund will not invest in leveraged or inverse leveraged ETNs.

[13] According to the Exchange, no more than 10% of the Fund's net assets will be invested in non-exchange-listed ADRs.

[14] With respect to the Fund's investments in the equity securities of foreign issuers, the Fund may invest in the equity securities of foreign issuers in emerging countries.

[15] *See supra* note 11.

[16] For purposes of this filing, ''exchange-traded pooled vehicles'' consist of Equity Gold Shares (as described in NYSE Arca Equities Rule 5.2(j)(5)); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); and Commodity Futures Trust Shares

Continued

pooled vehicles typically hold commodities, such as gold or oil, currency, or other property that is itself not a security.

The Fund may invest in shares of real estate investment trusts (''REITs'') that are U.S. exchange-listed.

The Fund may enter into repurchase agreements and reverse repurchase agreements.

The Fund may invest in U.S. government securities, which include U.S. Treasury securities, U.S. Treasury bills, U.S. Treasury notes, and U.S. Treasury bonds. The Fund may also invest in certain U.S. government securities that are issued or guaranteed by agencies or instrumentalities of the U.S. government including, but not limited to, obligations of U.S. government agencies or instrumentalities such as the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association.

The Fund may invest in U.S. exchange-traded equity options, U.S. exchange-traded index options, and U.S. exchange-traded stock index futures contracts, all of which are traded in markets that are members of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Fund may invest in U.S. exchange-traded ''passive foreign investment companies'' (''PFICs'').

The Fund, from time to time, in the ordinary course of business, may purchase securities on a when-issued, delayed-delivery, or forward commitment basis.

According to the Exchange, to respond to adverse market, economic, political, or other conditions, the Fund may invest up to 100% of its total assets, without limitation, in high-quality, short-term debt securities and money market instruments either directly or through ETFs. The Fund may be invested in this manner for extended periods, depending on the Sub-Adviser's assessment of market conditions. Debt securities and money market instruments are the following: Shares of mutual funds, commercial paper, certificates of deposit, bankers' acceptances, U.S. government securities, repurchase agreements, and bonds that are rated BBB or higher.

(as described in NYSE Arca Equities Rule 8.204). The exchange-traded pooled vehicles all will be listed and traded in the U.S. on registered exchanges. While the Fund may invest in inverse exchange-traded pooled vehicles, the Fund will not invest in leveraged or inverse leveraged exchange-traded pooled vehicles.

C. The Fund's Investment Restrictions

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets.[17] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are invested in illiquid assets.

The Fund will be classified as a diversified investment company under the 1940 Act.

The Fund intends to qualify as a ''regulated investment company'' for purposes of the Internal Revenue Code of 1986.

The Fund will not:

(a) With respect to 75% of its total assets, (i) purchase securities of any issuer (except securities issued or guaranteed by the U.S. government, its agencies or instrumentalities, or shares of investment companies) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer, or (ii) acquire more than 10% of the outstanding voting securities of any one issuer;

(b) invest 25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries. This limitation does not apply to investments in securities issued or guaranteed by the U.S. government, its agencies or instrumentalities, or shares of investment companies. The Fund will not invest 25% or more of its total assets in any investment company that so concentrates.

The Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns. The Fund's investments will not be used to seek performance that is the multiple or inverse multiple of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[18] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Exchange Act,[19] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[20] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

According to the Exchange, quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line, and information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.

In addition, the Portfolio Indicative Value (as defined in NYSE Arca Equities Rule 8.600(c)(3)), based on current information regarding the value of the securities and other assets in the Disclosed Portfolio,[21] will be widely disseminated at least every 15 seconds during the Core Trading Session [22] by one or more major market data vendors.[23] On each business day, before commencement of trading in Shares in the Core Trading Session on the

[17] In determining the liquidity of the Fund's investments, the Adviser may consider various factors, including: The frequency and volume of trades and quotations; the number of dealers and prospective purchasers in the marketplace; dealer undertakings to make a market; and the nature of the security and the market in which it trades.

[18] 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).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[21] The term ''Disclosed Portfolio'' is defined in NYSE Arca Equities Rule 8.600(c)(2).

[22] The term ''Core Trading Session'' is defined in NYSE Arca Equities Rule 7.34(a)(2).

[23] According to the Exchange, several major market data vendors display and/or make widely available Portfolio Indicative Values taken from CTA or other data feeds.

Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.[24] The Fund's Web site will also include a form of the prospectus for the Fund that may be downloaded, as well as additional quantitative information updated on a daily basis.

Quotation and last-sale information for U.S. exchange-listed equity securities, including common stocks, ETFs, ETNs, exchange-traded pooled vehicles, preferred stocks, rights, warrants, convertible securities, closed-end funds, MLPs, REITs, BDCs, PFICs, and certain Depositary Receipts will be available via the CTA high-speed line, and will be available from the national securities exchange on which they are listed. Prices related to foreign exchange-traded common stocks, preferred stocks, rights, warrants, convertible securities, and MLPs will be available from the applicable exchange or from major market data vendors. Intra-day and closing price information relating to OTC-traded common stocks, ADRs, preferred stocks, rights, warrants, convertible securities, and MLPs will be available from major market data vendors. Quotation and last-sale information for futures will be available from the exchange on which they are listed. Quotation and last-sale information for exchange-listed options cleared via the Options Clearing Corporation will be available via the Options Price Reporting Authority. Price information regarding investment company securities (other than exchange-traded investment company securities) will be available from the applicable fund. Price information regarding U.S. government securities, repurchase agreements, and reverse repurchase agreements may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Further, trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which trading in the Shares may be halted. In addition, trading in the Shares will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.[25] The Adviser, as the Reporting Authority, will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the Fund's portfolio. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange states that neither the Adviser nor the Sub-Adviser is a registered broker-dealer or affiliated with a broker-dealer, and that in the event (a) the Adviser or the Sub-Adviser becomes a registered broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The Exchange represents that it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. To support this proposal, the Exchange has made the following representations:

(1) The Shares will be subject to NYSE Arca Equities Rule 8.600, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.[26]

(4) The Exchange, or FINRA on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and certain underlying securities and financial instruments with other markets and other entities that are members of the ISG, and the Exchange, or FINRA on behalf of the Exchange, or both, may obtain trading information regarding trading in such securities and financial instruments from such markets and other entities.[27] In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(5) Not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (other than non-exchange-traded investment company securities) shall consist of equity securities whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(6) While the Fund may invest in inverse ETFs, ETNs, and exchange-traded pooled vehicles, the Fund will not invest in leveraged or inverse leveraged ETFs, ETNs, and exchange-traded pooled vehicles.

(7) The Fund may invest in U.S. exchange-traded equity options, U.S. exchange-traded index options, and U.S. exchange-traded stock index futures contracts, all of which are traded in markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[24] On a daily basis, the Adviser will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, index, or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held; maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

[25] These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[26] *See* Amendment No. 2, *supra* note 5, at 17. The Exchange states that FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement, and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

[27] *See id.*

(8) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets.

(9) For initial and continued listing, the Fund must be in compliance with Rule 10A–3 under the Exchange Act.[28]

(10) The Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns. The Fund's investments will not be used to seek performance that is the multiple or inverse multiple of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).

(11) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

(12) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value and the Disclosed Portfolio is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

The Exchange represents that all statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor[29] for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m). This approval order is based on all of the Exchange's representations, including those set forth above and in Amendment No. 2. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be initially and continuously listed and traded on the Exchange.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Exchange Act[30] and Section 11A(a)(1)(C)(iii) of the Exchange Act[31] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[32] that the proposed rule change (SR–NYSEArca–2016–46), as modified by Amendment No. 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Brent J. Fields,

Secretary.

[FR Doc. 2016–12782 Filed 5–31–16; 8:45 am]

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[28] *See* 17 CFR 240.10A–3.

[29] The Commission notes that certain other proposals for the listing and trading of managed fund shares include a representation that the exchange will ''surveil'' for compliance with the continued listing requirements. *See, e.g.,* Amendment No. 2 to SR–BATS–2016–04, available at: *http://www.sec.gov/comments/sr-bats-2016-04/bats201604-2.pdf.* In the context of this representation, it is the Commission's view that ''monitor'' and ''surveil'' both mean ongoing oversight of the Fund's compliance with the continued listing requirements. Therefore, the Commission does not view ''monitor'' as a more or less stringent obligation than ''surveil'' with respect to the continued listing requirements.

[30] 15 U.S.C. 78f(b)(5).

[31] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, June 2, 2016 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Stein, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Adjudicatory matters; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: May 26, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–12948 Filed 5–27–16; 11:15 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77902; File No. SR–NYSEMKT–2016–55]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 930NY Regarding Definition of Floor Broker

May 25, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the

[1] 15 U.S.C. 78s(b)(1).

''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on May 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 930NY (Floor Broker Defined). 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 930NY to update the definition of Floor Broker.[4] The proposed rule change would harmonize the Floor Broker definition with the recently updated rule of another competing options exchange—specifically NASDAQ OMX PHLX LLC (''PHLX'').[5]

Rule 930NY(a) defines a Floor Broker as ''a sole proprietor ATP Holder or a representative of an ATP Holder who is registered with the Exchange for the purpose, while on the Exchange Floor, of accepting and executing option orders received from ATP Holders.'' The Rule further provides that ''[a] Floor Broker shall not accept an order from any other source unless he is a sole proprietor ATP Holder or a representative of an ATP Holder approved to transact business with the public in accordance with Rule 441, in which event he may accept orders for customers of the ATP Holder.''

The Exchange notes that Floor Brokers, as registered Broker/Dealers,[6] have long handled orders from Broker/Dealers who may not be ATP Holders. In addition, Floor Brokers may accept orders from non-Broker/Dealers (*i.e.,* public customers).[7] Thus, the Exchange proposes to clarify Rule 930NY(a) by removing the language regarding the types of market participants from whom a Floor Broker may accept an order.[8] The updated rule would provide that a Floor Broker is an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and handling options orders.[9] Further, as proposed, a Floor Broker may accept orders from ATP Holders, Broker Dealers that are non-ATP Holders, Professional Customers, pursuant to Rule 930NY(b), as well as from public customers provided the Floor Broker is properly qualified to do business with the public.[10]

This proposed rule change would reflect current practice on the Exchange, specifically that a Floor Broker may accept orders from Broker Dealers that are not ATP Holders. The proposed modification would not alter a Floor Broker's responsibilities. Further, the proposal would have no impact on a Floor Broker's ability to accept orders from the public.[11]

2. Statutory Basis

The Exchange believes that the proposed change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5),[13] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that the proposal is designed to remove language that could be interpreted as a limitation on orders that may be accepted by Floor Brokers to reflect current practice on the Exchange, which would promote just and equitable principles of trade, and remove impediments to, and perfect the mechanism of a free and open market. The proposed change would make clear to market participants that a Floor Broker may accept an order from a non-ATP Holder that is a Broker Dealer, which adds clarity and transparency to Exchange rules to the benefit of all market participants. Thus, the Exchange believes that the proposal would help prevent confusion and help ensure that floor brokerage services are widely available to various types of market participants, which should, in turn, promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. With respect to inter-market competition, the proposed rule change is a competitive change that is substantially similar to rules in place at another competing options exchange.[14] With respect to intra-market competition, the proposal applies to all NYSE MKT Floor Brokers.

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange notes that, other than adding reference to Professional Customers, the definition of Floor Broker has remained unchanged since its adoption in 2009, as part of the Exchange's adoption of the Rule 900NY series. *See* Securities Exchange Act Release No. 59472 (February 27, 2009) 74 FR 9843 (March 6, 2009) (NYSEALTR–2008–14), which established rules for the trading of listed options. The Rule 900NY suite of rules was substantially based on the existing Rules of NYSE Arca LLC. *See also* Securities Exchange Act Release No. 61818 (March 31, 2010) 75 FR 17457 (April 6, 2010) (SR–NYSE Amex-2010–18) (relating to accepting orders from Professional Customers).

[5] *See* Securities Exchange Act Release No. 76800 (December 30, 2015), 81 FR 549, (January 6, 2016) (SR–Phlx–2015–114) (adopting updated definition of Floor Broker in PHLX Rule 1060 on immediately effective basis).

[6] *See* Rule 930NY(a).

[7] To handle the orders of public customers, Floor Brokers must be properly qualified to do business with the public, per Section 3 (Conduct of Accounts for Options Trading), generally, and Rule 920 (Registration and Examination of Options Personnel), specifically.

[8] *See* proposed Rule 930NY(a). This practice is consistent with the rules of other exchanges. *See, e.g., supra* n. 5 (PHLX Rule 1060) and CBOE Rule 6.70 (permitting CBOE Floor Brokers to accept orders from non-member broker-dealers).

[9] Consistent with the proposed changes to Rule 930NY(a), the Exchange proposes to delete the cross reference to this section from Rule 930NY(b)(1). *See* proposed Rule 930NY(b)(1).

[10] *See supra* n. 7.

[11] *See id.*

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See supra* n. 5.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16] 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) thereunder.[17]

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:

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–2016–55 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–55. 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–NYSEMKT–2016–55, and should be submitted on or before June 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Brent J. Fields,

Secretary.

[FR Doc. 2016–12788 Filed 5–31–16; 8:45 am]

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[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77901; File No. SR–NYSEMKT–2016–26]

Self-Regulatory Organizations; NYSE MKT LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No.1 Thereto, To Amend the Eighth Amended and Restated Operating Agreement of the Exchange

May 25, 2016.

I. Introduction

On March 29, 2016, NYSE MKT LLC (''Exchange'' or ''NYSE MKT'') 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 amend the Eighth Amended and Restated Operating Agreement of the Exchange (''Operating Agreement''). The proposed rule change was published for comment in the **Federal Register** on April 12, 2016.[3] The Commission received no comments in response to the Notice. On May 19, 2016, the Exchange filed Amendment No. 1 to the proposal.[4] This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of the Proposal

The Exchange proposes to amend the Operating Agreement to (1) change the process for nominating non-affiliated directors; (2) remove a reference to an obsolete category of member; and (3) add references to Designated Market Makers (''DMMs'').

A. Process for Nominating Non-Affiliated Directors

Pursuant to the Operating Agreement, at least 20 percent of the Exchange's Board of Directors (''Board'') is made up of ''Non-Affiliated Directors'' (commonly referred to as ''fair representation directors'').[5] Pursuant to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 77536 (April 6, 2016), 81 FR 21636 (''Notice'').

[4] Amendment No. 1 is a technical amendment to retain the initial reference to ''DCRC Candidates'' in Section 2.03(a)(iii) of the Operating Agreement rather than to delete it. Because Amendment No. 1 to the proposed rule change does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment.

[5] Pursuant to Section 2.03(a) of the Operating Agreement, Non-Affiliated Directors are persons who are not members of the Board of Directors of Intercontinental Exchange, Inc. (''ICE''). A person may not be a Non-Affiliated Director unless he or she is free of any statutory disqualification, as defined in Section 3(a)(39) of the Act, 15 U.S.C.

Section 2.03(a) of the Operating Agreement, the nominating and governance committee (''NGC'') of the board of directors of ICE, the indirect parent of the Exchange, nominates the candidates for Non-Affiliated Directors, who are then elected by NYSE Group, Inc. (''NYSE Group'') as the sole member of the Exchange. The Exchange proposes to amend Section 2.03(a) to have the Director Candidate Recommendation Committee (''DCRC'') of the Exchange assume the role currently played by the ICE NGC and to make a conforming change to Section 2.03(h)(i). In addition, if the Exchange's Member Organizations endorse a Petition Candidate [6] for Non-Affiliated Director pursuant to Section 2.03(a)(iv) of the Operating Agreement, the ICE NGC makes the determination of whether the person is eligible.[7] The Exchange proposes to amend Section 2.03(a)(iv) to have the Exchange make such determination instead of the ICE NGC.

Currently, the nomination by the ICE NGC is the final step in the process for electing a Non-Affiliated Director. First, the DCRC recommends a candidate, whose name then is announced to the Member Organizations. The Member Organizations may propose alternate candidates by petition. If there are no Petition Candidates, the DCRC recommends its candidate to the ICE NGC. If Petition Candidates are proposed, the ICE NGC makes the determination of whether the candidates are eligible, and then all of the eligible candidates are submitted to the Member Organizations for a vote. The DCRC recommends to the ICE NGC the candidate receiving the highest number of votes. The ICE NGC is obligated to designate the DCRC-recommended candidate as the nominee, and NYSE Group is obligated to elect him or her as a Non-Affiliated Director.

The Exchange believes that obligating the ICE NGC to nominate the candidates for Non-Affiliated Directors based on the DCRC's unalterable recommendation is neither necessary nor meaningful. Pursuant to Section 2.03(a)(iii), the ICE NGC is obligated to designate whomever the DCRC recommends or, if there is a Petition Candidate, whoever emerges from the petition process. According to the Exchange, the ICE NGC does not have any discretion. The Exchange believes that removing this step would make the NYSE MKT process with respect to the nomination of Non-Affiliated Directors more efficient. Moreover, the Exchange believes that having the Exchange determine whether persons endorsed to be Petition Candidates are eligible to serve as Non-Affiliated Directors also would be more efficient, as it would not require action by the ICE NGC, thereby potentially removing the possibility of any delay in the process. The Exchange further states that the proposed change would be consistent with the petition process of the Nasdaq Stock Market LLC in which that exchange determines the eligibility of proposed nominees.[8]

Accordingly, the Exchange proposes to revise Section 2.03(a)(iii)–(v) of the Operating Agreement to amend the process for electing Non-Affiliated Directors. First, as is currently the case, the DCRC would recommend a candidate, whose name would be announced to the Member Organizations, and the Member Organizations could propose alternate candidates by petition. Second, if there were no Petition Candidates, the DCRC would nominate the candidate whom it had previously recommended. If there were Petition Candidates, the Exchange would make the eligibility determination regarding Petition Candidates; all eligible candidates would be submitted to the Member Organizations for a vote; and the DCRC would nominate the candidate receiving the highest number of votes. Finally, NYSE Group would be obligated to elect the DCRC-nominated candidate as a Non-Affiliated Director.

In addition, the Exchange would make a conforming change to Section 2.03(h)(i) to state that the DCRC ''will be responsible for nominating Non-Affiliated Director Candidates.'' Currently, the provision states that the DCRC ''will be responsible for recommending Non-Affiliated Director Candidates to the ICE NGC.''

B. Elimination of a Category of DCRC Membership

The Operating Agreement requires that the DCRC include representatives from each of the four categories of Exchange members. The Exchange proposes to amend Section 2.03(h)(i) of the Operating Agreement to eliminate from the DCRC representatives of the fourth category, which relates to individuals who are ''associated with a Member Organization and spend a majority of their time on the trading floor of the [Exchange] and have as a substantial part of their business the execution of transactions on the trading floor of the [Exchange] for their own account or the account of their Member Organization, but are not registered as a specialist.'' [9]

This fourth category describes a class of proprietary traders known as Registered Equity Market Makers (''REMMs'') on the former American Stock Exchange LLC, a predecessor of the Exchange. REMMs were floor traders who engaged in on-floor proprietary trading, subject to certain requirements intended to have these members effectively function like market makers, pursuant to the exemption for market makers in Section 11(a)(1)(A) of the Exchange Act.[10] The rules relating to this category of proprietary floor trader were eliminated shortly after the American Stock Exchange LLC was acquired by the NYSE.[11] In addition, NYSE MKT Rule 114, which governed REMMs, was deleted as obsolete in 2012.[12] As a result, there are no Exchange members or member organizations that fall under the fourth category specified in Section 2.03(h)(i) of the Operating Agreement. Thus, the Exchange proposes to delete references to this category as obsolete. This change would make Section 2.03(h)(i) consistent with the categories of members of the Committee for Review, as set forth in Section 2.03(h)(iii).[13]

C. References to Designated Market Makers

In 2008, the Exchange adopted rules, based on NYSE rules, that transformed specialists in the Exchange's equity

78c(a)(39), Non-Affiliated Directors need not be independent.

[6] *See* Section 2.03(a)(iv) of the Operating Agreement.

[7] Pursuant to Section 2.02 of the Operating Agreement, ''Member Organizations'' refers to members and member organizations, as defined in NYSE MKT Rules 18 and 24, respectively.

[8] *See* By-Laws of the Nasdaq Stock Market LLC, Art. II, Sec. 1(b) (''The Company may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a Member Representative Director.'').

[9] Representatives from the following three categories would continue to be included on the DCRC: (1) Member organizations that engage in a business involving substantial direct contact with securities customers (commonly referred to as ''upstairs firms''); (2) specialists; and (3) floor brokers. The Exchange proposes to add DMMs to category (2), as discussed below. *See* note 15, *infra,* and accompanying text.

[10] This class of proprietary traders were known as Registered Competitive Market Makers (''RCMM'') on the New York Stock Exchange LLC (''NYSE'').

[11] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995, 58996 (October 8, 2008) (SR–Amex–2008–63). The NYSE eliminated RCMMs shortly thereafter. *See* Securities Exchange Act Release No. 60356 (July 21, 2009), 74 FR 37281 (July 28, 2009) (SR–NYSE–2009–08).

[12] *See* Securities Exchange Act Release No. 68306 (November 28, 2012), 77 FR 71846 (December 4, 2012) (SR–NYSEMKT–2012–68).

[13] *See* Securities Exchange Act Release No. 77008 (February 1, 2016), 81 FR 6311 (February 5, 2016) (SR–NYSEMKT–2015–106).

market into DMMs.[14] As a result, market makers on the NYSE MKT equity market are called DMMs and on the NYSE Amex Options LLC (''NYSE Amex Options'') options market are called specialists.[15] However, several provisions of the Operating Agreement were not updated and refer only to specialists. Accordingly, the Exchange proposes to amend Sections 2.02 and 2.03(h)(i) to add references to DMMs.

Section 2.02 of the Operating Agreement provides that the Board has general supervision over Member Organizations and over approved persons in connection with their conduct with or affecting Member Organizations. Section 2.02 further provides that the Board ''may disapprove of any member acting as a specialist or odd lot dealer.'' The Exchange proposes to add ''designated market maker (as defined in Rule 2 of the Company Rules) ('DMM')'' after ''specialist'' in Section 2.02.

Section 2.03(h)(i) sets out the categories of individuals that shall be represented on the DCRC. The Exchange proposes to add ''or DMM'' to the references to ''specialist'' in categories (ii) and (iii), so that they reference both types of market makers. The changes would be consistent with the categories of members of the Committee for Review set forth in Section 2.03(h)(iii), which refers to both DMMs and specialists.[16]

Finally, the Exchange proposes to make technical and conforming changes to the recitals and signature page of the Operating Agreement.

III. Discussion and Commission's Findings

The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of Section 6 of the Act[17] and the rules and regulations thereunder applicable to a national securities exchange.[18]

The Commission finds that the proposed rule change is consistent with Section 6(b)(1),[19] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the exchange. In addition, the Commission finds that the proposed rule change is consistent with Section 6(b)(3) of the Act,[20] which requires, among other things, that the rules of a national securities exchange assure a fair representation of its members in the selection of its directors and administration of its affairs.

The proposed rule change would remove the requirement that the ICE NGC nominate the candidates for Non-Affiliated Directors and instead have the DCRC nominate the candidates for Non-Affiliated Director directly.[21] Because the ICE NGC currently is required to nominate the candidate recommended to it by the DCRC, this proposed change would remove an additional step in the process of nominating candidates for Non-Affiliated Director positions and thus may improve the efficiency of the nomination process.

In addition, the proposed rule change would remove the requirement that the ICE NGC make the determination of whether persons endorsed to be Petition Candidates are eligible to be a Non-Affiliated Director, and would have the Exchange make such determination instead. The proposed process would maintain an independent review of the eligibility of any Petition Candidates, while avoiding the potential conflict of interest that could arise if, for example, the DCRC were to be responsible for both proposing and nominating candidates and making eligibility determinations of Petition Candidates proposed by Member Organizations. The Commission previously considered and approved rules of another exchange that similarly provide for that exchange to determine the eligibility of proposed Petition Candidates.[22]

Further, eliminating the requirement that the DCRC include representatives from the fourth category of members described above (formerly REMMs) would remove a reference to an obsolete category of member from the Operating Agreement. The Commission finds that eliminating such an obsolete reference would add clarity to the Exchange's rules and be consistent with the public interest and the protection of investors.

Finally, the proposed addition of references to DMMs in Section 2.02 and 2.03(h)(i) of the Operating Agreement would more accurately reflect that specialists in the Exchange's equity market are now referred to as DMMs and also would make these sections consistent with Section 2.03(h)(iii) (categories of members of the Committee for Review), which refers to both DMMs and specialists. The proposed addition of a reference to DMMs in Section 2.02 would clarify that the Board has general supervision over all Member Organizations, including the ability to disapprove of any member acting as a DMM, as well as a specialist or odd lot dealer. The proposed addition of references to DMMs in Section 2.03(h)(i) would clarify that DMMs, as well as specialists, are categories of individuals that would be represented on the DCRC.

The Commission finds that the foregoing revisions to the Operating Agreement are consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–NYSEMKT–2016–26), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Brent J. Fields,

Secretary.

[FR Doc. 2016–12787 Filed 5–31–16; 8:45 am]

BILLING CODE 8011–01–P

[14] *See* Securities Exchange Act Release Nos. 58705 (October 1, 2008), 73 FR 58995 (October 8. 2008) (SR–Amex–2008–63) (approval order) and 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR–NYSEALTR–2008–10) (amending equity rules to conform to NYSE New Market Model Pilot rules). *See also* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46) (approving rule change to create NYSE New Market Model Pilot).

[15] The Exchange operates a marketplace for trading options through NYSE Amex Options, a facility of the Exchange. *See* Rule 2—Equities (i) & (j) (defining DMM) and Rule 927NY (defining specialist).

[16] *See* note 13, *supra,* and accompanying text.

[17] 15 U.S.C. 78f.

[18] The Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78f(b)(1).

[20] 15 U.S.C. 78f(b)(3).

[21] The Commission notes that the DCRC is appointed by the Board. *See* Section 2.03(h)(i) of the Operating Agreement.

[22] *See supra* note 8. *See generally* Securities Exchange Act Release Nos. 56876 (November 30, 2007), 72 FR 70357 (December 11. 2007) (SR–NASDAQ–2007–068) (approving process for electing Member Representative Directors).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77908; File No. SR–Phlx–2016–59]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to PIXL Pricing

May 25, 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 May 11, 2016, NASDAQ PHLX LLC (''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section IV, Part A of the Pricing Schedule entitled ''PIXL Pricing.''

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to amend the PIXL[3] pricing located in the Pricing Schedule at Section IV, Part A. The Exchange amends the PIXL Pricing to incentivize market participants to direct more PIXL Orders to Phlx.

Today, the Exchange assesses a $0.07 per contract Initiating Order Fee. If the member or member organization qualifies for the Tier 4 or 5 Customer Rebate[4] in Section B, the member or member organization will be assessed a discounted Initiating Order Fee of $0.05 per contract for Simple PIXL Orders and $0.03 per contract for Complex[5] PIXL Orders. The Exchange is proposing to make three changes to the PIXL Pricing.

Pricing Change Number 1

The Exchange proposes to assess a $0.05 per contract discounted Initiating Order Fee to members and member organizations that qualify for the Tier 4 or 5 Customer Rebate in Section B, regardless of whether the order is a Simple or Complex PIXL Order. The Initiating Order Fee for Simple PIXL Orders would therefore be assessed the same lower rate when the member or member organization would qualify for this reduced fee. The Exchange proposes to increase the discounted Complex PIXL Initiating Order Fee from $0.03 to $0.05 per contract provided the member or member organization qualifies for Tier 4 or 5 of the Customer Rebate in Section B.

Pricing Change Number 2

Additionally, the Exchange proposes a new incentive for members or member organizations that deliver equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and exchange-traded fund (''ETF'') option classes, excluding SPY options,[6] in a given month to lower their Initiating Order Fee to $0.00 per contract for Complex PIXL Orders. This proposal will offer members submitting Complex PIXL Orders the opportunity to pay no Initiating Order Fee instead of a $0.05 per contract[7] discounted Complex PIXL Initiating Order Fee if the member qualifies for the incentive.

Pricing Change Number 3

The Exchange also proposes to offer this new incentive to members or member organizations under Common Ownership.[8] Today, any member or member organization under Common Ownership with another member or member organization that qualifies for a Tier 4 or 5 Customer Rebate in Section B will be assessed a discounted PIXL Initiating Order Fee of $0.05 per contract for Simple PIXL Orders and $0.03 per contract for Complex PIXL Orders. The Exchange proposes that any member or member organization under Common Ownership with another member or member organization that executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF options classes, excluding SPY options, in a given month will be assessed a discounted PIXL Initiating Order Fee of $0.05 for Simple PIXL Orders and $0.00 for Complex PIXL Orders. The Exchange also proposes to increase the discounted Complex PIXL Initiating Order Fee for members or member organizations under Common Ownership that qualify for Customer Rebate Tier 4 or 5 in Section B. With this proposal, any member or member organization under Common Ownership with another member or member organization that qualifies for a Customer Rebate Tier 4 or 5 in Section B will be assessed a discounted Complex PIXL Initiating Order Fee of $0.05 per contract.

Despite the increase to the discounted Complex PIXL Initiating Order Fee for members and member organizations that qualify for a Customer Rebate Tier 4 or 5 in Section B, the Exchange believes that the increased discounted rate will continue to encourage members to direct more Complex PIXL Orders to the Exchange.[9]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] PIXL℠ is the Exchange's price improvement mechanism known as Price Improvement XL or PIXL. A member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (''PIXL Order'') against principal interest or against any other order (except as provided in Rule 1080(n)(i)(F) it represents as agent (''Initiating Order''), provided it submits the PIXL order for electronic execution into the PIXL Auction pursuant to Rule 1080. *See* Exchange Rule 1080(n).

[4] Currently, the Exchange has a Customer Rebate Program consisting of five tiers that pay Customer rebates on three Categories, A, B and C of transactions. A Phlx member qualifies for a certain rebate tier based on the percentage of total national customer volume in multiply-listed options that it transacts monthly on Phlx. The Exchange calculates Customer volume in Multiply Listed Options by totaling electronically-delivered and executed volume, excluding volume associated with electronic Qualified Contingent Cross (''QCC'') Orders, as defined in Exchange Rule 1080(o). In calculating electronically-delivered and executed Customer volume in Multiply Listed Options, the numerator of the equation includes all electronically-delivered and executed Customer volume in Multiply Listed Options. The denominator of that equation includes national customer volume in multiply-listed equity and ETF options volume, excluding SPY. *See* Section B of the Pricing Schedule.

[5] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or ETF coupled with the purchase or sale of options contract(s). *See* Exchange Rule 1080, Commentary .07.

[6] Options overlying Standard and Poor's Depositary Receipts/SPDRs (''SPY'') are based on the SPDR exchange-traded fund, which is designed to track the performance of the S&P 500 Index.

[7] Today the Complex PIXL Initiating Order Fee for members and member organizations that qualify for the Tier 4 or 5 Customer Rebate in Section B is $0.03 per contract. This proposal increases that fee to $0.05 per contract.

[8] The term ''Common Ownership'' shall mean members or member organizations under 75% common ownership or control.

[9] Currently, the Initiating Order Fee for Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are contra to a Customer

Continued

2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [12]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [13] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[14] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [15]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [16] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Pricing Change Number 1

The Exchange's proposal to increase the discounted Complex PIXL Initiating Order Fee for members and member organizations that qualify for Tier 4 or 5 of the Customer Rebate in Section B from $0.03 to $0.05 per contract is reasonable because the Exchange assesses this discounted same [sic] rate for the Simple PIXL Initiating Order Fee. Furthermore, the Exchange believes that this fee is reasonable because it continues to be lower than the $0.07 per contract Initiating Order Fee for members and member organizations that do not qualify for Tier 4 or 5 of the Customer Rebate in Section B. Finally, the Exchange is offering members and member organizations an opportunity to lower the Complex PIXL Initiating Order Fee to $0.00 per contract provided the member or member organization executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF option classes, excluding SPY options, in a given month.

The Exchange's proposal to increase the discounted Complex PIXL Initiating Order Fee for members and member organizations that qualify for Tier 4 or 5 of the Customer Rebate in Section B from $0.03 to $0.05 per contract is equitable and not unfairly discriminatory because the Exchange will apply the proposed fees in a uniform manner to all market participants who qualify for the discounted rate. Further, all market participants are eligible to earn Customer Rebates, transact Complex PIXL Orders and participate in a PIXL Auction.

Pricing Change Number 2

The Exchange's proposal to offer members and member organizations an opportunity to pay no Complex PIXL Initiating Order Fee provided they transact equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF option classes, excluding SPY options, in a given month is reasonable because it will encourage market participants to transact Customer volume as well as a greater number of Complex PIXL Orders on the Exchange. Today, members and member organizations may lower their Complex PIXL Order Initiating Order Fees by qualifying for Tiers 4 [17] or 5 [18] of the Customer Rebate in Section B. In order to qualify for Section B Customer Rebate Tiers 4 or 5 a member or member organization is required to transact a certain percentage of total National Customer Volume (above 1.60%) in Multiply-Listed options in a month on Phlx to receive a lower Complex PIXL Initiating Order Fee of $0.05 [19] as compared to the Initiating Order Fee of $0.07 per contract. With this proposal the Exchange offers members and member organizations an opportunity to pay no Initiating Order Fee for Complex PIXL Orders provided they deliver equal to order [sic] greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF options classes, excluding SPY options, in a given month is transacted on Phlx [sic]. The Exchange seeks to encourage market participants to increase the amount of Customer order flow that is directed to Phlx by offering the opportunity to pay no Complex PIXL Initiating Order Fee. In order to qualify for this new incentive, a greater amount of Customer volume is necessary to be transacted than the volume currently required to qualify for the Customer Rebate Tiers 4 and 5 in Section B.

The Exchange believes that members and member organizations will direct a greater amount of Customer liquidity to Phlx to qualify for a Complex PIXL Initiating Order Fee of $0.00 per contract. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange's proposal to offer member and member organizations an opportunity to pay no Complex PIXL Initiating Order Fee provided they transact equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF options classes, excluding SPY options, in a given month is equitable and not unfairly discriminatory because the

PIXL Order will be reduced to $0.00 if the Customer PIXL Order is greater than 399 contracts. The Exchange is not amending this provision.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[13] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[14] *See NetCoalition,* at 534–535.

[15] *Id.* at 537.

[16] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[17] Tier 4 requires member and member organizations to transact above 1.60%–2.50% of National Customer Volume in Multiply-Listed Equity and ETF Options.

[18] Tier 5 requires member and member organizations to transact above 2.50% of National Customer Volume in Multiply-Listed Equity and ETF Options.

[19] Today the Complex PIXL Initiating Order Fee for members and member organizations that qualify for the Tier 4 or 5 Customer Rebate in Section B is $0.03 per contract. This proposal increases that fee to $0.05 per contract.

opportunity to pay no Complex PIXL Initiating Order Fee is available to all market participants. In addition, all market participants are eligible to earn Customer Rebates, transact Complex PIXL Orders and participate in a PIXL Auction.

Pricing Change Number 3

The Exchange's proposal to increase the discounted Complex PIXL Initiating Order Fee for members and member organizations under Common Ownership that qualify for Tier 4 or 5 of the Customer Rebate in Section B from $0.03 to $0.05 per contract is reasonable for the same reasons explained herein. It is also reasonable to offer member and member organizations under Common Ownership an opportunity to pay no Complex PIXL Order Initiating Order Fee provided the member or member organization executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF options classes, excluding SPY options, in a given month for the same reasons explained herein. The Exchange believes that applying the same pricing to members under Common Ownership as wholly-owned entities avoids disparate treatment of members that have divided their various business activities between separate corporate entities as compared to members that operate those business activities within a single corporate entity.

The Exchange's proposal to increase the discounted Complex PIXL Initiating Order Fee for members and member organizations under Common Ownership that qualify for Tier 4 or 5 of the Customer Rebate in Section B from $0.03 to $0.05 per contract is equitable and not unfairly discriminatory for the same reasons explained herein. It is also equitable and not unfairly discriminatory to offer member and member organizations under Common Ownership an opportunity to pay no Complex PIXL Initiating Order Fee provided the member or member organization executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed Equity and ETF options classes, excluding SPY options, in a given month for the same reasons explained herein. The Exchange believes that its proposed pricing is equitable and not unfairly discriminatory because it permits both wholly owned and common control members and member organizations to be subject to the same pricing for PIXL.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, that the degree to which fee changes in this market may impose any burden on inter-market competition is extremely limited.

Pricing Change Number 1

The Exchange believes that increasing the discounted Complex PIXL Initiating Order Fee for members and member organizations that qualify for Tier 4 or 5 of the Customer Rebate in Section B from $0.03 to $0.05 per contract does not create an undue burden on intra-market competition because the Exchange will apply the proposed fees in a uniform manner to all market participants who qualify for the discounted rate. All market participants are eligible to earn Customer Rebates, transact Complex PIXL Orders and participate in a PIXL auction. Also, encouraging Customer liquidity benefits all market participants by providing more trading opportunities, which attract Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Pricing Change Number 2

The Exchange believes that it is does not create an undue burden on intra-market competition to offer member and member organizations an opportunity to lower the Complex PIXL Initiating Order Fee to $0.00 per contract provided the member or member organization executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF options classes, excluding SPY options, in a given month because all market participants are eligible to earn Customer Rebates, transact Complex PIXL Orders and participate in a PIXL auction. Also, encouraging Customer liquidity benefits all market participants by providing more trading opportunities, which attract Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Pricing Change Number 3

The Exchange's proposal to increase the discounted Complex PIXL Initiating Order Fee for members and member organizations under Common Ownership that qualify for Tier 4 or 5 of the Customer Rebate in Section B from $0.03 to $0.05 per contract and the proposal to lower the Complex PIXL Initiating Order Fee to $0.00 per contract provided the member or member organization executes equal to or greater than 3.00% of National Customer Volume in Multiply-Listed equity and ETF options classes, excluding SPY options, in a given month do not create an undue burden on intra-market competition because the pricing subjects both wholly owned and common control members and member organizations to the same pricing for PIXL.

The Exchange does not believe that the proposed rule changes to increase the discounted Complex PIXL Initiating Order Fee for members and member organizations, including those under Common Ownership, that qualify for Tier 4 or 5 of the Customer Rebate in Section B from $0.03 to $0.05 per contract and offer a new incentive to reduce the Complex PIXL Initiating Order Fee to $0.00 per contract, including those members under Common Ownership, will impose any burden on intra-market competition not necessary or appropriate in furtherance of the purposes of the Act because all market participants are eligible to earn Customer Rebates, transact Complex PIXL Orders and participate in a PIXL auction. Also, encouraging Customer liquidity benefits all market participants by providing more trading opportunities, which attract Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2016–59 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–59. 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–Phlx–2016–59 and should be submitted on or before June 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Brent J. Fields,

Secretary.

[FR Doc. 2016–12793 Filed 5–31–16; 8:45 am]

BILLING CODE 8011–01–P

[20] 15 U.S.C. 78s(b)(3)(A)(ii).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77910; File No. SR–NYSEMKT–2016–13]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 955NY(c) by Revising the Clearing Member Requirements for Entering an Order Into the Electronic Order Capture System

May 25, 2016.

On March 22, 2016, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') 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 amend Rule 955NY(c) to change the timing for recording the name of the Clearing Member [3] in the Electronic Order Capture system (''EOC''). On March 29, 2016,[4] the Exchange filed Amendment No. 1 to the proposed rule change. The Commission published the proposed rule change, as modified by Amendment No. 1, for comment in the **Federal Register** on April 11, 2016.[5] The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act [6] provides that, within 45 days of the publication of the 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 approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, pursuant to Section 19(b)(2) of the Act,[7] the Commission designates July 10, 2016, as the date by which the Commission should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change (File No. SR–NYSEMKT–2016–13), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Brent J. Fields,

Secretary.

[FR Doc. 2016–12772 Filed 5–31–16; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 900.2NY defines ''Clearing Member'' as an Exchange ATP Holder which has been admitted to membership in the Options Clearing Corporation pursuant to the provisions of the Rules of the Options Clearing Corporation.

[4] The Commission notes that the amendment date of March 30, 2016 in the SR–NYSEMKT–2016–13 Notice is incorrect and the proper date is March 29, 2016.

[5] *See* Securities Exchange Act Release No. 34–77518 (April 5, 2016), 81 FR 21415 (''Notice''). Amendment No. 1 was included in the Notice and provided the clarification that the CMTA Information and the name of the clearing ATP Holder would be entered into the EOC ''as the events occur and/or during trade reporting procedures which may occur after the representation and execution of the order.''

[6] 15 U.S.C. 78s(b)(2).

[7] *Id.*

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77905; File No. SR–BatsEDGX–2016–19]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.7, Opening Process

May 25, 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 May 13, 2016, Bats EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] 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 filed a proposal to amend Rule 11.7, Opening Process, to await a two-sided quotation from the listing exchange prior to opening a security for trading during Regular Trading Hours.[5]

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.7, Opening Process, to await a two-sided quotation from the listing exchange prior to opening a security for trading during Regular Trading Hours.

Exchange Rule 11.7 describes the Exchange's current opening process. Subparagraph (a) to Rule 11.7 states that prior to the beginning of the Regular Session,[6] Users[7] who wish to participate in the Opening Process may enter orders to buy or sell.[8] Subparagraph (a)(2) to Rule 11.7 provides that, with certain exceptions,[9] all orders with a time-in-force instruction of Regular Hours Only may participate in the Opening Process. Subparagraph (b) to Rule 11.7 states that the Exchange will open by performing the Opening Process in which the System will attempt to match buy and sell orders that are executable at the midpoint of the National Best Bid and Offer (''NBBO''). Subparagraph (c) to Exchange Rule 11.7 sets forth the process by which the System sets the opening price of the Opening Process. Currently, the System[10] sets the price of the Opening Process at the midpoint of the first NBBO after 9:30:00 a.m. Eastern Time. However, for securities listed on either the New York Stock Exchange, Inc. (''NYSE'') or NYSE MKT LLC (''NYSE MKT''), the System currently sets the price of the Opening Process at the midpoint of the first NBBO subsequent to the first reported trade on the listing exchange after 9:30:00 a.m. Eastern Time. The Exchange may alternatively set the price of the Opening Process for securities listed on either the NYSE or NYSE MKT at the midpoint of the then prevailing NBBO when the first two-sided quotation published by the relevant listing exchange after 9:30:00 a.m. Eastern Time, but before 9:45:00 a.m. Eastern Time if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange. The System waits to set the price at the midpoint of the first NBBO as set forth above because securities listed on the NYSE or NYSE MKT may not open at precisely 9:30:00 a.m. Eastern Time.

Pursuant to subparagraph (b) of Rule 11.7, all orders executable at the midpoint of the NBBO will continue to be processed in time sequence, beginning with the order with the oldest time stamp and not in accordance with Exchange Rule 11.9(a)(2)(B), which outlines priority at the midpoint of the NBBO. Matches occur until there are no remaining contra-side orders or there is an imbalance of orders. An imbalance of orders may result in orders that cannot be executed in whole or in part. Any unexecuted orders may then be placed by the System on the EDGX Book,[11] cancelled, executed, or routed to away Trading Centers in accordance with the Users' instructions pursuant to Exchange Rule 11.11.

The Exchange proposes to amend subparagraph (c) to Rule 11.7 to now await a two-sided quotation from the listing exchange prior to opening a security for trading during Regular Trading Hours. As amended, subparagraph (c)(2) to Rule 11.7 would state that the System would set the price of the Opening Process at the midpoint of the first NBBO *subsequent to the first two-sided quotation* published by the listing exchange after 9:30:00 a.m. Eastern Time. For securities listed on either the NYSE or NYSE MKT, subparagraph (c)(1)(i) to Rule 11.7 would state that the System would set the price of the Opening Process at the midpoint of the first NBBO subsequent to the first reported trade *and first reported quotation* on the listing exchange after 9:30:00 a.m. Eastern Time. Pursuant to subparagraph (c)(1)(i) to Rule 11.7, the Exchange will utilize the existing NBBO to calculate each securities' [sic] opening price once a trade and two-sided quotation are received from the listing exchange, regardless of the order in which the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Exchange Rule 1.5(y).

[6] *See* Exchange Rule 1.5(hh).

[7] *See* Exchange Rule 1.5(ee).

[8] Orders cancelled prior to the Opening Process will not participate in the Opening Process.

[9] The following order types and instruction may not participate in the opening process: (i) Limit Orders with a Post Only instruction, (ii) the Discretionary Range of Limit Orders, and (iv) Intermarket Sweep Orders (''ISOs'') not modified by Rule 11.7(a)(1), and (iii) orders with a Minimum Execution Quantity instruction. *See* Exchange Rule 11.7(a)(2). Orders that are designated for the Regular Session that cannot participate in the Opening Process will not be accepted by the System until the Opening Process is completed or a Contingent Opening. *Id.* Limit Orders with a Reserve Quantity may participate to the full extent of their displayed size and Reserve Quantity. *Id.* Limit Orders with a Discretionary Range may participate up to their ranked limit price for buy orders and down to their ranked limit price for sell orders. *Id.* All Limit Orders with a Pegged instruction will be eligible for execution in the Opening Process based on their pegged prices at the time the Opening Process is conducted. *Id.*

[10] *See* Exchange Rule 1.5(cc).

[11] The term ''EDGX Book'' is defined as ''the System's electronic file of orders.'' *See* Exchange Rule 1.5(d).

trade or quotation are received. The Exchange believes the proposed rule change will enable the listing market's quotation to be incorporated into the NBBO, which the Exchange would, in turn, utilize in its calculation of the midpoint of the NBBO. The Exchange believes doing so would result in an opening price that more closely reflect the opening market prices and conditions for that security. Under subparagraph (c)(1)(ii) to Rule 11.7, the Exchange will continue to alternatively set the price of the Opening Process for securities listed on either the NYSE or NYSE MKT at the midpoint of the then prevailing NBBO when the first two-sided quotation published by the relevant listing exchange after 9:30:00 a.m. Eastern Time, but before 9:45:00 a.m. Eastern Time if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b)(5) of the Act [13] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change will promote just and equitable principles of trade, removes impediments to, and perfect the mechanism of, a free and open market and a national market system because it enables the System to execute the Opening Process at a price that is objectively established by the market for the security. The proposal would enable the listing market's quotation to be incorporated into the NBBO, which the Exchange would, in turn, utilize in its calculation of the midpoint of the NBBO. The Exchange believes doing so would result in an opening price that more closely reflect the opening market prices and conditions for that security. Therefore, the Exchange believes the proposed rule change promotes just and equitable principles of trade because it ensures a midpoint price that the Exchange believes would accurately reflect the market for the security.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will enable the Exchange to incorporate the listing market's quotation into its calculation of the midpoint of the NBBO, resulting in an opening price that would more closely reflect the opening market prices and conditions for that security. Therefore, the Exchange believes the proposed rule change will promote competition by enhancing the quality of the Exchange's opening process.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [16] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [17] permits the Commission to 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 Exchange states that waiver of the 30-day operative delay would allow market participants to immediately realize the benefits of what may be more accurate opening prices.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

Based on the foregoing, the Commission believes the waiver of the 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.[18]

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 change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR-BatsEDGX–2016–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BatsEDGX–2016–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[18] 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).

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 No. SR–BatsEDGX–2016–19, and should be submitted on or before June 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Brent J. Fields,

Secretary.

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[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77904; File No. SR–NYSEArca–2016–17]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, to List and Trade of Shares of the JPMorgan Diversified Alternative ETF Under NYSE Arca Equities Rule 8.600

May 25, 2016.

I. Introduction

On February 5, 2016, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the JPMorgan Diversified Alternative ETF (''Fund'') under NYSE Arca Equities Rule 8.600. The Commission published notice of the proposed rule change in the **Federal Register** on February 25, 2016.[3] On April 4, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced the original filing in its entirety. Also on April 4, 2016, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[4] On May 9, 2016, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced Amendment No. 1 and the original filing in their entirety. On May 20, 2016, the Exchange filed Amendment No. 3 to the proposed rule change, which replaced Amendment No. 2 and the original filing in their entirety.[5] The Commission received no comments on the proposed rule change. The Commission is publishing this notice to solicit comment on Amendment No. 3 to the proposed rule change from interested persons, and is approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77179 (February 19, 2016), 81 FR 9521 (''Notice'').

[4] *See* Securities Exchange Act Release No. 77512 (April 4, 2016), 81 FR 20718 (April 8, 2016). The Commission determined that it was appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission designated May 25, 2016 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[5] In Amendment No. 3, the Exchange modified the original proposed rule change by, among other things: (1) Changing certain permitted investments of the Fund; (2) representing that the Fund would not invest in inverse exchange-traded funds (''ETFs''); (3) describing where pricing information could be found for U.S. government mortgage backed securities; (4) representing that not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (other than non-exchange-traded investment company securities) shall consist of equity securities whose principal market is not a member of the Intermarket Surveillance Group (''ISG'') or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement; and (5) representing that all statements and representations made in the filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange; (6) representing that, under normal market conditions, the Fund will invest at least 75% of its corporate debt securities in issuances that have at least $100,000,000 par amount outstanding in developed countries or at least $200,000,000 par amount outstanding in emerging market countries; and (7) modifying certain surveillance representations. All of the amendments to the proposed rule change, including Amendment No. 3, are available at: *http://www.sec.gov/comments/sr-nysearca-2016-17/nysearca201617.shtml.*

II. The Exchange's Description of the Proposal[6]

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the J.P. Morgan Exchange-Traded Fund Trust (''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[7] J.P. Morgan Investment Management Inc. (''Adviser'') will be the investment advisor to the Fund.[8] The Adviser is a wholly-owned subsidiary of JPMorgan Asset Management Holdings Inc., which is a wholly-owned subsidiary of JPMorgan Chase & Co., a bank holding company. JPMorgan Funds Management, Inc. will serve as the administrator (''Administrator''). SEI

[6] The Commission notes that additional information regarding the Fund, the Trust (as defined below), and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, calculation of net asset value (''NAV''), distributions, and taxes, among other things, can be found in Amendment No. 3 and the Registration Statement, as applicable. *See* Amendment No. 3, supra note 5, and Registration Statement, *infra* note 7.

[7] The Trust is registered under the 1940 Act. On December 14, 2015, the Trust filed with the Commission a registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act'') and the 1940 Act relating to the Fund (File Nos. 333–192733 and 811–22917) (''Registration Statement''). The Trust filed an Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–13761), initially filed March 10, 2010, and most recently amended on December 23, 2015 (''Exemptive Application''). The Exemptive Application was published for notice in IC Release No. 31956 on January 14, 2016. The Shares will not be listed on the Exchange until an order (''Exemptive Order'') under the 1940 Act has been issued by the Commission with respect to the Exemptive Application. Investments made by the Fund will comply with the conditions set forth in the Exemptive Order.

[8] The Adviser is not a registered broker-dealer but is affiliated with a broker-dealer. The Adviser has implemented and will maintain a firewall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to a portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. In the event (a) the Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer or (b) any new adviser or sub-adviser is a broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its personnel or such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Investments Distribution Co. will serve as the distributor of the Shares.

According to the Exchange, the Fund will seek to provide long term, total return. The Fund will seek to achieve its investment objective by allocating assets across several different investment strategies, including traditional and alternative investment strategies, such as those utilized by certain hedge funds.

A. The Fund's Principal Investments [9]

According to the Exchange, under normal market conditions, the Fund will invest principally (*i.e.,* more than 50% of the Fund's assets) in the securities and financial instruments described below, which may be represented by derivatives, as discussed below.

The Fund may invest in exchange-listed common stocks, preferred stocks, warrants and rights of U.S. and foreign corporations, (including emerging market securities); and U.S. and non-U.S. real estate investment trusts (''REITs'').[10]

The Fund may invest in exchange-listed and over-the-counter (''OTC'') Depositary Receipts.[11]

The Fund may hold cash and the following cash equivalents: shares of money market funds; bank obligations, commercial paper, repurchase agreements, and short-term funding agreements.

The Fund may invest in corporate debt.[12]

The Fund may purchase and sell futures contracts on currencies and fixed income securities, and futures contracts on indexes of securities.[13]

The Fund may invest in OTC and exchange-traded call and put options on equities, fixed income securities and currencies or options on indexes of equities, fixed income securities and currencies.[14]

In addition to money market funds referenced above, the Fund may invest in shares of non-exchange-traded investment company securities to the extent permitted by Section 12(d)(1) of the 1940 Act and the rules thereunder and/or any applicable exemption or exemptive order under the 1940 Act with respect to such investments. The Fund may also invest in ETFs.[15]

The Fund may invest in swaps as follows: credit default swaps, interest rate swaps, currency swaps, and total return swaps on equity securities, equity indexes, fixed income securities, and fixed income futures.

The Fund may invest in forward currency transactions—consisting of: non-deliverable forwards, foreign forward currency contracts—and spot currency transactions.

The Fund may invest in U.S. Government obligations, which may include direct obligations of the U.S. Treasury, including Treasury bills, notes and bonds, all of which are backed as to principal and interest payments by the full faith and credit of the United States, and separately traded principal and interest component parts of such obligations that are transferable through the Federal book-entry system known as Separate Trading of Registered Interest and Principal of Securities and Coupons Under Book Entry Safekeeping.

The Fund may invest in U.S. government-sponsored mortgage-backed securities.

B. The Fund's Other Investments

While the Fund, under normal market conditions, will invest at least fifty percent of its assets in the securities and financial instruments described above, the Fund may invest its remaining assets in other assets and financial instruments, as described below.

The Fund will gain exposure to commodity markets indirectly by investing up to 15% of its total assets in the Subsidiary, which also will be advised by the Adviser. The Subsidiary will only invest in commodity futures contracts[16] and will also hold any necessary cash or cash equivalents as collateral. The Fund will not invest in commodity futures contracts directly.

The Fund may invest in U.S. and non-U.S. convertible securities, which are bonds that can convert to common stock. The Fund may invest in inflation-linked debt securities, which include fixed and floating rate debt securities of varying maturities issued by the U.S. government and foreign governments.

The Fund may invest in obligations of supranational agencies, which are chartered to promote economic development and are supported by various governments and governmental agencies.

The Fund may invest in reverse repurchase agreements.

The Fund may invest in sovereign obligations, which are investments in debt obligations issued or guaranteed by a foreign sovereign government or its agencies, authorities or political subdivisions.

The Fund may invest in U.S. Government agency securities (excluding U.S. government sponsored mortgage-backed securities, referenced above), which are securities issued or guaranteed by agencies and instrumentalities of the U.S. government. These include all types of securities issued by the Government National Mortgage Association, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation, including funding notes, subordinated benchmark notes, collateralized mortgage obligations, and real estate mortgage investment conduits.

The Fund may invest no more than 5% of its assets in equity and debt securities that are restricted securities (Rule 144A securities), excluding Rule 144A securities deemed illiquid by the Adviser.[17]

Under normal market conditions, the Fund may invest no more than 5% of its assets in OTC common stocks, preferred stocks, warrants, rights and contingent value rights (''CVRs'') of U.S. and foreign corporations (including emerging market securities).

C. The Fund's Investment Restrictions

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, consistent with Commission guidance. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current

[9] The Fund's permitted assets may be denominated in U.S. dollars, major reserve currencies, and currencies of other countries in which the Fund may invest.

[10] Not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (other than non-exchange-traded investment company securities) shall consist of equity securities whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

[11] Depositary Receipts include American Depositary Receipts (''ADRs''), Global Depositary Receipts, and European Depositary Receipts. No more than 10% of the net assets of the Fund will be invested in ADRs that are not exchange-listed. *See* Amendment No. 3, *supra* note 5, at 10, n.21.

[12] Under normal market conditions, the Fund will invest at least 75% of its corporate debt securities in issuances that have at least $100,000,000 par amount outstanding in developed countries or at least $200,000,000 par amount outstanding in emerging market countries. *See id.* at 11, n.22. The debt securities in which the Fund may invest may include both investment grade and high yield debt securities.

[13] Not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts or exchange-traded options shall consist of futures contracts or exchange-traded options whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

[14] *See* note 13, *supra.*

[15] All ETF shares will be listed and traded in the U.S. on national securities exchanges. The Fund will not invest in inverse, leveraged or inverse leveraged (*e.g.,* −1X, 2X, −2X, 3X or −3X) ETFs.

[16] *See* note 13, *supra.*

[17] Those illiquid Rule 144A securities are subject to a separate limit described below.

circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund's investments, including derivatives, will be consistent with the Fund's investment objective and will not be used to enhance leverage (although certain derivatives may result in leverage). That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's (and the Subsidiary's) investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[18] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Exchange Act,[19] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[20] which sets forth the finding of Congress that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

Quotation and last-sale information for the Shares and for portfolio holdings of the Fund that are U.S. exchange listed, including common stocks, preferred stocks, warrants, rights, ETFs, REITs, and U.S. exchange-traded ADRs will be available via the Consolidated Tape Association (''CTA'') high speed line. Quotation and last-sale information for such U.S. exchange-listed securities, as well as futures will be available from the exchange on which they are listed. Quotation and last-sale information for exchange-listed options cleared via the Options Clearing Corporation will be available via the Options Price Reporting Authority. Quotation and last-sale information for non-U.S. equity securities will be available from the exchanges on which they trade and from major market data vendors, as applicable. Price information for OTC common stocks, preferred stocks, warrants, rights and CVRs will be available from one or more major market data vendors or from broker-dealers. Quotation information for OTC options, cash equivalents, swaps, inflation-linked debt instruments, U.S. government sponsored mortgage-backed securities, obligations of supranational agencies, money market funds, non-exchange-listed investment company securities (other than money market funds), Rule 144A securities, U.S. Government obligations, U.S. Government agency obligations, sovereign obligations, corporate debt, inflation-linked debt securities, and reverse repurchase agreements may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements. The U.S. dollar value of foreign securities, instruments and currencies can be derived by using foreign currency exchange rate quotations obtained from nationally recognized pricing services. Forwards and spot currency price information will be available from major market data vendors.

In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Fund's calculation of NAV at the end of the business day.[21]

The NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading day. The Administrator, through the National Securities Clearing Corporation, will make available on each business day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m. Eastern time), the list of the names and the required number of shares of each deposit instrument to be included in the current portfolio deposit (based on information at the end of the previous business day), as well as information regarding the cash amount for the Fund. The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

The Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[22] Trading in Shares of the Fund will be halted if the circuit-breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.[23] Trading in the Shares also

[18] 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).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[21] On a daily basis, the Fund will disclose on its Web site the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge. The Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday.

[22] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[23] These may include: (1) The extent to which trading is not occurring in the securities or the financial instruments constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which trading in the Shares may be halted. The Exchange represents that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a fire wall with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.[24] Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio of the Fund must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[25]

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders (''ETP Holders'') in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[26] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange represents that it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be initially and continuously listed and traded on the Exchange. In support of this proposal, the Exchange has also made the following representations:

(1) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(2) The Exchange has represented that all statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements.[27] If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).[28]

(3) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain exchange-listed equity securities, certain futures, and certain exchange-traded options with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine.[29]

(4) Prior to the commencement of trading of the Shares, the Exchange will inform its ETP Holders in a Bulletin of the special characteristics and risks associated with trading the Shares. The Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV and the Disclosed Portfolio is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[30] as provided by NYSE Arca Equities Rule 5.3.

(6) A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange.

(7) The Fund will not invest in inverse, leveraged or inverse leveraged (*e.g.,* –1X, 2X, –2X, 3X or -3X) ETFs.

(8) No more than 10% of the net assets of the Fund will be invested in ADRs that are not exchange-listed

(9) Not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (other than non-exchange-traded investment company securities) shall consist of equity securities whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(10) Not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts or exchange-traded options shall consist of futures contracts or exchange-traded options whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(11) Under normal market conditions, the Fund will invest at least 75% of its corporate debt securities in issuances that have at least $100,000,000 par amount outstanding in developed countries or at least $200,000,000 par amount outstanding in emerging market countries.

(12) The Fund may invest no more than 5% of its assets in equity and debt securities that are restricted securities

[24] *See supra* note 8.

[25] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[26] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. *See* Amendment No. 3, *supra* note 5, at 24, n.38.

[27] The Commission notes that certain other proposals for the listing and trading of managed fund shares include a representation that the exchange will ''surveil'' for compliance with the continued listing requirements. *See, e.g.,* Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016). In the context of this representation, it is the Commission's view that ''monitor'' and ''surveil'' both mean ongoing oversight of the Fund's compliance with the continued listing requirements. Therefore, the Commission does not view ''monitor'' as a more or less stringent obligation than ''surveil'' with respect to the continued listing requirements.

[28] *See* Amendment No. 3, *supra* note 5, at 25.

[29] *See id.* at 24–25.

[30] 17 CFR 240.10A–3.

(Rule 144A securities), excluding Rule 144A securities deemed illiquid by the Adviser. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, consistent with Commission guidance.

This approval order is based on all of the Exchange's representations, including those set forth above and in Amendment No. 3.

IV. Solicitation of Comments on Amendment No. 3

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 3 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–17 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.

All submissions should refer to File Number SR–NYSEArca–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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–17 and should be submitted on or before June 22, 2016.

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 3, prior to the thirtieth day after the date of publication of Amendment No. 3 in the **Federal Register**. Amendment No. 3 supplements the information provided in the original proposed rule change by, among other things, clarifying surveillances related to trading in the Shares and providing certain representations that should help make the fund's portfolio less susceptible to manipulation. This information assisted the Commission in evaluating the susceptibility of the Shares to manipulation and the Exchange's ability to detect and investigate possible manipulative activity. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.[31]

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[32] that the proposed rule change (SR–NYSEArca–2016–17), as modified by Amendment No. 3 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Brent J. Fields,

Secretary.

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[31] 15 U.S.C. 78s(b)(2).

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77912; File No. SR–NYSEArca–2016–49]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend Rule 6.64 With Respect to Opening Trading in an Options Series

May 25, 2016.

On March 23, 2016, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's process for opening trading in an options series. The proposed rule change was published for comment in the **Federal Register** on April 12, 2016.[3] The Commission has received one comment letter on the proposal.[4]

Section 19(b)(2) of the Act [5] 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 these proposed rule changes should be disapproved. The 45th day for this filing is May 27, 2016.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider and take action on the Exchange's proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act [6] and for the reasons stated above, the Commission designates July 11, 2016 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77539 (April 6, 2016), 81 FR 21639.

[4] *See* Letter from Anonymous, dated May 3, 2016.

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

disapprove, the proposed rule change (File No. SR–NYSEArca–2016–49).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Brent J. Fields,

Secretary.

[FR Doc. 2016–12774 Filed 5–31–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77914; File No. SR–BX–2016–028]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide a Process for an Expedited Suspension Proceeding and Adopt a Rule To Prohibit Disruptive Quoting and Trading Activity

May 25, 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 May 19, 2016, NASDAQ BX, Inc. (''BX'' or ''Exchange'') 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 proposes to adopt a new rule to adopt a new equity rule to clearly prohibit disruptive quoting and trading activity on the Exchange, as further described below. Further the Exchange proposes to amend Exchange Rules to permit the Exchange to take prompt action to suspend Members or their clients that violate such rule.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is filing this proposal to adopt a new rule to clearly prohibit disruptive quoting and trading activity on the Exchange for the equities market and to amend Exchange Rules to permit the Exchange to take prompt action to suspend Members or their clients that violate such rule.

Background

As a national securities exchange registered pursuant to Section 6 of the Act, the Exchange is required to be organized and to have the capacity to enforce compliance by its members and persons associated with its members, with the Act, the rules and regulations thereunder, and the Exchange's Rules. Further, the Exchange's Rules are required to 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.'' [3] In fulfilling these requirements, the Exchange has developed a comprehensive regulatory program that includes automated surveillance of trading activity that is both operated directly by Exchange staff and by staff of the Financial Industry Regulatory Authority (''FINRA'') pursuant to a Regulatory Services Agreement (''RSA''). When disruptive and potentially manipulative or improper quoting and trading activity is identified, the Exchange or FINRA (acting as an agent of the Exchange) conducts an investigation into the activity, requesting additional information from the Member or Members involved. To the extent violations of the Act, the rules and regulations thereunder, or Exchange Rules have been identified and confirmed, the Exchange or FINRA as its agent will commence the enforcement process, which might result in, among other things, a censure, a requirement to take certain remedial actions, one or more restrictions on future business activities, a monetary fine, or even a temporary or permanent ban from the securities industry.

The process described above, from the identification of disruptive and potentially manipulative or improper quoting and trading activity to a final resolution of the matter, can often take several years. The Exchange believes that this time period is generally necessary and appropriate to afford the subject Member adequate due process, particularly in complex cases. However, as described below, the Exchange believes that there are certain obvious and uncomplicated cases of disruptive and manipulative behavior or cases where the potential harm to investors is so large that the Exchange should have the authority to initiate an expedited suspension proceeding in order to stop the behavior from continuing on the Exchange.

In recent years, several cases have been brought and resolved by the Exchange and other SROs that involved allegations of wide-spread market manipulation, much of which was ultimately being conducted by foreign persons and entities using relatively rudimentary technology to access the markets and over which the Exchange and other SROs had no direct jurisdiction. In each case, the conduct involved a pattern of disruptive quoting and trading activity indicative of manipulative layering [4] or spoofing.[5] The Exchange and other SROs were able to identify the disruptive quoting and trading activity in real-time or near real-time; nonetheless, in accordance with Exchange Rules and the Act, the Members responsible for such conduct or responsible for their customers' conduct were allowed to continue the disruptive quoting and trading activity on the Exchange and other exchanges during the entirety of the subsequent

[7] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b)(1).

[4] ''Layering'' is a form of market manipulation in which multiple, non-bona fide limit orders are entered on one side of the market at various price levels in order to create the appearance of a change in the levels of supply and demand, thereby artificially moving the price of the security. An order is then executed on the opposite side of the market at the artificially created price, and the non-bona fide orders are cancelled.

[5] ''Spoofing'' is a form of market manipulation that involves the market manipulator placing non-bona fide orders that are intended to trigger some type of market movement and/or response from other market participants, from which the market manipulator might benefit by trading bona fide orders.

lengthy investigation and enforcement process. The Exchange believes that it should have the authority to initiate an expedited suspension proceeding in order to stop the behavior from continuing on the Exchange if a Member is engaging in or facilitating disruptive quoting and trading activity and the Member has received sufficient notice with an opportunity to respond, but such activity has not ceased.

The following two examples are instructive on the Exchange's rationale for the proposed rule change.

In July 2012, Biremis Corp. (formerly Swift Trade Securities USA, Inc.) (the ''Firm'') and its CEO were barred from the industry for, among other things, supervisory violations related to a failure by the Firm to detect and prevent disruptive and allegedly manipulative trading activities, including layering, short sale violations, and anti-money laundering violations.[6] The Firm's sole business was to provide trade execution services via a proprietary day trading platform and order management system to day traders located in foreign jurisdictions. Thus, the disruptive and allegedly manipulative trading activity introduced by the Firm to U.S. markets originated directly or indirectly from foreign clients of the Firm. The pattern of disruptive and allegedly manipulative quoting and trading activity was widespread across multiple exchanges, and the Exchange, FINRA, and other SROs identified clear patterns of the behavior in 2007 and 2008. Although the Firm and its principals were on notice of the disruptive and allegedly manipulative quoting and trading activity that was occurring, the Firm took little to no action to attempt to supervise or prevent such quoting and trading activity until at least 2009. Even when it put some controls in place, they were deficient and the pattern of disruptive and allegedly manipulative trading activity continued to occur. As noted above, the final resolution of the enforcement action to bar the Firm and its CEO from the industry was not concluded until 2012, four years after the disruptive and allegedly manipulative trading activity was first identified.

In September of 2012, Hold Brothers On-Line Investment Services, Inc. (the ''Firm'') settled a regulatory action in connection with the Firm's provision of a trading platform, trade software and trade execution, support and clearing services for day traders.[7] Many traders using the Firm's services were located in foreign jurisdictions. The Firm ultimately settled the action with FINRA and several exchanges, including the Exchange, for a total monetary fine of $3.4 million. In a separate action, the Firm settled with the Commission for a monetary fine of $2.5 million.[8] Among the alleged violations in the case were disruptive and allegedly manipulative quoting and trading activity, including spoofing, layering, wash trading, and pre-arranged trading. Through its conduct and insufficient procedures and controls, the Firm also allegedly committed anti-money laundering violations by failing to detect and report manipulative and suspicious trading activity. The Firm was alleged to have not only provided foreign traders with access to the U.S. markets to engage in such activities, but that its principals also owned and funded foreign subsidiaries that engaged in the disruptive and allegedly manipulative quoting and trading activity. Although the pattern of disruptive and allegedly manipulative quoting and trading activity was identified in 2009, as noted above, the enforcement action was not concluded until 2012. Thus, although disruptive and allegedly manipulative quoting and trading was promptly detected, it continued for several years.

The Exchange also notes the current criminal proceedings that have commenced against Navinder Singh Sarao. Mr. Sarao's allegedly manipulative trading activity, which included forms of layering and spoofing in the futures markets, has been linked as a contributing factor to the ''Flash Crash'' of 2010, and yet continued through 2015.

The Exchange believes that the activities described in the cases above provide justification for the proposed rule change, which is described below.

Rule 9400—Expedited Client Suspension Proceeding

The Exchange proposes to adopt new Rule 9400, which is currently reserved, to set forth procedures for issuing suspension orders, immediately prohibiting a Member from conducting continued disruptive quoting and trading activity on the Exchange. Importantly, these procedures would also provide the Exchange the authority to order a Member to cease and desist from providing access to the Exchange to a client of the Member that is conducting disruptive quoting and trading activity in violation of proposed Rule 2170. Under proposed paragraph (a) of Rule 9400, with the prior written authorization of the Chief Regulatory Officer (''CRO'') or such other senior officers as the CRO may designate, the Office of General Counsel or Regulatory Department of the Exchange (such departments generally referred to as the ''Exchange'' for purposes of proposed Rule 9400) may initiate an expedited suspension proceeding with respect to alleged violations of Rule 2170, which is proposed as part of this filing and described in detail below. Proposed paragraph (a) would also set forth the requirements for notice and service of such notice pursuant to the Rule, including the required method of service and the content of notice.

Proposed paragraph (b) of Rule 9400 would govern the appointment of a Hearing Panel as well as potential disqualification or recusal of Hearing Officers. The proposed provision is consistent with existing Exchange Rule 9231(b). The Exchange's Rules provide for a Hearing Officer to be recused in the event he or she has a conflict of interest or bias or other circumstances exist where his or her fairness might reasonably be questioned in accordance with Rules 9233(a). In addition to recusal initiated by such a Hearing Officer, a party to the proceeding will be permitted to file a motion to disqualify a Hearing Officer. However, due to the compressed schedule pursuant to which the process would operate under Rule 9400, the proposed rule would require such motion to be filed no later than 5 days after the announcement of the Hearing Panel and the Exchange's brief in opposition to such motion would be required to be filed no later than 5 days after service thereof. Pursuant to existing Rule 9233(c), a motion for disqualification of a Hearing Officer shall be decided by the Chief Hearing Officer based on a prompt investigation. The applicable Hearing Officer shall remove himself or herself and request the Chief Executive Officer to reassign the hearing to another Hearing Officer such that the Hearing Panel still meets the compositional requirements described in Rule 9231(b). If the Chief Hearing Officer determines that the Respondent's grounds for disqualification are insufficient, it shall deny the Respondent's motion for disqualification by setting forth the reasons for the denial in writing and the Hearing Panel will proceed with the hearing.

Under paragraph (c) of the proposed Rule, the hearing would be held not

[6] *See Biremis Corp. and Peter Beck,* FINRA Letter of Acceptance, Waiver and Consent No. 2010021162202, July 30, 2012.

[7] *See Hold Brothers On-Line Investment Services, LLC,* FINRA Letter of Acceptance, Waiver and Consent No. 20100237710001, September 25, 2012.

[8] *In the Matter of Hold Brothers On-Line Investment Services, LLC,* Exchange Act Release No. 67924, September 25, 2012.

later than 15 days after service of the notice initiating the suspension proceeding, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. In the event of a recusal or disqualification of a Hearing Officer, the hearing shall be held not later than five days after a replacement Hearing Officer is appointed. Proposed paragraph (c) would also govern how the hearing is conducted, including the authority of Hearing Officers, witnesses, additional information that may be required by the Hearing Panel, the requirement that a transcript of the proceeding be created and details related to such transcript, and details regarding the creation and maintenance of the record of the proceeding. Proposed paragraph (c) would also state that if a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel may issue a suspension order without further proceedings. Finally, as proposed, if the Exchange fails to appear at a hearing for which it has notice, the Hearing Panel may order that the suspension proceeding be dismissed.

Under paragraph (d) of the proposed Rule, the Hearing Panel would be required to issue a written decision stating whether a suspension order would be imposed. The Hearing Panel would be required to issue the decision not later than 10 days after receipt of the hearing transcript, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. The Rule would state that a suspension order shall be imposed if the Hearing Panel finds by a preponderance of the evidence that the alleged violation specified in the notice has occurred and that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

Proposed paragraph (d) would also describe the content, scope and form of a suspension order. As proposed, a suspension order shall be limited to ordering a Respondent to cease and desist from violating proposed Rule 2170 and/or to ordering a Respondent to cease and desist from providing access to the Exchange to a client of Respondent that is causing violations of Rule 2170. Under the proposed rule, a suspension order shall also set forth the alleged violation and the significant market disruption or other significant harm to investors that is likely to result without the issuance of an order. The order shall describe in reasonable detail the act or acts the Respondent is to take or refrain from taking, and suspend such Respondent unless and until such action is taken or refrained from. Finally, the order shall include the date and hour of its issuance. As proposed, a suspension order would remain effective and enforceable unless modified, set aside, limited, or revoked pursuant to proposed paragraph (e), as described below. Finally, paragraph (d) would require service of the Hearing Panel's decision and any suspension order consistent with other portions of the proposed rule related to service.

Proposed paragraph (e) of Rule 9400 would state that at any time after the Hearing Officers served the Respondent with a suspension order, a Party could apply to the Hearing Panel to have the order modified, set aside, limited, or revoked. If any part of a suspension order is modified, set aside, limited, or revoked, proposed paragraph (e) of Rule 9400 provides the Hearing Panel discretion to leave the cease and desist part of the order in place. For example, if a suspension order suspends Respondent unless and until Respondent ceases and desists providing access to the Exchange to a client of Respondent, and after the order is entered the Respondent complies, the Hearing Panel is permitted to modify the order to lift the suspension portion of the order while keeping in place the cease and desist portion of the order. With its broad modification powers, the Hearing Panel also maintains the discretion to impose conditions upon the removal of a suspension—for example, the Hearing Panel could modify an order to lift the suspension portion of the order in the event a Respondent complies with the cease and desist portion of the order but additionally order that the suspension will be re-imposed if Respondent violates the cease and desist provisions [sic] modified order in the future. The Hearing Panel generally would be required to respond to the request in writing within 10 days after receipt of the request. An application to modify, set aside, limit or revoke a suspension order would not stay the effectiveness of the suspension order.

Finally, proposed paragraph (f) would provide that sanctions issued under the proposed Rule 9400 would constitute final and immediately effective disciplinary sanctions imposed by the Exchange, and that the right to have any action under the Rule reviewed by the Commission would be governed by Section 19 of the Act. The filing of an application for review would not stay the effectiveness of a suspension order unless the Commission otherwise ordered.

Rule 2170—Disruptive Quoting and Trading Activity Prohibited

The The Exchange currently has authority to prohibit and take action against manipulative trading activity, including disruptive quoting and trading activity, pursuant to its general market manipulation rules, including Rules 2110, 2111 and 2120. The Exchange proposes to adopt new Rule 2170, which would more specifically define and prohibit disruptive quoting and trading activity on the Exchange. As noted above, the Exchange also proposes to apply the proposed suspension rules to proposed Rule 2170.

Proposed Rule 2170 would prohibit Members from engaging in or facilitating disruptive quoting and trading activity on the Exchange, as described in proposed Rule 2170(i) and (ii), including acting in concert with other persons to effect such activity. The Exchange believes that it is necessary to extend the prohibition to situations when persons are acting in concert to avoid a potential loophole where disruptive quoting and trading activity is simply split between several brokers or customers. The Exchange believes, that with respect to persons acting in concert perpetrating an abusive scheme, it is important that the Exchange have authority to act against the parties perpetrating the abusive scheme, whether it is one person or multiple persons.

To provide proper context for the situations in which the Exchange proposes to utilize its proposed authority, the Exchange believes it is necessary to describe the types of disruptive quoting and trading activity that would cause the Exchange to use its authority. Accordingly, the Exchange proposes to adopt Rule 2170(i) and (ii) providing additional details regarding disruptive quoting and trading activity. Proposed Rule 2170(i)(a) describes disruptive quoting and trading activity containing many of the elements indicative of layering. It would describe disruptive quoting and trading activity as a frequent pattern in which the following facts are [sic] present: (i) A party enters multiple limit orders on one side of the market at various price levels (the ''Displayed Orders''); and (ii) following the entry of the Displayed Orders, the level of supply and demand for the security changes; and (iii) the party enters one or more orders on the opposite side of the market of the Displayed Orders (the ''Contra-Side Orders'') that are subsequently executed; and (iv) following the

execution of the Contra-Side Orders, the party cancels the Displayed Orders. Proposed Rule 2170(i)(b) describes disruptive quoting and trading activity containing many of the elements indicative of spoofing and would describe disruptive quoting and trading activity as a frequent pattern in which the following facts are present: (i) A party narrows the spread for a security by placing an order inside the national best bid or offer; and (ii) the party then submits an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the order described in proposed (b)(i) that narrowed the spread. The Exchange believes that the proposed descriptions of disruptive quoting and trading activity articulated in the rule are consistent with the activities that have been identified and described in the client access cases described above. The Exchange further believes that the proposed descriptions will provide Members with clear descriptions of disruptive quoting and trading activity that will help them to avoid engaging in such activities or allowing their clients to engage in such activities.

The Exchange proposes to make clear in proposed Rule 2170(ii), unless otherwise indicated, the descriptions of disruptive quoting and trading activity do not require the facts to occur in a specific order in order for the rule to apply. For instance, with respect to the pattern defined in proposed Rule 2170(i)(a) it is of no consequence whether a party first enters Displayed Orders and then Contra-side Orders or vice-versa. However, as proposed, it is required for supply and demand to change following the entry of the Displayed Orders. The Exchange also proposes to make clear that disruptive quoting and trading activity includes a pattern or practice in which some portion of the disruptive quoting and trading activity is conducted on the Exchange and the other portions of the disruptive quoting and trading activity are conducted on one or more other exchanges. The Exchange believes that this authority is necessary to address market participants who would otherwise seek to avoid the prohibitions of the proposed Rule by spreading their activity amongst various execution venues. In sum, proposed Rule 2170 coupled with proposed Rule 9400 would provide the Exchange with authority to promptly act to prevent disruptive quoting and trading activity from continuing on the Exchange.

Below is an example of how the proposed rule would operate.

Assume that through its surveillance program, Exchange staff identifies a pattern of potentially disruptive quoting and trading activity. After an initial investigation the Exchange would then contact the Member responsible for the orders that caused the activity to request an explanation of the activity as well as any additional relevant information, including the source of the activity. If the Exchange were to continue to see the same pattern from the same Member and the source of the activity is the same or has been previously identified as a frequent source of disruptive quoting and trading activity then the Exchange could initiate an expedited suspension proceeding by serving notice on the Member that would include details regarding the alleged violations as well as the proposed sanction. In such a case the proposed sanction would likely be to order the Member to cease and desist providing access to the Exchange to the client that is responsible for the disruptive quoting and trading activity and to suspend such Member unless and until such action is taken.

The Member would have the opportunity to be heard in front of a Hearing Panel at a hearing to be conducted within 15 days of the notice. If the Hearing Panel determined that the violation alleged in the notice did not occur or that the conduct or its continuation would not have the potential to result in significant market disruption or other significant harm to investors, then the Hearing Panel would dismiss the suspension order proceeding.

If the Hearing Panel determined that the violation alleged in the notice did occur and that the conduct or its continuation is likely to result in significant market disruption or other significant harm to investors, then the Hearing Panel would issue the order including the proposed sanction, ordering the Member to cease providing access to the client at issue and suspending such Member unless and until such action is taken. If such Member wished for the suspension to be lifted because the client ultimately responsible for the activity no longer would be provided access to the Exchange, then such Member could apply to the Hearing Panel to have the order modified, set aside, limited or revoked. The Exchange notes that the issuance of a suspension order would not alter the Exchange's ability to further investigate the matter and/or later sanction the Member pursuant to the Exchange's standard disciplinary process for supervisory violations or other violations of Exchange rules or the Act.

The Exchange reiterates that it already has broad authority to take action against a Member in the event that such Member is engaging in or facilitating disruptive or manipulative trading activity on the Exchange. For the reasons described above, and in light of recent cases like the client access cases described above, as well as other cases currently under investigation, the Exchange believes that it is equally important for the Exchange to have the authority to promptly initiate expedited suspension proceedings against any Member who has demonstrated a clear pattern or practice of disruptive quoting and trading activity, as described above, and to take action including ordering such Member to terminate access to the Exchange to one or more of such Member's clients if such clients are responsible for the activity.

The Exchange recognizes that its proposed authority to issue a suspension order is a powerful measure that should be used very cautiously. Consequently, the proposed rules have been designed to ensure that the proceedings are used to address only the most clear and serious types of disruptive quoting and trading activity and that the interests of Respondents are protected. For example, to ensure that proceedings are used appropriately and that the decision to initiate a proceeding is made only at the highest staff levels, the proposed rules require the CRO or another senior officer of the Exchange to issue written authorization before the Exchange can institute an expedited suspension proceeding. In addition, the rule by its terms is limited to violations of Rules 2170, when necessary to protect investors, other Members and the Exchange. The Exchange will initiate disciplinary action for violations of Rule 2170, pursuant to Rule 9400. Further, the Exchange believes that the proposed expedited suspension provisions described above that provide the opportunity to respond as well as a Hearing Panel determination prior to taking action will ensure that the Exchange would not utilize its authority in the absence of a clear pattern or practice of disruptive quoting and trading activity.

Notwithstanding the adoption of the proposed rules along with existing disciplinary rules in the 9000 series, the Exchange also notes that that it may impose temporary restrictions upon the automated entry or updating of orders or quotes/orders as the Exchange may determine to be necessary to protect the integrity of the Exchange's systems

pursuant to Rule 4611(c).[9] Also, pursuant to Rule 9555(a)(2) [10] if a member, associated person, or other person cannot continue to have access to services offered by the Exchange or a member thereof with safety to investors, creditors, members, or the Exchange, the Exchange's Regulation Department staff may provide written notice to such member or person limiting or prohibiting access to services offered by the Exchange or a member thereof. This ability to impose a temporary restriction upon Members assists the Exchange in maintaining the integrity of the market and protecting investors and the public interest.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(5) of the Act [12] in particular, in that it is designed to 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. Pursuant to the proposal, the Exchange will have a mechanism to promptly initiate expedited suspension proceedings in the event the Exchange believes that it has sufficient proof that a violation of Rule 2170 has occurred and is ongoing.

Further, the Exchange believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,[13] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of the Commission and Exchange rules. The Exchange also believes that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act because the proposal helps to strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where awaiting the conclusion of a full disciplinary proceeding is unsuitable in view of the potential harm to other Members and their customers. Also, the Exchange notes that if this type of conduct is allowed to continue on the Exchange, the Exchange's reputation could be harmed because it may appear to the public that the Exchange is not acting to address the behavior. The proposed expedited process would enable the Exchange to address the behavior with greater speed.

As explained above, the Exchange notes that it has defined the prohibited disruptive quoting and trading activity by modifying the traditional definitions of layering and spoofing [14] to eliminate an express intent element that would not be proven on an expedited basis and would instead require a thorough investigation into the activity. As noted throughout this filing, the Exchange believes it is necessary for the protection of investors to make such modifications in order to adopt an expedited process rather than allowing disruptive quoting and trading activity to occur for several years.

Through this proposal, the Exchange does not intend to modify the definitions of spoofing and layering that have generally been used by the Exchange and other regulators in connection with actions like those cited above. The Exchange believes that the pattern of disruptive and allegedly manipulative quoting and trading activity was widespread across multiple exchanges, and the Exchange, FINRA, and other SROs identified clear patterns of the behavior in 2007 and 2008 in the equities markets.[15] The Exchange believes that this proposal will provide the Exchange with the necessary means to enforce against such behavior in an expedited manner while providing Members with the necessary due process. The Exchange believes that its proposal is consistent with the Act because it provides the Exchange with the ability 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 from such ongoing behavior.

The Exchange further believes that the proposal is consistent with Section 6(b)(7) of the Act,[16] which requires that the rules of an exchange "provide a fair procedure for the disciplining of members and persons associated with members . . . and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof." Finally, the Exchange also believes the proposal is consistent with Sections 6(d)(1) and 6(d)(2) of the Act,[17] which require that the rules of an exchange with respect to a disciplinary proceeding or proceeding that would limit or prohibit access to or membership in the exchange require the exchange to: provide adequate and specific notice of the charges brought against a member or person associated with a member, provide an opportunity to defend against such charges, keep a record, and provide details regarding the findings and applicable sanctions in the event a determination to impose a disciplinary sanction is made. The Exchange believes that each of these requirements is addressed by the notice and due process provisions included within proposed Rule 9400. Importantly, as noted above, the Exchange will use the authority proposed in this filing only in clear and egregious cases when necessary to protect investors, other Members and the Exchange, and even in such cases, the Respondent will be afforded due process in connection with the suspension proceedings.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that each self-regulatory organization should be empowered to regulate trading occurring on their [sic] market consistent with the Act and without regard to competitive issues. The Exchange is requesting authority to take appropriate action if necessary for the protection of investors, other Members and the Exchange. The Exchange also believes that it is important for all exchanges to be able to take similar action to enforce its [sic] rules against manipulative conduct thereby leaving no exchange prey to such conduct.

The Exchange does not believe that the proposed rule change imposes an undue burden on competition, rather this process will provide the Exchange with the necessary means to enforce against violations of manipulative quoting and trading activity in an expedited manner, while providing Members with the necessary due process.

[9] For example, such temporary restrictions may be necessary to address a system problem at a particular BX Market Maker, BX ECN or Order Entry Firm or at the Exchange, or an unexpected period of extremely high message traffic.

[10] *See* Rule 9555, entitled "Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services."

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[14] *See* supra, notes 4 and 5.

[15] See Section 3 herein, the Purpose section, for examples of conduct referred to herein.

[16] 15 U.S.C. 78f(b)(7).

[17] U.S.C. 78f(d)(1).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BX–2016–028 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 No. SR–BX–2016–028. 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 No. SR–BX–2016–028, and should be submitted on or before June 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Brent J. Fields,

Secretary.

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[18] 15 U.S.C. 78s(b)(3)(a)(iii).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77903; File No. SR–MSRB–2016–07]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Proposed Amendments to MSRB Rule G–12, on Uniform Practice, Regarding Close-Out Procedures for Municipal Securities

May 25, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 11, 2016, the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB filed with the Commission a proposed rule change consisting of proposed amendments to Rule G–12, on uniform practice, regarding close-out procedures for municipal securities (''proposed rule change'').

The text of the proposed rule change is available on the MSRB's Web site at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2016-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 MSRB 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

Rule G–12(h) [3] and the MSRB's Manual on Close-Out Procedures [4] provide optional procedures that can be used by brokers, dealers, or municipal securities dealers (''dealers'') to close out open inter-dealer fail transactions. The rule currently allows the purchasing dealer to issue a notice of close-out to the selling dealer on any business day from five to 90 business days after the scheduled settlement date.[5] Rule G–12(h) currently does not

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* MSRB Rule G–12.

[4] *See* Manual on Close-Out Procedures.

[5] The purchasing dealer may initiate a close-out within 15 business days after a reclamation made under Rule G–12(g)(iii)(C) or G–12(g)(iii)(D), even

Continued

mandate a purchasing dealer to initiate a close-out, or to execute a close-out notice it has initiated nor does it provide the selling dealer with the right to force a close-out of the transaction. If the purchasing dealer chooses not to initiate a close-out within 90 business days of the original contract settlement date (and ultimately execute it) then that dealer loses its right to use the Rule G–12(h) procedure, and the transaction remains open until it is resolved by agreement of the parties or through arbitration. During this period, the selling dealer is subject to market risk for any increase in the price of the municipal securities. Rule G–12(h) provides the close-out options of substitution and mandatory repurchase because municipal securities often are not available for a buy-in within a reasonable period of time.

If the selling dealer does not deliver the securities owed on the transaction within 10 business days after receipt of the close-out notice (15 business days for retransmitted notices), then the purchasing dealer may execute a close-out procedure using one of three options: (1) Purchase (''buy-in'') at the current market all or any part of the securities necessary to complete the transaction for the account and liability of the seller; (2) accept from the seller in satisfaction of the seller's obligation under the original contract (which shall be concurrently cancelled) the delivery of municipal securities that are comparable to those originally bought in quantity, quality, yield or price, and maturity, with any additional expenses or any additional cost of acquiring such substituted securities being borne by the seller; or (3) require the seller to repurchase the securities on terms that provide for the seller to pay an amount that includes accrued interest and bear the burden of any change in market price or yield.

Rule G–12(h) includes a 90-business day time limit for close-outs to encourage dealers to resolve open transactions in a timely manner, but there is no requirement that open transactions be closed out within 90 business days. Currently, a purchasing dealer is not required to initiate a close-out or to execute a close-out notice if one is initiated, nor does the selling dealer have a right to force a close-out of the transaction. If the purchasing dealer chooses not to initiate a close-out within 90 business days of the original contract settlement date (and ultimately execute the close-out), then that dealer loses its right to use the Rule G–12(h) procedure and the transaction remains open until it is resolved by agreement of the parties or through arbitration. During this period, the selling dealer is subject to market risk for any increase in the price of the securities.

Since Rule G–12(h) was last revised in 1983, evolutions in the municipal securities market have changed how securities are offered and modernized the manner in which inter-dealer transactions are cleared and settled. There are electronic alternative trading systems (''ATS'') and broker-dealers that serve in the role of a ''broker's broker'' in the municipal market, facilitating the ability of dealers to find securities for purchase. MSRB rules requiring use of the Depository Trust & Clearing Corporation (''DTCC'') automated comparison system and book entry settlement, as well as the shortening of the settlement cycle from T+5 to T+3, likewise have contributed to lowering the occurrence of inter-dealer fails since the rule's adoption. The initiative to move to T+2 settlement has received broad support from both the industry and the SEC,[6] and is likely to further reduce the instances of inter-dealer fails.[7] The MSRB believes that a more timely resolution of inter-dealer fails would ultimately benefit customers by providing greater certainty that their fully paid for securities are in fact owned in their account, not allocated to a firm short, and would benefit dealers by reducing the risk and costs associated with inter-dealer fails.

MSRB Rule G–14 [8] requires the use of National Securities Clearing Corporation's (''NSCC'') Real-Time Trade Matching (''RTTM'') for submitting or modifying data with respect to Inter-Dealer Transactions Eligible for Comparison. Additionally, dealers' almost universal use of DTCC's continuous net settlement (''CNS'') on a voluntary basis [9] has resulted in inter-dealer transactions that are netted (or paired-off) with counterparties that may not have originally transacted together causing new settlement dates to be continually established. This scenario was not contemplated when Rule G–12(h) was originally adopted, thus making it unclear that firms should use the original contract settlement date pursuant to the rule today.[10]

Proposal

The proposed rule change to Rule G–12(h), regarding close-outs, would significantly compress the timing to initiate and complete a close-out by allowing a close-out notice to be issued the day after the purchaser's original settlement date, with the last day by which the purchasing dealer must complete a close-out on an open transaction being reduced to 20 calendar days.

With the vast majority of municipal securities in book entry form and DTCC's continued efforts to promote dematerialization, the MSRB is proposing that firms should no longer have to provide a 10-day delivery window before implementing an execution period. The MSRB believes a three-day delivery window would be sufficient as the majority of inter-dealer fails are resolved within days of the original settlement and/or a fail situation is known prior to the original settlement date.

Additionally, the current rule requires that the earliest day that can be specified as the execution date is 11 days after telephonic notice. The proposed amendments would amend the current allowable execution time frame from 11 days to four days after electronic notification. Accelerating the execution date could improve a firm's likelihood of finding a security for a buy-in, lower overall counter-party risk and may further reduce accrual, capital and other expenses.

Under the proposed rule change, a purchasing dealer notifying the selling dealer of an intent to close out an inter-dealer fail would continue to prompt DTCC to ''exit'' the position from CNS and the two parties are responsible for effecting the close-out. Because a municipal security may not be available

though more than 90 business days have elapsed since the original settlement date.

[6] *See* Michael S. Piwowar, Commissioner, and Kara M. Stein, Commissioner, SEC, Statement Regarding Proposals to Shorten the Trade Settlement Cycle (June 29, 2015) *available at http://www.sec.gov/news/statement/statement-on-proposals-to-shorten-the-trade-settlement-cycle.html.*

[7] On April 29, 2016 the SEC approved amendments to MSRB Rules G–12, on uniform practice, and G–15 on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers, to define regular-way settlement for municipal securities transactions as occurring on a two-day settlement cycle (''T+2''). Exchange Act Release No. 77744 (April 29, 2016), 81 FR 26851 (May 4, 2016), File No. SR–MSRB–2016–04.

[8] *See* MSRB Rule G–14.

[9] As a key part of the CNS system, NSCC acts as the central counterparty for clearance and settlement for virtually all broker-to-broker equity, corporate and municipal bond and unit investment trust trading in the United States. CNS processes include an automated book entry accounting system that centralizes settlement and maintains an orderly flow of security and money balances.

[10] In NSCC's CNS and RECAPS program, transactions are marked to market, and receive new settlement dates that may also serve for purposes of the SEC's net capital rules. This may reduce the dealer's net capital deductions for ''aged'' failed transactions, but does not always resolve the open transaction. If the dealer keeps the transaction open, it must use the original contract settlement date for purposes of the 90-day limit on close-outs.

for purchase, incorporating the buy-in procedures of a registered clearing agency will often not solve the inter-dealer fail. The MSRB expects firms to not solely rely upon the CNS system or the services of a registered clearing agency to resolve inter-dealer fails and take prompt action to close out inter-dealer fails in a timely manner. Under the proposed rule change, regardless of the date the positions are exited from CNS, the inter-dealer fail must be resolved within 20 calendar days of the purchasing dealer's original settlement date. The MSRB is also proposing to retire the Manual on Close-Out Procedures.[11]

Proposed Amendments to MSRB Rule G–12(h)

Rule G–12, on uniform practice, establishes uniform industry practices for processing, clearance and settlement of transactions in municipal securities between a broker, dealer or municipal securities dealer and any other broker, dealer or municipal securities dealer. The proposed amendments would amend Rule G–12(h) by requiring close-outs to be settled no later than 20 calendar days after the settlement date. The proposed amendments to G–12(h)(i)(B) would allow for the close-out process to continue to provide three options to the purchasing dealer. The three options include: (1) Purchase (''buy-in'') at the current market all or any part of the securities necessary to complete the transaction for the account and liability of the seller; (2) accept from the seller in satisfaction of the seller's obligation under the original contract (which shall be concurrently cancelled) the delivery of municipal securities that are comparable to those originally bought in quantity, quality, yield or price, and maturity, with any additional expenses or any additional cost of acquiring such substituted securities being borne by the seller; or (3) require the seller to repurchase the securities on terms which provide that the seller pay an amount which includes accrued interest and bear the burden of any change in market price or yield.

Firms must coordinate internally to determine which of the three close-out options are appropriate for any given fail-to-deliver situation. While a buy-in may be the most preferred method, Rule G–12(h) provides two other options to a purchaser in the event a buy-in is not feasible. Firms are reminded that, regardless of the option agreed upon by the counterparties, including a cancelation of the original transaction, the close-out transaction is reportable to the Real-time Transaction Reporting System (''RTRS'') as currently required pursuant to Rule G–14.

Additionally, the proposed amendments to Rule G–12(h)(i)(A) would allow a purchaser to notify the seller of the purchaser's intent to close-out the transaction the first business day following the purchaser's original transaction settlement date, instead of waiting five business days as currently required in Rule G–12(h)(i)(A).

Currently Rule G–12(h) references use of the telephone and mail as part of the notification process. The proposed amendments would update Rule G–12(h) throughout, to reflect modern communication methods and widely-used industry practices that would facilitate more timely and efficient close-outs. For example, DTCC's SMART/Track is available for use by any existing NSCC clearing firm or DTCC settling member, allowing users to create, retransmit, respond, update, cancel and view a notice.

The proposed amendments to Rule G–12(h)(i)(D) would require sellers to use their best efforts to locate the securities that are subject to a close-out notice from a purchaser. The proposed amendments to Rule G–12(h)(i)(E)(1) would also require the seller to bear any burden in the market price, with any benefit from any change in the market price remaining with the purchaser.

The proposed amendments would also require a purchasing dealer that has multiple counterparties, to utilize the FIFO (first-in-first-out) method for determining the contract date for the failing quantity. Amendments to Rule G–12(h)(iv) would require dealers to maintain all records regarding the close-out transaction as part of the firm's books and records.

Compliance Date

As part of implementation of the proposed amendments, the MSRB would allow for a 90-calendar day grace period for resolving all outstanding inter-dealer fails. The MSRB understands that many of the outstanding fails have been open for years and is concerned that such fails could continue to exist until maturity unless dealers are mandated to close-out all outstanding inter-dealer fails. While firms may be reluctant to seek a solution other than a buy-in, the proposed rule change provides alternative solutions that should be considered as part of an inter-dealer fail resolution.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Exchange Act,[12] which provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that the proposed rule change would benefit investors, dealers and issuers. Specifically, the MSRB believes that dealers may benefit from clarifications and revisions that more closely reflect actual market practices. In addition, dealers may be able to more quickly and efficiently resolve inter-dealer fails, which may reduce dealer risk, reduce the likelihood and duration that dealers are required to pay ''substitute interest'' to customers and reduce systemic risk. The MSRB believes that the proposed rule change may also reduce the likelihood and duration of firm short positions that allocate to customer long positions, reduce investor tax exposure and increase investor confidence in the market. Issuers and the market as a whole may benefit from increased investor confidence.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Exchange Act[13] requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In determining whether these standards have been met, the MSRB was guided by the Board's Policy on the Use of Economic Analysis in MSRB Rulemaking.[14] In accordance with this policy, the Board has evaluated the potential impacts on competition of the proposed rule change, including in comparison to reasonable alternative regulatory approaches, relative to the baseline. The MSRB also considered other economic

[11] *See* Manual on Close-Out Procedures. The Manual on Close-Out Procedures would be retired because such procedures would be outdated and, given the proposed rule change's overall simplicity, developing an updated version of the manual is not warranted.

[12] 15 U.S.C. 78*o*–4(b)(2)(C).

[13] *Id.*

[14] Policy on the Use of Economic Analysis in MSRB Rulemaking, available at, *http://www.msrb.org/About-MSRB/Financial-and-Other-Information/FinancialPolicies/Economic-Analysis-Policy.aspx.*

impacts of the proposed rule change and has addressed any comments relevant to these impacts in other sections of this document.

According to DTCC, during the period December 16, 2015 through December 22, 2015, NSCC had an average of 500 end-of-day municipal security interdealer fails in CNS with an average total daily value of $54.0 million. Of that total, there were an average of 170 end-of-day inter-dealer fails with an average total daily market value of $6.3 million that had been outstanding for more than 20 days.

As discussed above, the MSRB believes that the proposed rule change would benefit investors, dealers and issuers.

The MSRB believes that the proposed rule change may disproportionately impact some market participants including smaller selling dealers that may have more difficulty locating securities owed, selling dealers that frequently fail to deliver securities or who owe a large number of securities, purchasing dealers that frequently fail to resolve interdealer fails or do not have policies and procedures in place to monitor interdealer fails and clearing firms that do not regularly communicate fails to correspondents.

The MSRB sought additional data that would support a quantitative evaluation of the magnitude of any of these, or any other potential burdens, but was unable to identify relevant data directly or through the comment process. Therefore, at present, the MSRB is unable to quantitatively evaluate the magnitude, if any, of any burden on competition. However, the qualitative analysis and review of comments received supports the MSRB's view that the proposed rule change will not impose any additional burdens on competition, relative to the baseline, that are not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The MSRB received four comment letters [15] in response to the Request for Comment [16] on the draft amendments to Rule G–12(h) and all four comment letters were in support of the shorter mandated timeframes for resolving inter-dealer fails. Overall, the four commenters were supportive of the Board's Request for Comment and the Board's efforts to update close-out procedures, underscoring that municipal securities may fail to settle due to operational or trading desk errors, customer-based execution errors, failure to receive a security, or a partial call between trade and settlement date. BDA, NSCC and SIFMA noted that the draft amendments would decrease the costs and risks associated with dealer fails, while providing investors greater certainty.

None of the commenters objected to the proposed requirement to resolve all current outstanding transaction fails, though BDA requested a longer grace period. None of the commenters objected to settling money differences or expenses within five business days, with SIFMA specifically supporting this requirement. SIFMA also supported utilizing the FIFO method for determining which contract date to use for the failing quantity when the fail is a result of multiple transactions.

Shortening the Close-Out Period

SIFMA and Breena suggested a tighter time frame to resolve a fail of 15 and 10 days respectively, significantly less than the proposed time frame of 30 calendar days, with SIFMA emphasizing that ''failed transactions don't get better with age.''

While SIFMA supports an even shorter time frame for close-outs, they also suggest that the rule permit the buyer to grant the seller a one-time 15-day extension, for an aggregate total of 30 days to close-out an inter-dealer fail. While the Board commends these industry participants on an aggressive time frame to resolve inter-dealer fails, the Board is concerned that shortening the 30 calendar day period to 15 days may overburden smaller dealers who may not have the same resources that would be required to locate a security and effectively close-out a failed transaction in a shorter time frame. The MSRB believes it is better to provide all dealers a fixed time frame that is sufficient to complete the close-out process rather than a reduced time frame with an additional permissive 15-day extension as suggested by SIFMA. Therefore, the MSRB revised its original proposal in the Request for Comment; the proposed rule change would require firms to complete a close-out in 20 calendar days, which reflects not only the expressed commitment and desire of the industry to expedite a close-out, but also reduces the risk of placing an undue burden on smaller dealers.

Grace Period for Outstanding Fails

Rather than the 90-day grace period proposed in the Request for Comment, BDA recommended a 180-day grace period to allow the industry ample time to resolve existing aged fails. As noted in the Request for Comment, NSCC had an average of 170 end-of-day inter-dealer fails outstanding for more than 20 days during the period December 15, 2015 to December 22, 2015. The Board believes that the industry will have ample time to clean up the approximately 170 existing aged inter-dealer fails given that dealers with failed transactions could begin working on closing out those transactions immediately.

Documentation

SIFMA requested guidance regarding the documentation needed for the situation where one dealer is trying to resolve a fail, but the other party is not willing to cooperate. The proposed rule change would mandate that dealers utilize an inter-dealer communication system of the registered clearing agency through which the transaction would be compared to ensure consistency and which would provide a clear audit trail. The MSRB does not believe any further guidance on documenting the inter-dealer interaction is necessary at this point.

Partial Deliveries

SIFMA noted that a purchasing dealer should not be required to accept a partial delivery on an inter-dealer fail and would like to have further dialog with the MSRB and DTCC on this issue. Currently CNS will make a partial delivery if the full amount of securities is not available through CNS and a buyer in CNS is not able to reject a partial delivery from CNS and return the securities to CNS. According to DTCC, partial deliveries have been occurring in CNS for 20 years. The proposed rule change does not mandate acceptance of partial deliveries and the close-out process is done outside of the CNS process and the MSRB believes the comment was outside the scope of the proposed rule change.

More Onus Placed on the Failing Dealer

SIFMA noted that some of their members feel consideration should be

[15] Comment letters were received in response to the Request for Comment from: Bond Dealers of America, Letter from Michael Nicholas, Chief Executive Officer, dated March 4, 2016 (''BDA''); Breena LLC: Email from Geraldine Lettieri dated January 6, 2016 (''Breena''); National Securities Clearing Corporation, Letter from Murray C. Pozmanter, Managing Director, dated January 12, 2016 (''NSCC''); and Securities Industry and Financial Markets Association, Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated March 6, 2016 (''SIFMA'').

[16] MSRB Notice 2016–02, Request for Comment on Amendments to MSRB Rule G–12 on Close-Out Procedures (January 6, 2016) (''Request for Comment'').

given to a simpler rule in which more onus is placed on the dealer that fails to deliver the securities by forcing those dealers to take responsibility for resolving the short, even suggesting the seller break the trade or resolve a fail through a buy-back. Currently the rule places more emphasis on the buyer, allowing the buyer to control the execution and agree to the terms of the close-out in the event the seller does not resolve the fail. SIFMA noted that it is not uncommon for dealers to simply allow the delivery deadline to pass, thereby forcing the buyers to do all the ''heavy lifting.'' In response to this comment the proposed rule change would amend Rule G–12(h)(i)(D) to specifically address ''seller's responsibilities,'' which will further clarify that the seller is expected to use its best efforts to locate the securities referenced in the notice. Currently, the Manual on Close-out Procedures interprets any change in market price as attributable to the seller. The proposed amendments would further clarify that any financial burden as the result of the purchaser effecting a ''buy-in'' is borne by the seller, but any benefit remains with the purchaser.

Guidance for Customer Accounts

SIFMA would like guidance on how to close-out a short position that results from an inter-dealer fail when that position is in a customer's self-directed account where the dealer may not have the discretion to sell or cancel a position in that account or purchase a comparable security for that account. The MSRB believes the guidance requested by SIFMA is outside the scope of the Request for Comments because the proposal does not impose an obligation on dealers to effect transactions in customer accounts in order to resolve inter-dealer fails and should a customer want to retain a position that effectively requires a dealer to pay substitute interest, that issue is one outside the scope of MSRB rules.

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 of up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove 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–MSRB–2016–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2016–07. 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 MSRB. 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–MSRB–2016–07 and should be submitted on or before June 22, 2016.

For the Commission, pursuant to delegated authority.[17]

Brent J. Fields,

Secretary.

[FR Doc. 2016–12789 Filed 5–31–16; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77911; File No. SR–NYSEMKT–2016–42]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend Rule 952NY With Respect to Opening Trading in an Options Series

May 25, 2016.

On March 23, 2016, NYSE MKT LLC (''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 amend the Exchange's process for opening trading in an options series. The proposed rule change was published for comment in the **Federal Register** on April 12, 2016.[3] The Commission has received no comment letters on the proposal.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether these proposed rule changes should be disapproved. The 45th day for this filing is May 27, 2016.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider and take action on the Exchange's proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act [5] and for the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77540 (April 6, 2016), 81 FR 21623.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

reasons stated above, the Commission designates July 11, 2016 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEMKT–2016–42).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Brent J. Fields,

Secretary.

[FR Doc. 2016–12773 Filed 5–31–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77919; File No. SR–BatsBYX–2016–09]

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.23, Opening Process

May 25, 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 May 20, 2016, Bats BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] 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 filed a proposal to amend Rule 11.23, Opening Process, to await a two-sided quotation from the listing exchange prior to opening a security for trading during Regular Trading Hours.[5]

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.23, Opening Process, to await a two-sided quotation from the listing exchange prior to opening a security for trading during Regular Trading Hours.

Exchange Rule 11.23 describes the Exchange's current opening process. Subparagraph (a) to Rule 11.23 states that prior to the beginning of the Regular Trading Hours, Users[6] who wish to participate in the Opening Process may enter orders to buy or sell.[7] Subparagraph (a)(2) to Rule 11.23 provides that, with certain exceptions,[8] all orders with a time-in-force instruction of Regular Hours Only may participate in the Opening Process. Subparagraph (b) to Rule 11.23 states that the Exchange will open by performing the Opening Process in which the System will attempt to match buy and sell orders that are executable at the midpoint of the National Best Bid and Offer (''NBBO''). Subparagraph (c) to Exchange Rule 11.23 sets forth the process by which the System sets the opening price of the Opening Process. Currently, the System[9] sets the price of the Opening Process at the midpoint of the first NBBO after 9:30:00 a.m. Eastern Time. However, for securities listed on either the New York Stock Exchange, Inc. (''NYSE'') or NYSE MKT LLC (''NYSE MKT''), the System currently sets the price of the Opening Process at the midpoint of the first NBBO subsequent to the first reported trade on the listing exchange after 9:30:00 a.m. Eastern Time. The Exchange may alternatively set the price of the Opening Process for securities listed on either the NYSE or NYSE MKT at the midpoint of the then prevailing NBBO when the first two-sided quotation published by the relevant listing exchange after 9:30:00 a.m. Eastern Time, but before 9:45:00 a.m. Eastern Time if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange. The System waits to set the price at the midpoint of the first NBBO as set forth above because securities listed on the NYSE or NYSE MKT may not open at precisely 9:30:00 a.m. Eastern Time.

Pursuant to subparagraph (b) of Rule 11.23, all orders executable at the midpoint of the NBBO will continue to be processed in time sequence, beginning with the order with the oldest time stamp. Matches occur until there are no remaining contra-side orders or there is an imbalance of orders. An imbalance of orders may result in orders that cannot be executed in whole or in part. Any unexecuted orders may then be placed by the System on the BYX Book,[10] cancelled, executed, or routed to away Trading Centers in accordance with the Users' instructions pursuant to Exchange Rule 11.13(a)(2).

The Exchange proposes to amend subparagraph (c) to Rule 11.23 to now await a two-sided quotation from the listing exchange prior to opening a security for trading during Regular Trading Hours. As amended, subparagraph (c)(2) to Rule 11.23 would state that the System would set the price of the Opening Process at the midpoint of the first NBBO *subsequent to the first two-sided quotation* published by the listing exchange after 9:30:00 a.m. Eastern Time. For securities listed on either the NYSE or NYSE MKT, subparagraph (c)(1)(i) to Rule 11.23 would state that the System would set the price of the Opening Process at the midpoint of the first NBBO subsequent to the first reported trade *and first*

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Exchange Rule 1.5(w).

[6] *See* Exchange Rule 1.5(cc).

[7] Orders cancelled prior to the Opening Process will not participate in the Opening Process.

[8] The following order types and instruction may not participate in the opening process: (i) BYX Post Only Orders, Partial Post Only at Limit Orders, ISOs not modified by Rule 11.23(a)(1) above, and Minimum Quantity Orders. *See* Exchange Rule 11.23(a)(2). Limit orders with a Reserve Quantity may participate to the full extent of their displayed size and Reserve Quantity. *Id.* Discretionary Orders may participate only up to their ranked price for buy orders or down to their ranked price for sell orders. *Id.* The discretionary range of such orders will not be eligible for participation in the Opening Process. *Id.* All Pegged Orders and Mid-Point Peg Orders, as defined in Rule 11.9(c)(8) and (9), will be eligible for execution in the Opening Process based on their pegged prices. *Id.*

[9] *See* Exchange Rule 1.5(aa).

[10] The term ''BYX Book'' is defined as ''the System's electronic file of orders.'' *See* Exchange Rule 1.5(e).

reported quotation on the listing exchange after 9:30:00 a.m. Eastern Time. Pursuant to subparagraph (c)(1)(i) to Rule 11.23, the Exchange will utilize the existing NBBO to calculate each security's opening price once a trade and two-sided quotation are received from the listing exchange, regardless of the order in which the trade or quotation are received. The Exchange believes the proposed rule change will enable the listing market's quotation to be incorporated into the NBBO, which the Exchange would, in turn, utilize in its calculation of the midpoint of the NBBO. The Exchange believes doing so would result in an opening price that more closely reflect the opening market prices and conditions for that security. Under subparagraph (c)(1)(ii) to Rule 11.23, the Exchange will continue to alternatively set the price of the Opening Process for securities listed on either the NYSE or NYSE MKT at the midpoint of the then prevailing NBBO when the first two-sided quotation published by the relevant listing exchange after 9:30:00 a.m. Eastern Time, but before 9:45:00 a.m. Eastern Time if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(5) of the Act [12] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change will promote just and equitable principles of trade, removes impediments to, and perfect the mechanism of, a free and open market and a national market system because it enables the System to execute the Opening Process at a price that is objectively established by the market for the security. The proposal would enable the listing market's quotation to be incorporated into the NBBO, which the Exchange would, in turn, utilize in its calculation of the midpoint of the NBBO. The Exchange believes doing so would result in an opening price that more closely reflect the opening market prices and conditions for that security. Therefore, the Exchange believes the proposed rule change promotes just and equitable principles of trade because it ensures a midpoint price that the Exchange believes would accurately reflect the market for the security.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will enable the Exchange to incorporate the listing market's quotation into its calculation of the midpoint of the NBBO, resulting in an opening price that would more closely reflect the opening market prices and conditions for that security. Therefore, the Exchange believes the proposed rule change will promote competition by enhancing the quality of the Exchange's opening process.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [15] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [16] permits the Commission to 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 Exchange states that waiver of the 30-day operative delay would allow market participants to immediately realize the benefits of what may be more accurate opening prices. Based on the foregoing, the Commission believes the waiver of the 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.[17]

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 change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–BatsBYX–2016–09 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 No. SR–BatsBYX–2016–09. 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

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[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).

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 No. SR–BatsBYX–2016–09, and should be submitted on or before June 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Brent J. Fields,

Secretary.

[FR Doc. 2016–12781 Filed 5–31–16; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35), which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before July 1, 2016.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov.*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: The Small Business Regulatory Enforcement Fairness Act of 1996, 15 U.S.C. Sec. 657(b)(2)(B), requires the SBA National Ombudsman to establish a means for SBA to receive comments on regulatory and compliance actions from small entities regarding their disagreements with a Federal Agency action. The Ombudsman uses it to obtain the agency's response, encourage a fresh look by the agency at a high level, and build a more small business-friendly regulatory environment.

Solicitation of Public Comments:

Title: Federal Agency Comment Form.

Description of Respondents: Small Entities.

Form Number: 1993.

Estimated Annual Responses: 340.

Estimated Annual Hour Burden: 263.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2016–12741 Filed 5–31–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

U.S. Merchant Marine Academy Board of Visitors Meeting

AGENCY: Maritime Administration.

ACTION: Meeting notice.

SUMMARY: The U.S. Department of Transportation, Maritime Administration (MARAD) announces that the following U.S. Merchant Marine Academy (''Academy'') Board of Visitors (BOV) meeting will take place:

1. *Date:* June 14, 2016.
2. *Time:* 2:00 p.m.
3. *Location:* Capital Visitors Center, Washington, DC Room to be determined.
4. *Purpose of the Meeting:* The purpose of this meeting is to brief BOV members on the Academy Advisory Board's annual report to the Secretary of Transportation and the status of reaccreditation.
5. *Public Access to the Meeting:* This meeting is open to the public. Seating is on a first-come basis. Members of the public wishing to attend the meeting will need to show photo identification in order to gain access to the meeting location.

FOR FURTHER INFORMATION CONTACT: The BOV's Designated Federal Officer or Point of Contact Brian Blower; 202 366–2765; *Brian.Blower@dot.gov.*

SUPPLEMENTARY INFORMATION: Any member of the public is permitted to file a written statement with the Academy BOV. Written statements should be sent to the Designated Federal Officer at: Brian Blower; 1200 New Jersey Ave. SE., W28–313, Washington, DC 20590 or via email at *Brian.Blower@Dot.gov.* (Please contact the Designated Federal Officer for information on submitting comments via fax.) Written statements must be received no later than three working days prior to the next meeting in order to provide time for member consideration. By rule, no member of the public attending open meetings will be allowed to present questions from the floor or speak to any issue under consideration by the BOV.

Authority: 46 U.S.C. 51312; 5 U.S.C. app. 552b; 41 CFR 102–3.140 through 102–3.165.

By Order of the Maritime Administrator.

Dated: May 26, 2016.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2016–12833 Filed 5–31–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0063]

Notice of Buy America Waiver

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of Buy America Waiver.

SUMMARY: This notice provides NHTSA's finding with respect to a request to waive the requirements of Buy America from the New York Governor's Traffic Safety Committee (GTSC). NHTSA finds that a non-availability waiver of the Buy America requirement is appropriate for New York's purchase of a liquid chromatography-tandem mass spectrometry instrument using Federal highway traffic safety grant funds because that product is not produced in the United States.

DATES: The effective date of this waiver is June 16, 2016. Written comments

regarding this notice may be submitted to NHTSA and must be received on or before: June 16, 2016.

ADDRESSES: Written comments may be submitted using any one of the following methods:

- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Fax:* Written comments may be faxed to (202) 493–2251.
- *Internet:* To submit comments electronically, go to the Federal regulations Web site at *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Hand Delivery:* 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.

Instructions: All comments submitted in relation to this waiver must include the agency name and docket number. Please note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You may also call the Docket at 202–366–9324.

FOR FURTHER INFORMATION CONTACT: For program issues, contact Barbara Sauers, Office of Regional Operations and Program Delivery, NHTSA (phone: 202–366–0144). For legal issues, contact Andrew DiMarsico, Office of Chief Counsel, NHTSA (phone: 202–366–5263). You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: This notice provides NHTSA's finding that a waiver of the Buy America requirement, 23 U.S.C. 313, is appropriate for the GTSC to purchase a liquid chromatography-tandem mass spectrometry device and its accessories for approximately $400,000 using grant funds authorized under 23 U.S.C. 405(d). Section 405(d) funds are available for use by State highway safety programs to support effective programs to reduce driving under the influence of alcohol, drugs, or the combination of alcohol and drugs, including enforcement efforts. 23 U.S.C. 405(d). States may use Section 405(d) grant funds to improve blood-alcohol concentration testing and reporting and developing impaired driving information systems. *Id.*

Buy America provides that NHTSA ''shall not obligate any funds authorized to be appropriated to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or [Title 23] and administered by the Department of Transportation, unless steel, iron, and manufactured products used in such project are produced in the United States.'' 23 U.S.C. 313. However, NHTSA may waive those requirements if NHTSA finds ''(1) that their application would be inconsistent with the public interest; (2) that such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) that the inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.'' 23 U.S.C. 313(b).

The New York GTSC seeks a waiver to purchase a liquid chromatography-tandem mass spectrometry device (LC/MS/MS system) using Federal grant funds to be used by the New York State Police Forensic Investigation Center's Toxicology Section (FIC) to analyze drugs in impaired driving case samples. The cost of a LC/MS/MS system is approximately $400,000.

Liquid chromatography-tandem mass spectrometry is an analytical chemistry technique that combines the physical separation capabilities of liquid chromatography with the mass analysis capabilities of mass spectrometry. It is a technique that has very high sensitivity and selectivity that is oriented towards the separation, general detection and potential identification of chemicals of particular masses in the presence of other chemicals. This complex analytical technique involves two separate but connected instruments. These two instruments are each comprised of advanced scientific equipment, and this equipment is essential for the function of the entire LC/MS/MS system. The liquid chromatograph (LC) portion performs the chromatography part of the analysis that separates the drugs of interest from any interferences in the sample and passes them to a detector at known time intervals. Some essential pieces of equipment within the LC system are the autosampler, which is used to inject all the samples, the pump used to control the mobile phase flow rate, the mixer used to precisely blend the mobile phases, and the degasser used to remove air from the mobile phase. The detector, a tandem mass spectrometer (MS/MS), uniquely identifies the drug by comparing its fragmentation pattern to a known library match. Some of the essential equipment within the MS/MS system are the rotary pump used to create a vacuum environment, the source used to fragment the drug into ions, the quadrupole mass analyzers used to filter the desired fragmented ions, the collision cell used to further fragment the filtered drug parent ions, and the ion detector (electron multiplier) used to detect every ion of selected mass that passes through the quadrupoles. In addition, a computer system with advanced software is used to control the entire LC/MS/MS instrument to provide more accurate reporting of the findings.

In support of its waiver request, GTSC states it seeks to purchase the LC/MS/MS instrument to replace a gas chromatography-mass spectrometry (GC/MS). GTSC adds that while GC/MS has long been an effective technique for the analysis of blood and urine for trace levels of drugs, LC/MS/MS has emerged in recent years as the preferred instrumentation. It adds that the benefits of LC/MS/MS are numerous, including increased sensitivity (which reduces sample consumption and lowers detection limits), fewer interferences from other drugs or metabolites (which can potentially reduce the number of inconclusive results), quicker and easier sample preparation, and faster run times. According to GTSC, these advantages can help to reduce overall turnaround time and give the analysts more time for additional casework. GTSC adds that the FIC is one of the only toxicology labs in the state that does not currently have an LC/MS/MS instrument and is unable to meet current driving under the influence detection guidelines for detection limits for many of the drug assays using a GC/MS instrument.

The GTSC claims that there are no LC/MS/MS instruments manufactured or assembled in the United States. It states that Agilent Technologies, Waters Corporation, AB Sciex (a subsidiary of Danaher Corporation), Thermo Fisher Scientific and Shimadzu are the only manufacturers that offer a full LC/MS/MS instrument that are proven within the forensic toxicology community. The GTSC adds that it compared the available LC/MS/MS instruments' relative cost, size, service and training packages, pre-existing methods, method transfer (within the forensic toxicology community), technical capability, software, LC and MS/MS compatibility, and country of origin. Although the features of the instruments vary, GTSC states that the critical needs for the FIC are size, pre-existing methods, and method transfer ability. First, the LC/MS/MS instrument must meet the available space in the FIC laboratory. According to the GTSC, the FIC plans to purchase a second instrument within a few years to support additional casework. The GTSC identified three

manufacturers (Waters, AB Sciex and Thermo Fisher Scientific) that produce an instrument that is small enough for two instruments to fit within the FIC laboratory. Second, the GTSC identified four manufacturers that have forensic toxicology packages that are included with the software, that contain pre-loaded methods that are already developed and are widely used in the toxicology community. According to GTSC, this last feature is critical since it will permit the FIC to communicate with other labs for assistance with methods and troubleshooting, which would save considerable time and resources. GTSC states that Waters, Agilent, AB Sciex and Thermo Fisher Scientific meet its pre-existing methods and transfer methods requirements.

NHTSA conducted similar assessments [1] and was unable to locate domestic manufacturers of LC/MS/MS instruments with the specifications required by GTSC. Based upon New York GTSC's and NHTSA's analysis, NHTSA is unaware of an LC/MS/MS instrument that is manufactured domestically. Since an LC/MS/MS instrument is unavailable from a domestic manufacturer and the equipment would improve blood-alcohol testing and reporting by increasing detection, reducing drug interference, and increasing processing speed to advance the purpose of 23 U.S.C. 405(d), a Buy America waiver is appropriate. NHTSA invites public comment on this conclusion.

We note that NHTSA highway safety grant funds are intended to support traffic safety programs in the States. The goal of the impaired driving countermeasures grant is to have States adopt and implement effective programs to reduce driving under the influence of alcohol, drugs, or the combination of alcohol and drugs. Activities and equipment fully funded and purchased using NHTSA 405(d) grant funds must be used solely to support this goal. For all funded activities and equipment that have both related and unrelated highway safety grant components, the Federal share is based proportionately on the projected use for the highway safety grant purpose. Therefore, if a State plans to use an item of equipment 50 percent of the time to support its federally funded traffic safety program and 50 percent of the time to support unrelated state programs, the NHTSA participation cannot exceed 50 percent of the total cost of the equipment.

In light of the above discussion, and pursuant to 23 U.S.C. 313(b)(2), NHTSA finds that it is appropriate to grant a waiver from the Buy America requirements to GTSC in order to purchase a LC/MS/MS instrument. This waiver is effective through fiscal year 2016 and expires at the conclusion of fiscal year 2016 (September 30, 2016). In accordance with the provisions of Section 117 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy of Users Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), NHTSA is providing this notice as its finding that a waiver of the Buy America requirements is appropriate for the purchase of a LC/MS/MS instrument.

Written comments on this finding may be submitted through any of the methods discussed above. NHTSA may reconsider this finding if, through comment, it learns of additional relevant information regarding its decision to grant the GTSC waiver request.

This finding should not be construed as an endorsement or approval of any products by NHTSA or the U.S. Department of Transportation. The United States Government does not endorse products or manufacturers.

Authority: 23 U.S.C. 313; Pub. L. 110–161; Pub. L. 110–244.

Issued in Washington, DC, on May 25, 2016, under authority delegated in 49 CFR 1.95.

Paul A. Hemmersbaugh,

Chief Counsel.

[FR Doc. 2016–12834 Filed 5–31–16; 8:45 am]

BILLING CODE 4910–59–P

[1] NHTSA conducted internet searches, reviewed manufacturer Web sites, public information, and reviewed several Web sites that catalog domestic-made products (*www.usaonly.us; www.americansworking.com; www.madeinamericaforever.com;* and *www.madeinusa.org*) to locate domestically made LC/MS/MS instruments.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[OCC Charter Number 703395]

Illinois-Service Federal Savings and Loan Association, Chicago, Illinois; Approval of Conversion Application

Notice is hereby given that on April 25, 2016, the Office of the Comptroller of the Currency (OCC) approved the application of Illinois-Service Federal Savings and Loan Association, Chicago, Illinois, to convert to the stock form of organization. Copies of the application are available for inspection on the OCC Web site at the FOIA Electronic Reading Room *https://foia-pal.occ.gov/palMain.aspx.* If you have any questions, please call OCC Licensing Activities at (202) 649–6260.

Dated: May 24, 2016.

By the Office of the Comptroller of the Currency.

Stephen A. Lybarger,

Deputy Comptroller for Licensing.

[FR Doc. 2016–12839 Filed 5–31–16; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 25, 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 July 1, 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.*

Internal Revenue Service (IRS)

OMB Control Number: 1545–1546.

Type of Review: Extension of a previously approved collection.

Title: Revenue Procedure 97–33, EFTPS (Electronic Federal Tax Payment System).

Abstract: Some taxpayers are required by regulations issued under Sec. 6302 (h) of the Internal Revenue Code to make Federal Tax Deposits (FTDs) using the Electronic Federal Tax Payment System (EFTPS). Other taxpayers may choose to voluntarily participate in EFTPS. EFTPS requires that a taxpayer complete an enrollment form to provide the information the IRS needs to properly credit the taxpayer's account.

Revenue 97–33 provides procedures and information that will help taxpayers to electronically make FTDs and tax payments through EFTPS.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 278,622.

OMB Control Number: 1545–1850.

Type of Review: Extension of a previously approved collection.

Title: TD 9178—Testimony or Production of Records in a Court or Other Proceeding.

Abstract: This document contains final regulations replacing the existing regulation that establishes the procedures to be followed by IRS officers and employees upon receipt of a request or demand for disclosure of IRS records or information. The purpose of the final regulations is to provide specific instructions and to clarify the circumstances under which more specific procedures take precedence. The final regulations extend the application of the regulation to former IRS officers and employees as well as to persons who are or were under contract to the IRS. The final regulations affect current and former IRS officers, employees and contractors, and persons who make requests or demands for disclosure.

Affected Public: Individuals or households.

Estimated Total Annual Burden Hours: 1,400.

OMB Control Number: 1545–2025.

Type of Review: Revision of a currently approved collection.

Title: Clean Renewable Energy Bond Credit and Gulf Bond Credit.

Abstract: Form 8912, Clean Renewable Energy Bond Credit and Gulf Bond Credit, was developed to carry out the provisions of new Internal Revenue Code sections 54 and 1400N(l). The form provides a means for the taxpayer to compute the clean renewable energy bond credit and the Gulf bond credit.

Estimated Total Annual Burden Hours: 6,890.

OMB Control Number: 1545–2168.

Type of Review: Revision of a currently approved collection.

Title: Tax Return Preparer Complaint Process.

Form: Form 14157, Form 14157–A.

Abstract: These forms (14157 and 14157–A), are designed specifically for tax return preparer complaints and include the items necessary for the IRS to evaluate and route to the appropriate function. The form will be used by taxpayers to report allegations of misconduct by tax return preparers.

Affected Public: Individuals or households.

Estimated Total Annual Burden Hours: 2,337.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2016–12730 Filed 5–31–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Survey of Foreign Ownership of U.S. Securities as of June 30, 2016

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Department of the Treasury is informing the public that it is conducting a mandatory survey of foreign ownership of U.S. securities as of June 30, 2016. This mandatory survey is conducted under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*). This Notice constitutes legal notification to all United States persons (defined below) who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, this survey. Additional copies of the reporting forms SHLA (2016) and instructions may be printed from the Internet at: *http://www.treasury.gov/resource-center/data-chart-center/tic/Pages/forms-sh.aspx.*

Definition: A U.S. person is any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency), who resides in the United States or is subject to the jurisdiction of the United States.

Who Must Report: The panel for this survey is based primarily on the level of foreign resident holdings of U.S. securities reported on the June 2014 benchmark survey of foreign resident holdings of U.S. securities, and on the Aggregate Holdings of Long-Term Securities by U.S. and Foreign Residents (TIC SLT) report as of December 2014, and will consist mostly of the largest reporters. Entities required to report will be contacted individually by the Federal Reserve Bank of New York. Entities not contacted by the Federal Reserve Bank of New York have no reporting responsibilities.

What To Report: This report will collect information on foreign resident holdings of U.S. securities, including equities, short-term debt securities (including selected money market instruments), and long-term debt securities.

How To Report: Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, may be obtained at the Web site address given above in the Summary, or by contacting the survey staff of the Federal Reserve Bank of New York at (212) 720–6300 or (646) 720–6300, email: *SHLA.help@ny.frb.org.* The mailing address is: Federal Reserve Bank of New York, Statistics Function, 4th Floor, 33 Liberty Street, New York, NY 10045–0001. Inquiries can also be made to the Federal Reserve Board of Governors, at (202) 452–3476, or to Dwight Wolkow, at (202) 622–1276, or by email: *comments2TIC@do.treas.gov.*

When To Report: Data should be submitted to the Federal Reserve Bank of New York, acting as fiscal agent for the Department of the Treasury, by August 31, 2016.

Paperwork Reduction Act Notice: This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 1505–0123. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. The estimated average annual burden associated with this collection of information is 486 hours per report for the largest custodians of securities, and 110 hours per report for the largest issuers of securities that have data to report and are not custodians. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Department of the Treasury, Office of International Affairs, Attention Administrator, International Portfolio Investment Data Reporting Systems, Room 5422, Washington, DC 20220, and to OMB, Attention Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Reporting Systems.

[FR Doc. 2016–12937 Filed 5–31–16; 8:45 am]

BILLING CODE 4810–25–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.

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, June 9, 2016, on ''Chinese Intelligence Services and Espionage Operations.''

Background: This is the Sixth public hearing the Commission will hold during its 2016 report cycle. This hearing will examine the structure, capabilities, and recent reforms of Chinese intelligence services. It will describe how China conducts espionage and other forms of intelligence collection. It will assess the implications for U.S. national security of Chinese espionage operations in the United States and abroad that target U.S. national security organizations and actors, including U.S. defense industrial chains, military forces, and leading national security decision makers. Panelists will discuss recommendations for congressional action to address the threat of Chinese intelligence collection against the United States. The hearing will be co-chaired by Peter Brookes and Sen. Byron L. Dorgan. Any interested party may file a written statement by June 9, 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, June 9, 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).

Dated: May 25, 2016.

Michael Danis,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2016–12795 Filed 5–31–16; 8:45 am]

BILLING CODE 1137–00–P

FEDERAL REGISTER

Vol. 81 Wednesday,

No. 105 June 1, 2016

Part II

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 50

Federal Reserve System

12 CFR Part 249

Federal Deposit Insurance Corporation

12 CFR Part 329

Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 50

[Docket ID OCC–2014–0029]

RIN 1557–AD97

FEDERAL RESERVE SYSTEM

12 CFR Part 249

[Regulation WW; Docket No. R–1537]

RIN 7100–AE 51

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 329

RIN 3064–AE 44

Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements

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

ACTION: Notice of proposed rulemaking with request for public comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) are inviting comment on a proposed rule that would implement a stable funding requirement, the net stable funding ratio (NSFR), for large and internationally active banking organizations. The proposed NSFR requirement is designed to reduce the likelihood that disruptions to a banking organization's regular sources of funding will compromise its liquidity position, as well as to promote improvements in the measurement and management of liquidity risk. The proposed rule would also amend certain definitions in the liquidity coverage ratio rule that are also applicable to the NSFR. The proposed NSFR requirement would apply beginning on January 1, 2018, to bank holding companies, certain savings and loan holding companies, and depository institutions that, in each case, have $250 billion or more in total consolidated assets or $10 billion or more in total on-balance sheet foreign exposure, and to their consolidated subsidiaries that are depository institutions with $10 billion or more in total consolidated assets.

In addition, the Board is proposing a modified NSFR requirement for bank holding companies and certain savings and loan holding companies that, in each case, have $50 billion or more, but less than $250 billion, in total consolidated assets and less than $10 billion in total on-balance sheet foreign exposure. Neither the proposed NSFR requirement nor the proposed modified NSFR requirement would apply to banking organizations with consolidated assets of less than $50 billion and total on-balance sheet foreign exposure of less than $10 billion.

A bank holding company or savings and loan holding company subject to the proposed NSFR requirement or modified NSFR requirement would be required to publicly disclose the company's NSFR and the components of its NSFR each calendar quarter.

DATES: Comments on this notice of proposed rulemaking must be received by August 5, 2016.

ADDRESSES: Comments should be directed to: *OCC:* Because paper mail in the Washington, DC area is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title ''Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements'' 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–2014–0029'' 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–2014–0029'' 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–2014–0029'' 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 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 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–1537; RIN 7100 AE–51, 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, 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 NW., (between 18th and 19th Street NW.) Washington, DC 20006 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/propose.html*.
- *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 (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–AE44.'' Comments received will be posted without change to *http://www.FDIC.gov/regulations/laws/federal/propose.html*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

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I. Introduction

A. Summary of the Proposed Rule

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are inviting comment on a proposed rule (proposed rule) that would implement a net stable funding ratio (NSFR) requirement. The proposed NSFR requirement is designed to reduce the likelihood that disruptions to a banking organization's regular sources of funding will compromise its liquidity position, as well as to promote improvements in the measurement and management of liquidity risk. By requiring banking organizations to maintain a stable funding profile, the proposed rule would reduce liquidity risk in the financial sector and provide for a safer and more resilient financial system.

Maturity and liquidity transformation are important components of the financial intermediation performed by banking organizations, which contributes to efficient resource allocation and credit creation in the United States. These activities entail a certain inherent level of funding instability, however. Consequently, the risks of these activities must be well-managed by banking organizations in order to help ensure their ongoing

ability to provide financial intermediation.

The proposed rule would establish a quantitative metric, the NSFR, to measure the stability of a covered company's funding profile.[1] Under the requirement, a covered company would calculate a weighted measure of the stability of its equity and liabilities over a one-year time horizon (its available stable funding amount or ASF amount). The proposed rule would require a covered company's ASF amount to be greater than or equal to a minimum level of stable funding (its required stable funding amount or RSF amount) calculated based on the liquidity characteristics of its assets, derivative exposures, and commitments over the same one-year time horizon. A covered company's NSFR would measure the ratio of its ASF amount to its RSF amount. Sections II.C and II.D of this **SUPPLEMENTARY INFORMATION** section describe in more detail the calculation of a covered company's ASF and RSF amounts, respectively.

The proposed rule would require a covered company to maintain a minimum NSFR of 1.0. Given their size, complexity, scope of activities, and interconnectedness, covered companies with an NSFR of less than 1.0 face an increased likelihood of liquidity stress in the event of demands for repayment of their short- and medium-term liabilities, which may also contribute to financial instability in the broader economy. The NSFR would help to identify a covered company that has a heightened liquidity risk profile and poses greater risk to U.S. financial stability. It would allow the agencies, before a liquidity crisis, to require the covered company to take steps to improve its liquidity and resilience, as discussed in section I.C.1 of this Supplementary Information section.

As part of this proposal, the Board is also inviting comment on a modified NSFR requirement for bank holding companies and savings and loan holding companies without significant insurance or commercial operations that, in each case, have $50 billion or more, but less than $250 billion, in total consolidated assets and less than $10 billion in total on-balance sheet foreign exposure (each, a modified NSFR holding company). This modified NSFR requirement is described in section IV of this **SUPPLEMENTARY INFORMATION** section.

The proposed rule also includes public disclosure requirements for depository institution holding companies that would be subject to the proposed NSFR requirement or modified NSFR requirement.

B. Background

The 2007–2009 financial crisis exposed the vulnerability of large and internationally active banking organizations to liquidity shocks. For example, before the crisis, many banking organizations lacked robust liquidity risk management metrics and relied excessively on short-term wholesale funding to support less liquid assets.[2] In addition, firms did not sufficiently plan for longer-term liquidity risks, and the control functions of banking organizations failed to challenge such decisions or sufficiently plan for possible disruptions to the organization's regular sources of funding. Instead, the control functions reacted only after funding shortfalls arose.

During the crisis, many banking organizations experienced severe contractions in the supply of funding. As access to funding became limited and asset prices fell, many banking organizations faced the possibility of default and failure. The threat this presented to the financial system caused governments and central banks around the world to provide significant levels of support to these institutions to maintain global financial stability. This experience demonstrated a need to address these shortcomings at banking organizations and to implement a more rigorous approach to identifying, measuring, monitoring, and limiting reliance by banking organizations on less stable sources of funding.[3]

Since the 2007–2009 financial crisis, the agencies have developed quantitative and qualitative standards focused on strengthening banking organizations' overall risk management, liquidity positions, and liquidity risk management. By improving banking organizations' ability to absorb shocks arising from financial and economic stress, these measures, in turn, promote a more resilient banking sector and financial system. This work has taken into account ongoing supervisory reviews and analysis in the United States, as well as international discussions regarding appropriate liquidity standards.[4]

The agencies have implemented or proposed several measures to improve the liquidity positions and liquidity risk management of supervised banking organizations. First, the agencies adopted the liquidity coverage ratio (LCR) rule in September 2014,[5] which requires certain banking organizations to hold a minimum amount of high-quality liquid assets (HQLA) that can be readily converted into cash to meet net cash outflows over a 30-calendar-day period. Second, pursuant to section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act[6] (Dodd-Frank Act) and in consultation with the OCC and the FDIC, the Board adopted general risk management, liquidity risk management, and stress testing requirements for bank holding companies with total consolidated assets of $50 billion or more in Regulation YY.[7] Third, the Board adopted a risk-based capital surcharge for global systemically important banking organizations (GSIBs) in the United States that is calculated based on a bank holding company's risk profile, including its reliance on short-term wholesale funding (GSIB surcharge rule).[8] Fourth, the Board recently proposed a long-term debt requirement and a total loss-absorbing capacity (TLAC) requirement that would apply to U.S. GSIBs and the U.S. operations of certain foreign GSIBs, and would require these firms and operations to have sufficient amounts of equity and eligible long-term debt to improve their ability to absorb significant losses and withstand financial stress, which would also improve the funding profile of these firms.[9]

[1] As discussed in section I.C.2 of this **SUPPLEMENTARY INFORMATION** section, covered companies are bank holding companies, certain savings and loan holding companies, and depository institutions, in each case with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance sheet foreign exposure, as well as any consolidated subsidiary depository institution with total consolidated assets of $10 billion or more.

[2] *See* Senior Supervisors Group, Risk Management Lessons from the Global Banking Crisis of 2008, (October 21, 2009), available at *https://www.newyorkfed.org/medialibrary/media/newsevents/news/banking/2009/SSG_report.pdf.*

[3] *See id.*

[4] *See, e.g.,* Principles for Sound Liquidity Risk Management and Supervision (September 2008), available at *http://www.bis.org/publ/bcbs144.htm*; Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools (January 2013), available at *http://www.bis.org/publ/bcbs238.pdf*; Basel III: the net stable funding ratio (October 2014), available at *http://www.bis.org/bcbs/publ/d295.pdf.*

[5] ''Liquidity Coverage Ratio: Liquidity Risk Measurement Standards,'' 79 FR 61440 (October 10, 2014), codified at 12 CFR part 50 (OCC), 12 CFR part 249 (Board), and 12 CFR part 329 (FDIC).

[6] Public Law 111–203, 124 Stat. 1376, 1423–1432 (2010) § 165, codified at 12 U.S.C. 5365.

[7] *See* ''Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations,'' 79 FR 17240 (March 27, 2014), codified at 12 CFR part 252.

[8] ''Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies,'' 80 FR 49082 (August 14, 2015).

[9] ''Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of

The agencies have also focused specifically on the importance of banking organizations maintaining a stable funding profile. The agencies have issued supervisory guidance to address the risks arising from excessive reliance on unstable funding, such as short-term wholesale funding, both before and after the 2007–2009 financial crisis, and have incorporated such guidance in their supervisory ratings. For example, in 1990, the Board issued guidance that cautioned against excessive reliance on the use of short-term debt,[10] and in 2010, the agencies issued interagency guidance emphasizing the importance of diversifying funding sources and tenors.[11] In addition, there are statutory restrictions under the Federal Deposit Insurance Act (FDI Act) on the ability of an insured depository institution that is less than well capitalized to accept or renew brokered deposits, which can be a less stable form of funding than other retail deposits.[12]

The proposed rule would complement existing law and regulations and the proposed TLAC and long-term debt requirements, as well as existing supervisory guidance.[13] For example, it would build on the LCR rule's goal of improving resilience to short-term economic and financial stress by focusing on the stability of a covered company's structural funding profile over a longer, one-year time horizon. It would also address liquidity risks that are not readily mitigated by the agencies' capital requirements. In a financial crisis, financial institutions without stable funding sources may be forced by creditors to monetize assets at the same time, driving down asset prices. The proposed rule would mitigate such risks by directly increasing the funding resilience of individual covered companies, thereby indirectly increasing the overall resilience of the U.S. financial system.

The proposed NSFR requirement would also provide a standardized means for measuring the stability of a covered company's funding structure, promote greater comparability of funding structures across covered companies and foreign firms subject to similar requirements, and improve transparency and increase market discipline through the proposed rule's public disclosure requirements.

The proposed rule would be consistent with the net stable funding ratio standard published by the Basel Committee on Banking Supervision (BCBS) [14] in October 2014 (Basel III NSFR) [15] and the net stable funding ratio disclosure standards published by the BCBS in June 2015.[16] The Basel III NSFR is a longer-term structural funding metric that complements the BCBS's short-term liquidity risk metric, the BCBS liquidity coverage ratio standard (Basel III LCR).[17] In developing the Basel III NSFR, the agencies and their international counterparts in the BCBS considered a number of possible structural funding metrics. For example, the BCBS considered the traditional ''cash capital'' measure, which compares a firm's amount of long-term and stable sources of funding to the amount of its illiquid assets. The BCBS found that this cash capital measure failed to account for material funding risks, such as those related to off-balance sheet commitments and certain on-balance sheet short-term funding and lending mismatches. The Basel III NSFR incorporates consideration of these and other funding risks, as would the proposed rule's NSFR requirement.

C. Overview of the Proposed Rule

1. NSFR Calculation, Shortfall Remediation, and Disclosure Requirements

The proposed rule would require a covered company to maintain an amount of ASF, or available stable funding, that is no less than the amount of its RSF, or required stable funding, on an ongoing basis. A covered company's NSFR would be expressed as a ratio of its ASF amount (the numerator of the ratio) to its RSF amount (the denominator of the ratio). A covered company's ASF amount would be a weighted measure of the stability of the company's funding over a one-year time horizon. A covered company would calculate its ASF amount by applying standardized weightings (ASF factors) to its equity and liabilities based on their expected stability. Similarly, a covered company would calculate its RSF amount by applying standardized weightings (RSF factors) to its assets, derivative exposures, and commitments based on their liquidity characteristics.[18] These characteristics would include credit quality, tenor, encumbrances, counterparty type, and characteristics of the market in which an asset trades, as applicable.

As noted above, the proposed rule would require a covered company to maintain, on a consolidated basis, an NSFR equal to or greater than 1.0. The proposed rule would require a covered company to take several steps if its NSFR fell below 1.0, as discussed in more detail in section III of this **SUPPLEMENTARY INFORMATION** section. In particular, a covered company would be required to notify its appropriate Federal banking agency of the shortfall no later than 10 business days (or such other period as the appropriate Federal banking agency may require by written notice) following the date that any event has occurred that would cause or has caused the covered company's NSFR to fall below the minimum requirement. In addition, a covered company would be required to submit to its appropriate Federal banking agency a plan to remediate its NSFR shortfall. These procedures would enable supervisors to monitor and respond appropriately to the particular circumstances that give rise to any deficiency in a covered company's funding profile. Given the range of possible reasons, both

Systemically Important Foreign Banking Organizations; Regulatory Capital Deduction for Investments in Certain Unsecured Debt of Systemically Important U.S. Bank Holding Companies,'' 80 FR 74926 (November 20, 2015).

[10] See Supervision and Regulation Letter 90–20 (June 22, 1990), available at *http://www.federalreserve.gov/boarddocs/srletters/1990/sr9020.htm*, superseded by OCC, Board, FDIC, Office of Thrift Supervision, and National Credit Union Administration, ''Interagency Policy Statement on Funding and Liquidity Risk Management,'' 75 FR 13656 (March 22, 2010) (Interagency 2010 Policy Statement on Funding and Liquidity Risk Management); and Supervision and Regulation Letter 96–38 (December 27, 1996), available at *http://www.federalreserve.gov/boarddocs/srletters/1996/sr9638.htm*.

[11] *See* Interagency 2010 Policy Statement on Funding and Liquidity Risk Management.

[12] *See* 12 U.S.C. 1831f(a).

[13] *See, e.g.,* Interagency 2010 Policy Statement on Funding and Liquidity Risk Management; Supervision and Regulation Letter 12–17 (December 12, 2012), available at *http://www.federalreserve.gov/bankinforeg/srletters/sr1217.htm*; Interagency Guidance on Funds Transfer Pricing Related to Funding and Contingent Liquidity Risks (March 1, 2016), available a: *http://www.occ.gov/news-issuances/bulletins/2016/bulletin-2016-7.html* (OCC), *http://www.federalreserve.gov/bankinforeg/srletters/sr1603a1.pdf* (Board), and *https://www.fdic.gov/news/news/financial/2016/fil16012.pdf* (FDIC).

[14] The BCBS is a committee of banking supervisory authorities that was established by the central bank governors of the G10 countries in 1975. It currently consists of senior representatives of bank supervisory authorities and central banks from Argentina, Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong SAR, India, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Russia, Saudi Arabia, Singapore, South Africa, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. Documents issued by the BCBS are available through the Bank for International Settlements Web site at *http://www.bis.org*.

[15] *See supra* note 4.

[16] ''Net Stable Funding Ratio disclosure standards'' (June 2015), available at *http://www.bis.org/bcbs/publ/d324.pdf* (Basel III NSFR Disclosure Standards).

[17] *See supra* note 4.

[18] ASF factors are described in section II.C, RSF factors are described in section II.D, and the derivatives RSF amount is described in section II.E of this Supplementary Information section.

idiosyncratic and systemic, for a covered company having an NSFR below 1.0, the proposed rule would establish a framework that would allow for flexible supervisory responses. The agencies expect circumstances where a covered company has an NSFR shortfall to arise only rarely.

Nothing in the proposed rule would limit the authority of the agencies under any other provision of law or regulation to take supervisory or enforcement actions, including actions to address unsafe or unsound practices or conditions, deficient liquidity levels, or violations of law.

The proposed rule would require a covered company that is a depository institution holding company to publicly disclose, each calendar quarter, its NSFR and NSFR components in a standardized tabular format and to discuss certain qualitative features of its NSFR calculation. These disclosures, which are described in further detail in section V of this Supplementary Information section, would enable market participants to assess and compare the liquidity profiles of covered companies and non-U.S. banking organizations.

The proposed NSFR requirement would take effect on January 1, 2018.

2. Scope of Application of the Proposed Rule

The proposed NSFR requirement would apply to the same large and internationally active banking organizations that are subject to the LCR rule: (1) Bank holding companies, savings and loan holding companies without significant commercial or insurance operations, and depository institutions that, in each case, have $250 billion or more in total consolidated assets or $10 billion or more in on-balance sheet foreign exposure,[19] and (2) depository institutions with $10 billion or more in total consolidated assets that are consolidated subsidiaries of such bank holding companies and savings and loan holding companies.

The proposed rule would apply to banking organizations that tend to have larger and more complex liquidity risk profiles than smaller and less internationally active banking organizations. While banking organizations of any size can face threats to their safety and soundness based on an unstable funding profile, covered companies' scale, scope, and complexity require heightened measures to manage their liquidity risk. In addition, covered companies with total consolidated assets of $250 billion or more can pose greater risks to U.S. financial stability than smaller banking organizations because of their size, the scale and breadth of their activities, and their interconnectedness with the financial sector. Consequently, threats to the availability of funding to larger firms pose greater risks to the financial system and economy. Likewise, the foreign exposure threshold identifies firms with a significant international presence, which may also present risks to financial stability for similar reasons. By promoting stable funding profiles for large, interconnected institutions, the proposed rule would strengthen the safety and soundness of covered companies and promote a more resilient U.S. financial system and global financial system.

The proposed rule would also apply the NSFR requirement to depository institutions that are the consolidated subsidiaries of covered companies and that have $10 billion or more in total consolidated assets.[20] These large depository institution subsidiaries can play a significant role in covered companies' funding structures and operations, and present a larger exposure to the FDIC's Deposit Insurance Fund than smaller insured institutions because of the greater volume of their deposit-taking and lending activities. To reduce the potential impacts of a liquidity event on the safety and soundness of such large depository institution subsidiaries, the proposed rule would require that such entities independently have sufficient stable funding.

Consistent with the LCR rule, the proposed rule would not apply to depository institution holding companies with large insurance operations or savings and loan holding companies with large commercial operations because their business models and liquidity risks differ significantly from those of other covered companies.[21] The proposed rule would also not apply to nonbank financial companies designated by the Financial Stability Oversight Council (Council) for Board supervision (nonbank financial companies).[22] However, the Board may apply an NSFR requirement and disclosure requirements to these companies in the future by separate rule or order. The Board would assess the business model, capital structure, and risk profile of a nonbank financial company to determine whether, and if so how, the proposed NSFR requirement should apply to a nonbank financial company or to a category of nonbank financial companies, as appropriate. The Board would provide nonbank financial companies, either collectively or individually, with notice and opportunity to comment prior to applying an NSFR requirement.

The proposed rule would also not apply to the U.S. operations of foreign banking organizations or intermediate holding companies required to be formed under the Board's Regulation YY that do not otherwise meet the requirements to be a covered company (for example, as a U.S. bank holding company with more than $250 billion in total consolidated assets). The Board anticipates implementing an NSFR requirement through a future, separate rulemaking for the U.S. operations of foreign banking organizations with $50 billion or more in combined U.S. assets.

The proposed rule would not apply to a ''bridge financial company'' or a subsidiary of a ''bridge financial

[19] Total consolidated assets for the purposes of the proposed rule would be as reported on a banking organization's most recent year-end Consolidated Reports of Condition and Income or Consolidated Financial Statements for Bank Holding Companies, Federal Reserve Form FR Y–9C. Foreign exposure data would be calculated in accordance with the Federal Financial Institutions Examination Council 009 Country Exposure Report.

[20] Pursuant to the International Banking Act (IBA), 12 U.S.C. 3101 *et seq.*, and OCC regulation, 12 CFR 28.13(a)(1), a Federal branch or agency regulated and supervised by the OCC has the same rights and responsibilities as a national bank operating at the same location. Thus, as a general matter, Federal branches and agencies are subject to the same laws as national banks. The IBA and the OCC regulation state, however, that this general standard does not apply when the IBA or other applicable law provides other specific standards for Federal branches or agencies or when the OCC determines that the general standard should not apply. This proposal would not apply to Federal branches and agencies of foreign banks operating in the United States. At this time, these entities have assets that are substantially below the proposed $250 billion asset threshold for applying the proposed liquidity standard to large and internationally active banking organizations. As part of its supervisory program for Federal branches and agencies of foreign banks, the OCC reviews liquidity risks and takes appropriate action to limit such risks in those entities.

[21] The proposed rule would not apply to: (i) A grandfathered unitary savings and loan holding company (as described in section 10(c)(9)(A) of the Home Owners' Loan Act, 12 U.S.C. 1467a(c)(9)(A)) that derives 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k)); (ii) a top-tier bank holding company or savings and loan holding company that is an insurance underwriting company; or (iii) a top-tier bank holding company or savings and loan holding company that has 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies. For purposes of (iii), the company must calculate its total consolidated assets in accordance with GAAP or estimate its total consolidated assets, subject to review and adjustment by the Board.

[22] *See* 12 U.S.C. 5323.

company,'' a ''new depository institution,'' or a ''bridge depository institution,'' as those terms are used in the FDI Act in the resolution context.[23] Requiring these entities to maintain a minimum NSFR may constrain the FDIC's ability to resolve a depository institution or its affiliates in an orderly manner.

The Board is also proposing to implement a modified version of the NSFR requirement for bank holding companies and savings and loan holding companies without significant insurance or commercial operations that, in each case, have $50 billion or more, but less than $250 billion, in total consolidated assets and less than $10 billion in total on-balance sheet foreign exposure. Modified NSFR holding companies are large financial companies that have sizable operations in banking, brokerage, or other financial activities, as discussed in section IV of this **SUPPLEMENTARY INFORMATION** section. Although they generally are smaller in size, less complex in structure, and less reliant on riskier forms of funding than covered companies, these modified NSFR holding companies are nevertheless important providers of credit in the U.S. economy. The Board is therefore proposing a form of the NSFR requirement that is tailored to the less risky liquidity profile of these companies.

The agencies would each reserve the authority to apply the proposed rule to additional companies if the application of the NSFR requirement would be appropriate in light of a company's asset size, complexity, risk profile, scope of operations, affiliation with covered companies, or risk to the financial system. A covered company would remain subject to the proposed NSFR requirement until its appropriate Federal banking agency determines in writing that application of the rule to the company is not appropriate in light of these same factors. The agencies would also reserve the authority to require a covered company to maintain an ASF amount greater than otherwise required under the proposed rule, or to take any other measure to improve the covered company's funding profile, if the appropriate Federal banking agency determines that the covered company's NSFR requirement under the proposed rule is not commensurate with its liquidity risks.

A company that becomes subject to the proposed rule pursuant to § ____.1(b)(1) after the effective date would be required to comply with the proposed NSFR requirement beginning on April 1 of the following year. For example, if a bank holding company becomes subject to the proposed rule on December 31, 2020, because it reports on its year-end Consolidated Financial Statements for Holding Companies (FR Y–9C) that it has total consolidated assets of $251 billion, that bank holding company would be required to begin complying with the proposed NSFR requirement on April 1, 2021.

Question 1: Would the proposed one-quarter transition period provide sufficient time for a covered company to make any needed adjustments to its systems to come into compliance with the proposed rule's requirements? What alternative transition period, if any, would be more appropriate and why? What would be the benefits of providing covered companies with a longer or shorter transition period?

D. Definitions

The proposed rule would share definitions with the LCR rule and would be adopted and codified in the same part of the Code of Federal Regulations as the LCR rule for each of the agencies.[24] In connection with the proposed rule, the agencies are proposing to revise certain of the existing definitions in § ____.3 of the LCR rule and to add certain new definitions. This part of the **SUPPLEMENTARY INFORMATION** section discusses these definitions.

1. Revisions to Existing Definitions

The proposed rule would amend the existing definition of ''calculation date'' in § ____.3 of the LCR rule to define ''calculation date'' for purposes of the NSFR requirement as any date on which a covered company calculates its NSFR under § ____.100.

The existing definition of ''collateralized deposit'' in § ____.3 of the LCR rule includes those fiduciary deposits that a covered company is required by federal law, as applicable to national banks and Federal savings associations, to collateralize using its own assets. The LCR rule excludes collateralized deposits from the set of secured funding transactions that a covered company is required to unwind in its calculation of adjusted liquid asset amounts under § ____.21 of the LCR rule. To provide consistent treatment for covered companies subject to state laws that require collateralization of deposits, the proposed rule would amend the definition of ''collateralized deposit'' to include those deposits collateralized as required under state law, as applicable to state member and nonmember banks and state savings associations. In addition, the proposed rule would amend the definition of ''collateralized deposit'' to include those fiduciary deposits held at a covered company for which a depository institution affiliate of the covered company is a fiduciary and that the covered company has collateralized pursuant to 12 CFR 9.10(c) (for national banks) or 12 CFR 150.310 (for Federal savings associations). Although a covered company may not be required under applicable law to collateralize fiduciary deposits held at an affiliated depository institution, if the covered company decides to collateralize those deposits, then they should also be excluded from the unwind of applicable secured funding transactions.

The existing definition of ''committed'' in § ____.3 of the LCR rule provides the criteria under which a credit facility or liquidity facility would be considered committed for purposes of the LCR rule, and thus receive an outflow rate as specified in § ____.32(e). The definition provides that a credit facility or liquidity facility is committed if (1) the covered company may not refuse to extend credit or funding under the facility or (2) the covered company may refuse to extend credit under the facility (to the extent permitted under applicable law) only upon the satisfaction or occurrence of one or more specified conditions not including change in financial condition of the borrower, customary notice, or administrative conditions.

To more clearly capture the intended meaning of ''committed,'' the proposed rule would amend the definition to state that a credit or liquidity facility is committed if it is not unconditionally cancelable under the terms of the facility. The proposed rule would define ''unconditionally cancelable,'' consistent with the agencies' risk-based capital rules, to mean that a covered company may refuse to extend credit under the facility at any time, including without cause (to the extent permitted under applicable law).[25] For example, a credit or liquidity facility that only permits a covered company to refuse to extend credit upon the occurrence of a specified event (such as a material adverse change) would not be considered unconditionally cancelable, and therefore the facility would be considered committed under the proposed definition. Conversely, a credit or liquidity facility that the covered company may cancel without

[23] *See* 12 U.S.C. 1813(i) and 12 U.S.C. 5381(a)(3).

[24] 12 CFR part 50 (OCC), 12 CFR part 249 (Board), and 12 CFR part 329 (FDIC).

[25] *See* 12 CFR 3.2 (OCC), 12 CFR 217.2 (Board), and 12 CFR 324.2 (FDIC).

cause would not be considered committed because the covered company may refuse to extend credit under the facility at any time. For example, home equity lines of credit and credit cards lines that are cancelable without cause (to the extent permitted under applicable law), as is generally the case, would not be considered committed under the proposed amendment to the definition.

The proposed rule would revise the definition of ''covered nonbank company'' to clarify that if the Board requires a company designated by the Council for Board supervision to comply with the LCR rule or the proposed rule, it will do so through a rulemaking that is separate from the LCR rule and this proposed rule or by issuing an order.

The existing definition of ''operational deposit'' provides the parameters under which funding of a covered company would be considered an operational deposit for purposes of the LCR rule, meaning that the funding amount is necessary for the provision of operational services, as defined in § ____.3 of the LCR rule. While the LCR rule defines the term ''operational deposit'' to refer only to funding of a company, the proposed rule would use the term to refer to both funding and lending. Accordingly, the proposed rule would amend the definition of ''operational deposit'' to include both deposits received by the covered company in connection with operational services provided by the covered company and deposits placed by the covered company in connection with operational services received by the covered company. The proposed rule would also amend the definition of ''operational deposit'' to clarify that only deposits, as defined in § ____.3 of the LCR rule, can qualify as operational deposits. Other forms of funding from, or provided to, wholesale customers or counterparties (*e.g.,* longer-term unsecured funding) would not qualify as operational deposits. Because operational deposits are limited to accounts that facilitate short-term transactional cash flows associated with operational services, operational deposits also should only have short-term maturities, falling within the proposed rule's less-than-6-month maturity category and generally within the LCR rule's 30 calendar-day period. Notwithstanding the proposed revisions to this definition, the treatment of operational deposits under §§ ____.32 and ____.33 of the LCR rule would remain the same.

Finally, the proposed rule would revise the definitions of ''secured funding transaction'' and ''secured lending transaction'' to clarify that the obligations referenced in those definitions must be secured by a lien on securities or loans (rather than secured by a lien on other assets), that such transactions are only those with wholesale customers or counterparties, and that securities issued or owned by a covered company do not constitute secured funding or lending transactions of the covered company. The treatment of secured transactions in the LCR rule, which adjusts inflow and outflow rates based on the relative liquidity of the collateral, would be appropriate only for transactions where the collateral is securities or loans because these forms of collateral are generally more liquid than others. For example, inflows in a stressed environment associated with lending secured by collateral types that are not generally traded in liquid markets, such as property, plant, and equipment, are typically based on the nature of the counterparty rather than the collateral, thus making the liquidity risk associated with such arrangements more akin to that of unsecured lending. Said another way, lending secured by property, plant, and equipment should not receive a 100 percent inflow rate; rather, the inflow should depend on the characteristics of the borrower, which more accurately reflects the likelihood a covered company will roll over such a loan during a period of significant stress. By the same reasoning, the definition of ''unsecured wholesale funding'' would be revised to include transactions that are not secured by securities or loans, but that may be secured by other forms of collateral (such as property, plant, and equipment), which are generally less liquid.

By limiting the definitions of ''secured funding transaction'' and ''secured lending transaction'' to those transactions with wholesale customers or counterparties, the proposed rule would clarify that funding and lending transactions with a retail customer or counterparty, even if collateralized, are subject to the retail treatment under the LCR rule and the proposed rule. For the same reasons as discussed above, the inflows and outflows associated with funding provided by a retail customer or counterparty, even if collateralized, are more dependent on the retail nature of the counterparty and not any collateral that secures the funding. Lastly, by excluding securities from these definitions, the proposed rule would clarify that securities issued by a covered company or owned by a covered company are treated based on the provisions applicable to securities in the LCR rule and the proposed rule. For example, securities issued through conduit structures that are consolidated on a covered company's balance sheet would not be considered secured funding transactions but rather, would be considered securities issued by the covered company.

Question 2: What modifications, if any, should be made to the proposed revised definitions of ''calculation date,'' ''collateralized deposits,'' ''committed,'' ''covered nonbank company,'' ''operational deposit,'' ''secured funding transaction,'' ''secured lending transaction,'' and ''unsecured wholesale funding'' and why? What, if any, are the unintended consequences to the operation of the LCR rule and the proposed rule that may result from the proposed revisions to these definitions?

Question 3: Given that the terms ''unsecured wholesale funding'' and, as discussed below, ''unsecured wholesale lending'' would include funding and lending that is secured by certain less liquid forms of collateral, would it be clearer to use different terminology for these terms and ''secured funding transaction'' and ''secured lending transaction?''

Question 4: For the definitions of ''secured funding transaction'' and ''secured lending transaction,'' what, if any, assets beyond securities and loans should be included as qualifying collateral because they are sufficiently liquid to be relevant in assigning inflow and outflow rates to such transactions under the LCR rule? What, if any, securities or loans should be excluded from the qualifying collateral because they are not sufficiently liquid and why?

Question 5: Is the term ''unsecured wholesale lending'' appropriately defined by reference to a liability or obligation of a wholesale customer or counterparty? If not, in what ways should the definition be modified and why? What specific assets, if any, should be, but are not currently, included or excluded from the definition of ''unsecured wholesale lending'' for purposes of the NSFR? Likewise, what specific liabilities, if any, should be, but are not currently, included or excluded from the definition of ''unsecured wholesale funding'' for purposes of the NSFR? For example, what assets or liabilities within these terms, if any, such as a receivable based on an insurance claim or a payable for services rendered by a wholesale service provider, should be assigned different RSF and ASF

factors[26] *than other assets or liabilities within these terms?*

Question 6: Given that the definitions in the LCR rule would apply to the proposed rule and the Board's GSIB surcharge rule, are there other definitions or terms, in addition to those noted above, that the agencies should amend and why? For example, should the definition of ''liquid and readily-marketable'' be amended, including any of its criteria, to provide more clarity or to ease operational burden, given its implication on the determination of HQLA and HQLA treatment under the proposed NSFR requirement, and if so, why? Commenters are invited to provide suggested language to amend any definitions.

2. New Definitions

The proposed rule would add several new defined terms. The proposed rule would define ''carrying value'' to mean the value on a covered company's balance sheet of an asset, NSFR regulatory capital element, or NSFR liability, as determined in accordance with U.S. generally accepted accounting principles (GAAP). The proposed rule includes this definition because RSF and ASF factors generally would be applied to the carrying value of a covered company's assets, NSFR regulatory capital elements, and NSFR liabilities. By relying on values based on GAAP, the proposed rule would ensure consistency in the application of the NSFR requirement across covered companies and limit operational burdens to comply with the proposed rule because covered companies already prepare financial reports in accordance with GAAP. This definition would be consistent with the definition used in the agencies' regulatory capital rules.[27]

The proposed rule would define ''encumbered'' using the criteria for an unencumbered asset in § ____.22(b) of the LCR rule. The proposed definition does not include any substantive changes to the concept of encumbrance included in the LCR rule. The proposed rule would also use the defined term in place of the criteria enumerated in § ____.22(b) of the LCR rule. The addition of this definition is necessary to apply the concept of encumbrance in § ____.106(c) and (d) of the proposed rule, as discussed below.

The proposed rule would define two new related terms, ''NSFR regulatory capital element'' and ''NSFR liability.'' The proposed rule would define ''NSFR regulatory capital element'' to mean any capital element included in a covered company's common equity tier 1 capital, additional tier 1 capital, and tier 2 capital, as those terms are defined in the agencies' risk-based capital rules, prior to the application of capital adjustments or deductions set forth in the agencies' risk-based capital rules.[28] This definition would exclude any debt or equity instrument that does not meet the criteria for additional tier 1 or tier 2 capital instruments in § ____.22 of the agencies' risk-based capital rules or that is being phased out of tier 1 or tier 2 capital pursuant to subpart G of the agencies' risk-based capital rules.[29] The term ''NSFR regulatory capital element'' would include both equity and liabilities under GAAP that meet the requirements of the definition. This definition of ''NSFR regulatory capital element'' would generally align with the definition of regulatory capital in the agencies' risk-based capital rules, but would not include capital deductions and adjustments.[30] Because the proposed rule would require assets that are capital deductions (such as goodwill) to be fully supported by stable funding, as discussed in section II.D.3.a.viii of this **SUPPLEMENTARY INFORMATION** section below, deducting the value of these assets from a covered company's NSFR regulatory capital elements would understate a company's NSFR.

The proposed rule would define ''NSFR liability'' to mean any liability or equity reported on a covered company's balance sheet that is not an NSFR regulatory capital element. The term ''NSFR liability'' primarily refers to balance sheet liabilities but may include equity because some equity may not qualify as an NSFR regulatory capital element. The definitions of ''NSFR liability'' and ''NSFR regulatory capital element,'' taken together, should capture the entirety of the liability and equity side of a covered company's balance sheet.

The proposed rule would define ''QMNA netting set'' to refer to a group of derivative transactions with a single counterparty that is subject to a qualifying master netting agreement,[31] and is netted under the qualifying master netting agreement.[32] QMNA netting sets would include, in addition to non-cleared derivative transactions, a group of cleared derivative transactions (that is, a group of derivative transactions that have been entered into with, or accepted by, a central counterparty (CCP)) if the applicable governing rules for the group of cleared derivative transactions meet the definition of a qualifying master netting agreement. The proposed rule would use the term ''QMNA netting set'' in the calculation of a covered company's stable funding requirement attributable to its derivative transactions, as discussed in section II.E of this **SUPPLEMENTARY INFORMATION** section.

The proposed rule would define ''unsecured wholesale lending'' as a liability or general obligation of a wholesale customer or counterparty to the covered company that is not a secured lending transaction. Although the term ''unsecured wholesale funding'' is defined in the LCR rule, ''unsecured wholesale lending'' is not. The proposed rule's NSFR requirement would require a covered company to hold stable funding against unsecured wholesale lending, so a definition of this term is included in the proposed rule.

Question 7: In what ways, if any, should the agencies modify the newly proposed definitions of ''carrying value,'' ''encumbered,'' ''NSFR liability,'' ''NSFR regulatory capital element,'' ''QMNA netting set,'' and ''unsecured wholesale lending'' and why?

Question 8: What other terms, if any, should the agencies define and why?

Question 9: In the definition of ''NSFR regulatory capital element,'' what adjustments to, or deductions from, regulatory capital, if any, should the agencies include in NSFR regulatory capital elements and why? For example, should the NSFR regulatory capital elements include adjustments or deductions for changes in the fair value of a liability due to a change in a

[26] *See* section II.D and II.C of this **SUPPLEMENTARY INFORMATION** section for discussion of assignment of RSF and ASF factors, respectively.

[27] *See* 12 CFR 3.2 (OCC), 12 CFR 217.2 (Board), and 12 CFR 324.2 (FDIC).

[28] *See* 12 CFR part 3 (OCC), 12 CFR part 217 (Board), and 12 CFR part 324 (FDIC).

[29] Tier 2 capital instruments that have a remaining maturity of less than one year are not included in regulatory capital. *See* 12 CFR 3.20(d)(1)(iv) (OCC), 12 CFR 217.20(d)(1)(iv) (Board), and 12 CFR 324.20(d)(1)(iv) (FDIC); *see also* 12 CFR 3.300 (OCC), 12 CFR 217.300 (Board), and 12 CFR 324.300 (FDIC).

[30] The proposed definition of ''NSFR regulatory capital element'' would include allowances for loan and lease losses (ALLL) to the same extent as under the risk-based capital rules. *See* 12 CFR 3.20(d)(3) (OCC), 12 CFR 217.20(d)(3) (Board), and 12 CFR 324.20(d)(3) (FDIC).

[31] Each QMNA netting set must meet each of the conditions specified in the definition of ''qualifying master netting agreement'' under § ____.3 of the LCR rule and the operational requirements under § ____.4(a) of the LCR rule.

[32] A qualifying master netting agreement may identify a single QMNA netting set (for which the agreement creates a single net payment obligation and for which collection and posting of margin applies on an aggregate net basis) or it may establish multiple QMNA netting sets, each of which would be separate from and exclusive of any other QMNA netting set or derivative transaction covered by the qualifying master netting agreement.

covered company's own credit risk? If so, why?

E. Effective Dates

As noted, the proposed NSFR requirement would be effective as of January 1, 2018. This effective date should provide covered companies with sufficient time to adjust to the requirements of the proposal, including to make any changes to ensure their assets, derivative exposures, and commitments are stably funded and to adjust information systems to calculate and monitor their NSFR. The NSFR is a balance-sheet metric, and its calculations would generally be based on the carrying value, as determined under GAAP, of a covered company's assets, liabilities, and equity. As a result, covered companies should be able to leverage current financial reporting systems to comply with the NSFR requirement.

The revisions to definitions currently used in the LCR rule and that would be used in the proposed rule, as discussed in section I.D.1 of this **SUPPLEMENTARY INFORMATION** section, would become effective for purposes of the LCR rule at the beginning of the calendar quarter after finalization of the proposed rule, instead of on January 1, 2018. Because these revisions would enhance the clarity of certain definitions used in the LCR rule, the agencies are proposing that they become effective sooner than the proposed NSFR effective date.

Question 10: Would the proposed effective date provide sufficient time for covered companies to make any needed adjustments to their systems for compliance with the proposed rule's requirements and to ensure that their assets, derivative exposures, and commitments are stably funded? What alternative effective date, if any, would be more appropriate for the proposed NSFR requirement and why? What would be the benefits of providing covered companies with a longer or shorter period of time to comply with the proposed rule?

Question 11: What alternative effective date, if any, would be more appropriate for the proposed revisions to the existing definitions used in the LCR rule, and why?

II. Minimum Net Stable Funding Ratio

As noted above, a covered company would calculate its NSFR by dividing its ASF amount by its RSF amount. The proposed rule would require a covered company to maintain an NSFR equal to or greater than 1.0 on an ongoing basis. As a result, while the proposed rule would require a covered company that is a depository institution holding company to calculate its NSFR on a quarterly basis in order to comply with the proposed rule's public disclosure requirements (as discussed in section V of this **SUPPLEMENTARY INFORMATION** section), a covered company would need to monitor its funding profile on an ongoing basis to ensure compliance with the NSFR requirement. If a covered company's funding profile materially changes intra-quarter, the agencies expect the company to be able to calculate its NSFR to determine whether it remains compliant with the NSFR requirement, consistent with the notification requirements under § ____.110(a) and discussed in section III of this **SUPPLEMENTARY INFORMATION** section.

The following discussion describes the calculation of a covered company's ASF amount and RSF amount.

A. Rules of Construction

The proposed rule would include rules of construction in § ____.102 relating to how items recorded on a covered company's balance sheet would be reflected in the covered company's ASF and RSF amounts.

1. Balance-Sheet Metric

As noted above, a covered company would generally determine its ASF and RSF amounts based on the carrying values of its assets, NSFR regulatory capital elements, and NSFR liabilities as determined under GAAP. Under GAAP, certain transactions and exposures are not recorded on the covered company's balance sheet. The proposed rule would include a rule of construction in § ____.102(a) specifying that, unless otherwise provided, a transaction or exposure that is not recorded on the balance sheet of a covered company would not be assigned an ASF or RSF factor and, conversely, a transaction or exposure that is recorded on the balance sheet of the covered company would be assigned an ASF or RSF factor. While the proposed rule would generally rely on balance sheet carrying values, it would differ in some cases, such as with respect to determination of a covered company's stable funding requirements relating to derivative transactions, as described in section II.E of this **SUPPLEMENTARY INFORMATION** section, and the undrawn amount of commitments, as described in section II.D.3 of this **SUPPLEMENTARY INFORMATION** section.

2. Netting of Certain Transactions

The proposed rule would include a rule of construction in § ____.102(b) that describes the treatment of receivables and payables that are associated with secured funding transactions, secured lending transactions, and asset exchanges with the same counterparty that the covered company has netted against each other. For purposes of determining the carrying value of these transactions, GAAP permits a covered company, when the relevant accounting criteria are met, to offset the gross value of receivables due from a counterparty under secured lending transactions by the amount of payments due to the same counterparty under secured funding transactions (GAAP offset treatment). The proposed rule would require a covered company to satisfy both these accounting criteria and the criteria applied in § ____.102(b) before it could treat the applicable receivables and payables on a net basis for the purposes of the NSFR requirement.

Section § ____.102(b) would apply the netting criteria specified in the agencies' supplementary leverage ratio rule (SLR rule).[33] These criteria require, first, that the offsetting transactions have the same explicit final settlement date under their governing agreements. Second, the criteria require that the right to offset the amount owed to the counterparty with the amount owed by the counterparty is legally enforceable in the normal course of business and in the event of receivership, insolvency, liquidation, or similar proceeding. Third, the criteria require that under the governing agreements, the counterparties intended to settle net, settle simultaneously, or settle according to a process that is the functional equivalent of net settlement (that is, the cash flows of the transactions are equivalent, in effect, to a single net amount on the settlement date), where the transactions are settled through the same settlement system, the settlement arrangements are supported by cash or intraday credit facilities intended to ensure that settlement of the transactions will occur by the end of the business day, and the settlement of the underlying securities does not interfere with the net cash settlement.

If a covered company entered into secured funding and secured lending transactions with the same counterparty and applied the GAAP offset treatment when recording the carrying value of these transactions, but the transactions did not meet the criteria in § ____.102(b), the covered company would be required to assign the appropriate RSF and ASF factors to the gross value of the receivables and payables associated with these

[33] 12 CFR 3.10(c)(4)(ii)(E)(*1*) through (*3*) (OCC), 12 CFR 217.10(c)(4)(ii)(E)(*1*) through (*3*) (Board), and 12 CFR 324.10(c)(4)(ii)(E)(*1*) through (*3*) (FDIC).

transactions, rather than to the net value. Thus, the gross value of these receivables or payables would be treated as if they were included on the balance sheet of the covered company. If the criteria in § ____.102(b) are not met, the cash flows associated with the maturities of these secured lending and secured funding transactions may not align and, therefore, the proposed rule would treat these transactions on an individual basis when assigning them RSF and ASF factors. The proposed rule's incorporation of these netting criteria would also maintain consistency with covered companies' treatment of offset receivables and payables under the SLR rule.

3. Treatment of Securities Received in an Asset Exchange by a Securities Lender

The proposed rule would include a rule of construction in § ____.102(c) specifying that when a covered company, acting as a securities lender, receives a security in an asset exchange and has not rehypothecated the security received, the covered company is not required to assign an RSF factor to the security it has received and is not permitted to assign an ASF factor to any liability to return the security. The requirements of § ____.102(c), which would be consistent with the treatment of security-for-security transactions under the SLR rule,[34] are intended to neutralize differences across different accounting frameworks and maintain consistency across covered companies. Because the proposed rule would not require stable funding for the securities received, it would not treat the covered company's obligation to return these securities as stable funding and would not assign an ASF factor to this obligation. If, however, the covered company, acting as the securities lender, sells or rehypothecates the securities received, the proposed rule would require the covered company to assign the appropriate RSF factor or factors under § ____.106 to the proceeds of the sale or, in the case of a pledge or rehypothecation, to the securities themselves if they remain on the covered company's balance sheet.[35] Similarly, the covered company would assign a corresponding ASF factor to the NSFR liability associated with the asset exchange, for example, an obligation to return the security received.

B. Determining Maturity

Under the proposed rule, the ASF and RSF factors assigned to a covered company's NSFR liabilities and assets would depend in part on the maturity of each NSFR liability or asset. The proposed rule would incorporate the maturity assumptions in § ____.31(a)(1) and (2) of the LCR rule to determine the maturities of a covered company's NSFR liabilities and assets. These LCR rule provisions generally require a covered company to identify the most conservative maturity date when calculating inflow and outflow amounts—that is, the earliest possible date for an outflow from a covered company and the latest possible date for an inflow to a covered company. These provisions also generally require covered companies to take the most conservative approach when determining maturity with respect to any notice periods and with respect to any options, either explicit or embedded, that may modify maturity dates.

Because the proposed rule would incorporate the LCR rule's maturity assumptions, it would similarly require a covered company to identify the maturity date of its NSFR liabilities and assets in the most conservative manner. Specifically, the proposed rule would require a covered company to apply the earliest possible maturity date to an NSFR liability (which would be assigned an ASF factor) and the latest possible maturity date to an asset (which would be assigned an RSF factor). The proposed rule would also require a covered company to take the most conservative approach when determining maturity with respect to any notice periods and with respect to any options, either explicit or embedded, that may modify maturity dates. For example, a covered company would be required to assume that an option to reduce the maturity of an NSFR liability and an option to extend the maturity of an asset will be exercised.

The proposed rule would treat an NSFR liability that has an ''open'' maturity (*i.e.,* the NSFR liability has no maturity date and may be closed out on demand) as maturing on the day after the calculation date. For example, an ''open'' repurchase transaction or a demand deposit placed at a covered company would be treated as maturing on the day after the calculation date. To ensure consistent use of terms in the proposed rule and LCR rule and to avoid ambiguity between perpetual instruments and transactions (*i.e.,* the instrument or transaction has no contractual maturity date and may not be closed out on demand) and open instruments and transactions, the proposed rule would amend the LCR rule to use the term ''open'' instead of using the phrase ''has no maturity date.'' This proposed change would have no substantive impact on the LCR rule. The proposed rule would treat a perpetual NSFR liability (such as perpetual securities issued by a covered company) as maturing one year or more after the calculation date.

The proposed rule would treat each principal amount due under a transaction, such as separate principal payments due under an amortizing loan, as a separate transaction for which the covered company would be required to identify the date when the payment is contractually due and apply the appropriate ASF or RSF factor based on that maturity date. This proposed treatment would ensure that a covered company's ASF and RSF amounts reflect the actual timing of a company's cash flows and obligations, rather than treating all principal payments for a transaction as though each were due on the same date (*e.g.,* the last contractual principal payment date of the transaction). For example, if a loan from a counterparty to a covered company requires two contractual principal payments, the first due less than six months from the calculation date and the second due one year or more from the calculation date, only the principal amount that is due one year or more from the calculation date would be assigned a 100 percent ASF factor, which is the factor assigned to liabilities that have a maturity of one year or more from the calculation date. The liability arising from the principal payment due within six months represents a less stable source of funding and would therefore be assigned a lower ASF factor (for example, a zero percent ASF factor if the loan is from a financial sector entity, as discussed in section II.C.3.e of this **SUPPLEMENTARY INFORMATION** section).

For deferred tax liabilities that have no maturity date, the maturity date under the proposed rule would be the first calendar day after the date on which the deferred tax liability could be realized.

[34] 12 CFR 3.10(c)(4)(ii)(A) (OCC), 12 CFR 217.10(c)(4)(ii)(A) (Board), and 12 CFR 324.10(c)(4)(ii)(A) (FDIC).

[35] *See* sections II.D.3.c and II.D.3.d of this Supplementary Information section. If the collateral securities received by the securities lender have been rehypothecated but remain on the covered company's balance sheet, the collateral securities would be assigned an RSF factor under § ____.106(c) to reflect the encumbrance. If the collateral securities have been rehypothecated but do not remain on the covered company's balance sheet, the covered company may be required to apply an additional encumbrance to the asset it has provided in the asset exchange, pursuant to § ____.106(d).

The proposed rule would not apply the LCR rule's maturity assumptions to a covered company's NSFR regulatory capital elements. Unlike NSFR liabilities, which have varying maturities, NSFR regulatory capital elements are longer-term by definition, and as such, the proposed rule would assign a 100 percent ASF factor to all NSFR regulatory capital elements.

C. Available Stable Funding

Under the proposed rule, a covered company's ASF amount would measure the stability of its equity and liabilities. An ASF amount that equals or exceeds a covered company's RSF amount would be indicative of a stable funding profile over the NSFR's one-year time horizon.

1. Calculation of ASF Amount

Under § ____.103 of the proposed rule, a covered company's ASF amount would equal the sum of the carrying values of the covered company's NSFR regulatory capital elements and NSFR liabilities, each multiplied by the ASF factor assigned in § ____.104 or § ____.107(c). As described below, these ASF factors would be assigned based on the stability of each category of NSFR liability or NSFR regulatory capital element over the NSFR's one-year time horizon.

As discussed in section II.E of this **SUPPLEMENTARY INFORMATION** section, certain NSFR liabilities relating to derivative transactions are not considered stable funding for purposes of a covered company's NSFR calculation and are assigned a zero percent ASF factor under § ____.107(c). In addition, pursuant to § ____.108 of the proposed rule, a covered company may include in its ASF amount the available stable funding of a consolidated subsidiary only to the extent that the funding of the subsidiary supports the RSF amount associated with the subsidiary's own assets or is readily available to support RSF amounts associated with the assets of the covered company outside the consolidated subsidiary. This restriction is discussed in more detail in section II.F of this **SUPPLEMENTARY INFORMATION** section.

2. ASF Factor Framework

The proposed rule would use a set of standardized weightings, or ASF factors, to measure the relative stability of a covered company's NSFR liabilities and NSFR regulatory capital elements over a one-year time horizon. ASF factors would be scaled from zero to 100 percent, with a zero percent weighting representing the lowest stability and a 100 percent weighting representing the highest stability. The proposed rule would consider funding to be less stable if there is a greater likelihood that a covered company will need to replace or repay it during the NSFR's one-year time horizon—for example, if the funding matures and the counterparty declines to roll it over. The proposed rule would categorize NSFR liabilities and NSFR regulatory capital elements and assign an ASF factor based on three characteristics relating to the stability of the funding: (1) Funding tenor, (2) funding type, and (3) counterparty type.

Funding tenor. For purposes of assigning ASF factors, the proposed rule would generally treat funding that has a longer effective maturity (or tenor) as more stable than shorter-term funding. All else being equal, funding that by its terms has a longer remaining tenor should be less susceptible to rollover risk, meaning there is a lower risk that a firm would need to replace maturing funds with less stable funding or potentially monetize less liquid positions at a loss to meet obligations, which could cause a firm's liquidity position to deteriorate. Longer-term funding, therefore, should provide greater stability across all market conditions, but especially during periods of stress. The proposed rule would group the maturities of NSFR liabilities and NSFR regulatory capital elements into one of three categories: Less than six months, six months or more but less than one year, and one year or more. The proposed rule would generally treat funding with a remaining maturity of one year or more as the most stable, because a covered company would not need to roll it over during the NSFR's one-year time horizon. Funding with a remaining maturity of less than six months or an open maturity would generally be treated as the least stable, because a covered company would need to roll it over in the short term. The proposed rule would generally treat funding that matures in six months or more but less than one year as partially stable, because a covered company would not need to roll it over in the shorter term, but would still need to roll it over before the end of the NSFR's one-year time horizon.

As described further below and in section II.C.3 of this **SUPPLEMENTARY INFORMATION** section, funding tenor matters more for the stability of some categories of funding than for others. For example, with respect to stable retail deposits,[36] contractual maturity generally has less effect on the stability of the funding relative to wholesale deposits.

Funding type. The proposed rule would recognize that certain types of funding are inherently more stable than others, independent of the remaining tenor. For example, as described in section II.C.3.b of this **SUPPLEMENTARY INFORMATION** section, the proposed rule would assign a higher ASF factor to stable retail deposits relative to other retail deposits, due in large part to the presence of full deposit insurance coverage and other stabilizing features that reduce the likelihood of a counterparty discontinuing the funding across a broad range of market conditions. Similarly, the proposed rule would assign a higher ASF factor to operational deposits than to certain other forms of short-term, wholesale deposits, based on the provision of services linked to an operational deposit, as discussed in section II.C.3.d of this **SUPPLEMENTARY INFORMATION** section. Likewise, the proposed rule would assign different ASF factors to different categories of retail brokered deposits, based on features that tend to make these forms of deposit more or less stable, as described in sections II.C.3.c, II.C.3.d, and II.C.3.e of this **SUPPLEMENTARY INFORMATION** section below.

Counterparty type. The proposed rule's assignment of ASF factors would also take into account the type of counterparty providing funding, using the same counterparty type classifications as the LCR rule: (1) Retail customers or counterparties, (2) wholesale customers or counterparties that are not financial sector entities, and (3) financial sector entities.[37] As

[36] Section ____.3 of the LCR rule defines a ''stable retail deposit'' as a retail deposit that is entirely covered by deposit insurance and either (1) is held by the depositor in a transactional account or (2) the depositor that holds the account has another established relationship with the covered company such as another deposit account, a loan, bill payment services, or any similar service or product provided to the depositor that the covered company demonstrates, to the satisfaction of the appropriate Federal banking agency, would make the withdrawal of the deposit highly unlikely during a liquidity stress event. ''Deposit insurance'' is defined in § ____.3 as deposit insurance provided by the FDIC under the FDI Act (12 U.S.C. 1811 *et seq.*).

[37] Under § ____.3 of the LCR rule, the term ''retail customer or counterparty'' includes individuals, certain small businesses, and certain living or testamentary trusts. The term ''wholesale customer or counterparty'' refers to any customer or counterparty that is not a retail customer or counterparty. The term ''financial sector entity'' refers to a regulated financial company, identified company, investment advisor, investment company, pension fund, or non-regulated fund, as such terms are defined in § ____.3. The proposed rule would incorporate these definitions. For purposes of determining ASF and RSF factors assigned to assets, commitments, and liabilities where counterparty is relevant, the proposed rule would treat an

described below and in section II.C.3 of this **SUPPLEMENTARY INFORMATION** section, within the NSFR's one-year time horizon, and all other things being equal, the proposed rule would treat most types of deposit funding provided by retail customers or counterparties as more stable than similar types of funding provided by wholesale customers or counterparties. It would also treat most types of funding that matures within six months and that is provided by financial sector entities as less stable than funding of a similar tenor provided by non-financial wholesale customers or counterparties.

Different types of counterparties may respond to events and market conditions in different ways. For example, differences in business models and liability structures tend to make short-term funding provided by financial sector entities less stable than similar funding provided by non-financial wholesale customers or counterparties. Financial sector entities typically have less stable liability structures than non-financial wholesale customers or counterparties, due to their financial intermediation activities. They tend to be more sensitive to market fluctuations and more susceptible to sudden cash outflows that could cause them to rapidly withdraw funding from a covered company. In contrast, wholesale customers and counterparties that are not financial sector entities typically maintain balances with covered companies to support their non-financial activities, such as production and physical investment, which tend to be impacted by financial market fluctuations to a lesser degree than activities of financial sector entities. In addition, non-financial wholesale customers or counterparties generally rely less on funding that is short-term or that can be withdrawn on demand. Therefore, these non-financial wholesale customers or counterparties may be less likely than financial sector entities to rapidly withdraw funding from a covered company. The proposed rule would accordingly treat most short-term funding provided by financial sector entities as less stable than similar funding provided by non-financial wholesale customers or counterparties.

The proposed rule's assignment of ASF factors would also account for differences in funding provided by retail and wholesale customers or counterparties. For example, retail customers and counterparties typically place deposits at a bank to safeguard their money and access the payments system, which makes them less likely to withdraw these deposits purely as a result of market stress, especially when covered by deposit insurance. Wholesale customers or counterparties, while often motivated by similar considerations, may also be motivated to a greater degree by the return and risk of an investment. In addition, as compared to retail customers or counterparties, wholesale customers or counterparties tend to be more sophisticated and responsive to changing market conditions, and often employ personnel who specialize in the financial management of the company. Therefore, the proposed rule would treat most types of deposit funding provided by retail customers or counterparties as more stable than similar funding provided by wholesale customers or counterparties.

While comprehensive data on the funding of covered companies by counterparty type is limited, the agencies' analysis of available data was consistent with the expectation of funding stability differences across counterparty types.[38] The agencies reviewed information collected on the Consolidated Reports of Condition and Income (Call Report), Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), and the Securities and Exchange Commission (SEC) Financial and Operational Combined Uniform Single Report (FOCUS Report) over the period beginning December 31, 2007, and ending December 31, 2008, in combination with more recent FR 2052a report data and supervisory information collected in connection with the LCR rule. In addition, the agencies reviewed supervisory information collected from depository institutions that the FDIC placed into receivership in 2008 and 2009. Although the NSFR requirement is designed to measure the stability of a covered company's funding profile across all market conditions and would not be specifically based on a market stress environment, the agencies focused on a period of stress for purposes of evaluating the relative effects of counterparty type on funding stability. Because a covered company may under normal conditions adjust funding across counterparty types for any number of reasons, focusing on periods of stress allowed the agencies to better measure differences in stability by counterparty type. During these periods of stress, a covered company will generally be trying to roll over its funding, so differences in funding behavior may reasonably be more attributed to its counterparties than business decisions of the covered company.

The agencies' analysis of available public and supervisory information found that, during 2008, funding from financial sector entities exhibited less stability than funding provided by non-financial wholesale counterparties, which in turn exhibited less stability than retail deposits. For example, Call Report data on insured deposits, deposit data from the FFIEC 002, and broker-dealer liability data reported on the SEC FOCUS Report showed higher withdrawals in wholesale funding than retail deposits over this period. The agencies' analysis of supervisory data from a sample of large depository institutions that the FDIC placed into receivership in 2008 and 2009 also indicated that, during the periods leading up to receivership, funding provided by wholesale counterparties can be significantly less stable, showing higher average total withdrawals, than funding provided by retail customers and counterparties.

Question 12: The agencies invite comment regarding the foregoing framework. Are funding tenor, funding type, and counterparty type appropriate indicators of funding stability for purposes of the proposed rule? Why or why not? What other funding characteristics should the proposed rule take into account for purposes of assigning ASF factors? Please provide data and analysis to support your conclusions.

3. ASF Factors

a. 100 Percent ASF Factor

NSFR Regulatory Capital Elements and Long-Term NSFR Liabilities

Section ____.104(a) of the proposed rule would assign a 100 percent ASF factor to NSFR regulatory capital elements, as defined in § ____.3 and described in section I.D of this **SUPPLEMENTARY INFORMATION** section, and to NSFR liabilities that mature one year or more from the calculation date, other than funding provided by retail customers or counterparties. Because NSFR regulatory capital elements and these long-term liabilities do not mature during the NSFR's one-year time horizon, they are not susceptible to rollover risk during this time frame and represent the most stable form of

unconsolidated affiliate of a covered company as a financial sector entity.

[38] Prior to the 2007–2009 financial crisis, covered companies did not consistently report or disclose detailed liquidity information. On November 17, 2015, the Board adopted the revised FR 2052a Complex Institutions Liquidity Monitoring Report (FR 2052a report) to collect quantitative information on selected assets, liabilities, funding activities, and contingent liabilities from certain large banking organizations.

funding under the proposed rule. This category would include securities issued by a covered company that have a remaining maturity of one year or more. Therefore, the proposed rule would assign the highest possible ASF factor of 100 percent to NSFR regulatory capital elements and most long-term NSFR liabilities. As described in sections II.C.3.b through II.C.3.e of this **SUPPLEMENTARY INFORMATION** section, the proposed rule would assign different ASF factors to retail deposits and other forms of NSFR liabilities provided by retail customers or counterparties.

Question 13: Which, if any, NSFR regulatory capital elements should be assigned an ASF factor of other than 100 percent, and why?

Question 14: Should long-term debt securities issued by a covered company where the company is the primary market maker of such securities be assigned an ASF factor other than 100 percent (such as between 95 and 99 percent) to address the risk of a covered company buying back these debt securities? Please provide supporting data for such alternative factors.

b. 95 Percent ASF Factor

Stable Retail Deposits

Section ____.104(b) of the proposed rule would assign a 95 percent ASF factor to stable retail deposits held at a covered company.[39] The proposed rule would assign a 95 percent ASF factor to stable retail deposits to reflect the fact that such deposits are a highly stable source of funding for covered companies. Specifically, the combination of full deposit insurance coverage, the depositor's relationship with the covered company, and the costs of moving transactional or multiple accounts to another institution substantially reduce the likelihood that retail depositors will withdraw these deposits in significant amounts over a one-year time horizon.[40] Because stable retail deposits are nearly as stable over the NSFR's one-year time horizon as NSFR regulatory capital elements and long-term NSFR liabilities under § ____.104(a) of the proposed rule (described above in section II.C.3.a), the proposed rule would assign to stable deposits an ASF factor that is only slightly lower than that assigned to NSFR regulatory capital elements and long-term NSFR liabilities.

As discussed in section II.C.2 of this **SUPPLEMENTARY INFORMATION** section, insured retail deposits would be treated as more stable than similar funding from wholesale customers or counterparties, and would therefore be assigned a higher ASF factor.

Consistent with the LCR rule, the maturity and collateralization of stable retail deposits would not affect their treatment under the proposed rule, because the stability of retail deposits is more closely linked to the combination of deposit insurance, the other stabilizing features included in the definition of ''stable retail deposit,'' and the retail nature of the depositor, rather than maturity or any underlying collateral. Maturity is less relevant, for example, because a covered company may repay a retail term deposit for business and reputational reasons in the event of an early withdrawal request by the depositor despite the absence of a contractual requirement to provide such a repayment within the NSFR's one-year time horizon.

c. 90 Percent ASF Factor

Other Retail Deposits

Section ____.104(c) of the proposed rule would assign a 90 percent ASF factor to retail deposits that are neither stable retail deposits nor retail brokered deposits, which includes retail deposits that are not fully insured by the FDIC or are insured under non-FDIC deposit insurance regimes.

The proposed rule would assign a lower ASF factor to deposits that are not entirely covered by deposit insurance relative to that assigned to stable retail deposits because of the elevated risk of depositors withdrawing funds if they become concerned about the condition of the bank, in part, because the depositor will have no guarantee that uninsured funds will promptly be made available through established and timely intervention and resolution protocols. Supervisory experience has demonstrated that retail depositors whose deposits exceed the FDIC's insurance limit have tended to withdraw not only the uninsured portion of the deposit, but the entire deposit under these circumstances. In addition, deposits that are neither transactional deposits nor deposits of a customer that has another relationship with a covered company tend to be less stable than deposits that have such characteristics because the depositor is less reliant on the bank. Therefore, the proposed rule would assign an ASF factor of 90 percent to these deposits, slightly lower than the ASF factor it would assign to stable retail deposits.

Retail customers and counterparties tend to provide deposits that are more stable than funding provided by other types of counterparties, as discussed in section II.C.2 of this **SUPPLEMENTARY INFORMATION** section above, and, thus, retail deposits would be assigned a higher ASF factor than all but the most stable forms of long-term funding from wholesale customers. For the same reasons as discussed above in relation to stable retail deposits, the maturity and collateralization of these other retail deposits would not affect the ASF factor they would be assigned under the proposed rule.

Retail funding that is not in the form of a deposit, such as payables owed to small business service providers, would not be treated as stable funding and would be assigned a zero percent ASF factor, as described in section II.C.3.e of this **SUPPLEMENTARY INFORMATION** section below.

Fully Insured Affiliate, Reciprocal, and Certain Longer-Term Retail Brokered Deposits

Section ____.104(c) of the proposed rule would assign a relatively high 90 percent ASF factor to three categories of brokered deposits[41] provided by retail customers or counterparties that include certain stabilizing features that tend to make them more stable forms of funding than other brokered deposits, as discussed in sections II.C.3.d and II.C.3.e of this **SUPPLEMENTARY INFORMATION** section below.[42] Retail brokered deposits that would be assigned a 90 percent ASF factor include (1) a reciprocal brokered deposit where the entire amount is covered by deposit insurance;[43] (2) a brokered sweep deposit that is deposited in accordance with a contract between the retail customer or counterparty and the

[39] The proposed rule would incorporate the LCR rule's definition of ''stable retail deposit.'' *See supra* note 36.

[40] *See supra* section II.C.2 of this **SUPPLEMENTARY INFORMATION** section.

[41] Under § ____.3 of the LCR rule, a brokered deposit is a deposit held at the covered company that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker, as that term is defined in section 29(g) of the FDI Act (12 U.S.C. 1831f(g)).

[42] The agencies note that the ASF factors assigned to retail brokered deposits are based solely on the stable funding characteristics of these deposits over a one-year time horizon. The assignment of ASF factors is not intended to reflect the impact of these deposits on a covered company, such as their effect on a company's probability of failure or loss given default, franchise value, or asset growth rate or lending practices. In addition, the assignment of ASF factors does not affect the determination of deposits as brokered, which is addressed under other regulations and guidance.

[43] A ''reciprocal brokered deposit'' is defined in § ____.3 of the LCR rule as a brokered deposit that the covered company receives through a deposit placement network on a reciprocal basis, such that: (1) For any deposit received, the covered company (as agent for the depositors) places the same amount with other depository institutions through the network and (2) each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members.

covered company, a controlled subsidiary of the covered company, or a company that is a controlled subsidiary of the same top-tier company of which the covered company is a controlled subsidiary, where the entire amount of the deposit is covered by deposit insurance;[44] and (3) a brokered deposit that is not a reciprocal brokered deposit or brokered sweep deposit, is not held in a transactional account, and has a remaining maturity of one year or more. By assigning a 90 percent ASF factor, the proposed rule would treat these brokered deposits as more stable than most other categories of brokered deposits, less stable than stable retail deposits, and comparably stable to retail deposits other than stable retail deposits.

First, § ____.104(c)(2) of the proposed rule would assign a 90 percent ASF factor to a reciprocal brokered deposit provided by a retail customer or counterparty, where the entire amount of the deposit is covered by deposit insurance. The reciprocal nature of the brokered deposit means that a deposit placement network contractually provides a covered company with the same amount of deposits that it places with other depository institutions. As a result, and because the deposit is fully insured, the retail customers or counterparties providing the deposit tend to be less likely to withdraw it than other types of brokered deposits.

Second, § ____.104(c)(3) of the proposed rule would assign a 90 percent ASF factor to a brokered sweep deposit that is deposited in accordance with a contract between the retail customer or counterparty that provides the deposit and the covered company or an affiliate of the covered company, where the entire amount of the deposit is covered by deposit insurance. A typical brokered sweep deposit arrangement places deposits, usually those in excess of deposit insurance caps, at different banking organizations, with each banking organization receiving the maximum amount that is covered by deposit insurance, according to a priority ''waterfall.'' Within the waterfall structure, affiliates of the deposit broker tend to be the first to receive deposits and the last from which deposits are withdrawn. With this affiliate relationship, a covered company is more likely to receive and maintain a steady stream of brokered sweep deposits. Based on the reliability of this stream of brokered sweep deposits and the enhanced stability associated with full deposit insurance coverage, the proposed rule would treat this type of brokered deposit, in the aggregate, as more stable than brokered sweep deposits received from unaffiliated institutions.

Third, § ____.104(c)(4) of the proposed rule would assign a 90 percent ASF factor to a brokered deposit provided by a retail customer or counterparty that is not a reciprocal brokered deposit or brokered sweep deposit, is not held in a transactional account, and has a remaining maturity of one year or more. The contractual term of this category of brokered deposit and the exclusion of accounts used by a customer for transactional purposes make this category of brokered deposit more stable than other types of brokered deposits that would be assigned a lower ASF factor. Like other types of retail deposits with a remaining maturity of one year or more, however, these deposits would not be assigned a 100 percent ASF factor, because a covered company may be more likely to repay retail brokered deposits, in the event of an early withdrawal request by the depositor, for reputational or franchise reasons even without a contractual requirement to make such repayment. In addition, the brokered nature of these deposits makes them no more stable than stable retail deposits, which are assigned a 95 percent ASF factor, or retail deposits other than stable retail deposits and brokered deposits, which are assigned a 90 percent ASF factor, even if the deposit is fully covered by deposit insurance.

The proposed rule would assign lower ASF factors to brokered deposits that do not include these stabilizing factors, as discussed in sections II.C.3.d and II.C.3.e of this **SUPPLEMENTARY INFORMATION** section below.

Question 15: To what extent should the proposed rule consider the contractual term of a retail deposit (in addition to considering it for some forms of brokered deposits) for purposes of assigning an ASF factor? What alternative ASF factors, if any, would be more appropriate, and under what circumstances?

Question 16: The agencies invite commenter views on the proposed 90, 50, and zero percent ASF factors assigned to retail brokered deposits. What, if any, alternative ASF factors should be assigned to these deposits and why?

d. 50 Percent ASF Factor

Section ____.104(d) of the proposed rule would assign a 50 percent ASF factor to certain unsecured wholesale funding, and secured funding transactions, depending on the tenor of the transaction and the covered company's counterparty; operational deposits that are placed at the covered company; and certain brokered deposits.

Unsecured Wholesale Funding Provided by, and Secured Funding Transactions With, a Counterparty That Is Not a Financial Sector Entity or Central Bank and With Remaining Maturity of Less Than One Year

Sections ____.104(d)(1) and (2) of the proposed rule would assign a 50 percent ASF factor to a secured funding transaction or unsecured wholesale funding (including a wholesale deposit) that, in each case, matures less than one year from the calculation date and is provided by a wholesale customer or counterparty that is not a central bank or a financial sector entity (or a consolidated subsidiary thereof).

The proposed 50 percent ASF factor for this category would be lower than the 100 percent ASF factor assigned to funding from similar counterparties that matures more than a year from the calculation date because the need to roll over the funding during the NSFR's one-year time horizon makes this category of funding less stable. The 50 percent ASF factor would also be lower than the factor assigned to the categories of retail deposits described above, which include features such as deposit insurance and retail counterparty relationships that make those categories of funding more stable, regardless of remaining contractual maturity.

The proposed rule would generally assign an ASF factor to secured funding transactions and unsecured wholesale funding on the basis of counterparty type and maturity, without regard to whether and what type of collateral secures the transaction. This treatment would differ from the LCR rule, which more closely considers the liquidity characteristics of the underlying collateral. This different treatment stems from the fact that the LCR rule considers the immediate liquidity of the underlying collateral and behavior of the counterparty during a 30-calendar day period of significant stress, whereas the proposed rule focuses on the stability of funding over a one-year time horizon, which is less influenced by the underlying collateral.

[44] Under § ____.3 of the LCR rule, a ''brokered sweep deposit'' is a deposit held at a covered company by a customer or counterparty through a contractual feature that automatically transfers to the covered company from another regulated financial company at the close of each business day amounts identified under the agreement governing the account from which the amount is being transferred. Typically, these transactions involve securities firms or investment companies that transfer (''sweep'') idle customer funds into deposit accounts at one or more banks.

Unsecured Wholesale Funding Provided by, and Secured Funding Transactions With, a Financial Sector Entity or Central Bank With Remaining Maturity of Six Months or More, But Less Than One Year

Sections ____.104(d)(3) and (4) of the proposed rule would assign a 50 percent ASF factor to a secured funding transaction or unsecured wholesale funding that matures six months or more but less than one year from the calculation date and is provided by a financial sector entity or a consolidated subsidiary thereof, or a central bank.[45] As discussed in section II.C.2 of this **SUPPLEMENTARY INFORMATION** section, to account for the less stable nature of funding from these financial counterparties, the proposed rule would treat this funding more conservatively than funding from other types of wholesale customers or counterparties. If the funding from these counterparties has a maturity of less than six months, the proposed rule would assign a zero percent ASF factor, as described below, which would reflect the higher rollover risk of the funding resulting from the short remaining maturity and the financial nature of the counterparty.

The proposed rule would treat funding from central banks consistently with funding from financial sector entities (*i.e.,* as a less stable form of funding) to discourage potential overreliance on funding from central banks, consistent with the proposed rule's focus on stable funding raised from market sources. In the United States, the Federal Reserve does not currently offer funding arrangements of this term.

Securities Issued by a Covered Company With Remaining Maturity of Six Months or More, But Less Than One Year

Section ____.104(d)(5) of the proposed rule would assign a 50 percent ASF factor to securities issued by a covered company that mature in six months or more, but less than one year, from the calculation date. As discussed in section II.C.2 of this **SUPPLEMENTARY INFORMATION** section, in general, the proposed rule would consider funding that has a longer maturity to be more stable. These securities would represent less stable funding than securities issued by a covered company that are perpetual or mature one year or more from the calculation date (which would be assigned an ASF factor of 100 percent, as discussed above), but more stable funding than securities that mature within six months from the calculation date (which would be assigned a zero percent ASF factor, as discussed below).

Unlike other NSFR liabilities for which the proposed rule considers the counterparty type when assigning an ASF factor, the proposed rule would not consider the identities of the holders of the securities issued by a covered company. Because securities may actively trade on secondary markets and may be purchased by a variety of investors including financial sector entities, the identities of current security holders would not be an accurate or consistent factor that affects the stability of this type of funding. In addition, a covered company may not know or be able to track the identities of the holders of its securities that are traded. The proposed rule would therefore treat securities issued by a covered company equivalently to funding provided by a financial sector entity, rather than assuming greater stability based on a different type of counterparty. Therefore, similar to funding provided by a financial sector entity, securities issued by a covered company that mature in six months or more, but less than one year, from the calculation date would be assigned a 50 percent ASF factor.

Operational Deposits

Operational deposits are unsecured wholesale funding in the form of deposits or collateralized deposits that are necessary for the provision of operational services, such as clearing, custody, or cash management services.[46] In the LCR rule, such funds are assumed to have a lower outflow rate than other types of unsecured wholesale funding during a period of stress based on legal or operational limitations that make significant withdrawals from these accounts within 30 calendar days less likely. For example, an entity that relies on the cash management services of a covered company would find it more difficult to terminate its deposit agreement because it might be subject to early termination fees and might also incur start-up costs to establish a similar operational account with another financial institution.

As noted, a key operating assumption of the NSFR is a one-year time horizon. Under this longer time horizon, it is more reasonable to assume that a counterparty could successfully restructure its operational deposits and place them with another financial institution. Therefore, as compared with the treatment in the LCR rule, the treatment of operational deposits in the proposed rule is closer to that of non-operational deposits, but reflects that there may still be some difficulty and cost associated with switching operational service providers. Accordingly, § ____.104(d)(6) of the proposed rule would also treat operational deposits, including those from financial sector entities, as more stable than other forms of short-term wholesale funding and assign them a 50 percent ASF factor.

Other Retail Brokered Deposits

Section ____.104(d)(7) of the proposed rule would assign a 50 percent ASF factor to most categories of brokered deposits provided by retail customers or counterparties that do not include the additional stabilizing features required under § ____.104(c) and summarized in section II.C.3.c of this **SUPPLEMENTARY INFORMATION** section. Brokered deposits tend to be less stable and exhibit greater volatility than stable retail deposits, even in cases where the deposits are fully or partially insured, as customers can more easily move brokered deposits among institutions. In addition, intermediation by a deposit broker may result in a higher likelihood of withdrawal compared to a non-brokered retail deposit where a direct relationship exists between the depositor and the covered company. Statutory restrictions on certain brokered deposits can also make this form of funding less stable than other deposit types. Specifically, a covered company that becomes less than ''well capitalized'' [47] is subject to restrictions on accepting, renewing, or rolling over funds obtained directly or indirectly through a deposit broker.[48] Thus, as a general matter, the proposed rule would assign a 50 percent ASF factor to most categories of brokered deposits.

Retail brokered deposits that would be assigned a 50 percent ASF factor include (1) a brokered deposit that is not a reciprocal brokered deposit or brokered sweep deposit and that is held in a transactional account; (2) a

[45] As noted *supra* note 37 for purposes of determining ASF and RSF factors assigned to assets, commitments, and liabilities where counterparty is relevant, the proposed rule would treat an unconsolidated affiliate of a covered company as a financial sector entity.

[46] The agencies note that the methodology that a covered company uses to determine whether and to what extent a deposit is operational for the purposes of the proposed rule must be consistent with the methodology used for the purposes of the LCR rule. See § ____.3 of the LCR rule for the full list of services that qualify as operational services and § ____.4(b) of the LCR rule for additional requirements for operational deposits.

[47] As defined in section 38 of the FDI Act, 12 U.S.C. 1831o.

[48] *See* 12 U.S.C. 1831f.

brokered deposit that is not a reciprocal brokered deposit or brokered sweep deposit, is not held in a transactional account, and matures in six months or more, but less than one year, from the calculation date; (3) a reciprocal brokered deposit or brokered affiliate sweep deposit where less than the entire amount of the deposit is covered by deposit insurance; and (4) a brokered non-affiliate sweep deposit, regardless of deposit insurance coverage.

Retail brokered deposits to which the proposed rule would assign a 50 percent ASF factor do not have the same combination of stabilizing attributes, such as a combination of being fully covered by deposit insurance, being an affiliated brokered sweep deposit, or having a longer-term maturity, as brokered deposits assigned a 90 percent ASF factor, as discussed in section II.C.3.c of this **SUPPLEMENTARY INFORMATION** section. However, these types of brokered deposits are more stable than brokered deposits that mature in less than six months from the calculation date and are not reciprocal brokered deposits or brokered sweep deposits or held in a transactional account, which are assigned a zero percent ASF factor, as discussed in section II.C.3.e of this **SUPPLEMENTARY INFORMATION** section.

All Other NSFR Liabilities With Remaining Maturity of Six Months or More, But Less Than One Year

Section ____.104(d)(8) of the proposed rule would assign a 50 percent ASF factor to all other NSFR liabilities that have a remaining maturity of six months or more, but less than one year. As discussed in section II.C.2 of this **SUPPLEMENTARY INFORMATION** section, a covered company would not need to roll over a liability of this maturity in the shorter-term, but would still need to roll it over before the end of the NSFR's one-year time horizon.

e. Zero Percent ASF Factor

Section ____.104(e) of the proposed rule would assign a zero percent ASF factor to NSFR liabilities that demonstrate the least stable funding characteristics, including trade date payables, certain short-term retail brokered deposits, non-deposit retail funding, certain short-term funding from financial sector entities, and any other NSFR liability that matures in less than six months and is not described above.

Trade Date Payables

Section ____.104(e)(1) of the proposed rule would assign a zero percent ASF factor to trade date payables that result from purchases by a covered company of financial instruments, foreign currencies, and commodities that are required to settle within the lesser of the market standard settlement period for the particular transactions and five business days from the date of the sale. Trade date payables are established when a covered company buys financial instruments, foreign currencies, and commodities, but the transactions have not yet settled. These payables, which are liabilities, should result in an outflow from a covered company at the settlement date, which varies depending on the specific market, but generally occurs within five business days, so the proposed rule does not treat the liability as stable funding. The failure of a trade date payable to settle within the required settlement period for the transaction would not affect the ASF factor assigned to the transaction under the proposed rule because a trade date payable that has failed to settle also does not represent stable funding. Consistent with the definition of ''derivative transaction'' in § ____.3, the proposed rule would treat a payable with a contractual settlement period that is longer than the lesser of the market standard for the particular instrument or five business days as a derivative transaction under § ____.107, rather than as a trade date payable.

Certain Brokered Deposits

Section ____.104(e)(2) of the proposed rule would assign a zero percent ASF factor to a brokered deposit provided by a retail customer or counterparty that is not a reciprocal brokered deposit or brokered sweep deposit, is not held in a transactional account, and matures less than six months from the calculation date. In addition to the reasons discussed in section II.C.3.d above, this type of brokered deposit tends to be less stable than other types of brokered deposits because of the absence of incrementally stabilizing features such as being a transactional account or reciprocal or brokered sweep arrangement. As a result, retail customers or counterparties that provide this type of brokered deposit face low costs associated with withdrawing the funding. For example, a retail customer or counterparty providing this type of brokered deposit may seek to deposit funds with the banking organization that offers the highest interest rates, which may not be the covered company.

Non-Deposit Retail Funding

Section ____.104(e)(3) of the proposed rule would assign a zero percent ASF factor to retail funding that is not in the form of a deposit. Given that non-deposit retail liabilities are not regular sources of funding or commonly utilized funding arrangements, the proposed rule would not treat any portion of them as stable funding. As noted above, a security issued by the covered company that is held by a retail customer or counterparty would not take into account counterparty type and therefore would not fall within this category.

Short-Term Funding From a Financial Sector Entity or Central Bank

Section ____.104(e)(5) of the proposed rule would apply a zero percent ASF factor to funding (other than operational deposits) for which the counterparty is a financial sector entity or a consolidated subsidiary thereof and the transaction matures less than six months from the calculation date.[49] Financial sector entities and their consolidated subsidiaries are generally the most likely to withdraw funding from a covered company, regardless of whether the funding is secured or unsecured or the nature of any collateral securing the funding, as described in section II.C.2 of this **SUPPLEMENTARY INFORMATION** section.

Short-term funding from central banks is also assigned a zero percent ASF factor to discourage overreliance on funding from central banks, consistent with the proposed rule's focus on stable funding from market sources, as noted in section II.C.3.d of this Supplementary Information section above. For example, overnight funding from the Federal Reserve's discount window would be assigned a zero percent ASF factor.

Securities Issued by a Covered Company With Remaining Maturity of Less Than Six Months

Section ____.104(e)(4) of the proposed rule would assign a zero percent ASF factor to securities that are issued by a covered company and that have a remaining maturity of less than six months. As discussed above, the proposed rule generally treats as less stable those instruments that have shorter tenors and have to be paid within the NSFR's one-year time horizon. Because these liabilities may be actively traded, also as discussed above, the counterparty holding the securities may not be reflective of the stability of the covered company's funding under the securities. As a result, the proposed rule would treat these NSFR liabilities

[49] As noted *supra* note 37 for purposes of determining ASF and RSF factors assigned to assets, commitments, and liabilities where counterparty is relevant, the proposed rule would treat an unconsolidated affiliate of a covered company as a financial sector entity.

equivalently to funding with a similar maturity provided by a financial sector entity, rather than assuming greater stability based on a particular type of counterparty.

All Other NSFR Liabilities With Remaining Maturity of Less Than Six Months or an Open Maturity

Section ____.104(e)(6) of the proposed rule would assign a zero percent ASF factor to all other NSFR liabilities, including those that mature less than six months from the calculation date and those that have an open maturity. NSFR liabilities that do not fall into one of the categories described above would not represent a regular or reliable source of funding and, therefore, the proposed rule would not treat any portion as stable funding.

Question 17: What, if any, liabilities are not, but should be, specifically addressed in the proposed rule and what ASF factors should be assigned to those liabilities?

Question 18: What, if any, additional ASF factors should be included and to which NSFR liabilities or NSFR regulatory capital elements should they be assigned? Would adding such ASF factors provide for a better calibrated ASF amount and, if so, why?

Question 19: What, if any, liabilities owed to retail customers or counterparties not in the form of a deposit should be assigned an ASF factor greater than zero percent, and why?

D. Required Stable Funding

Under the proposed rule, a covered company would be required to maintain an ASF amount that equals or exceeds its RSF amount. As described below, a covered company's RSF amount would be based on the liquidity characteristics of its assets, derivative exposures, and commitments. In general, the less liquid an asset over the NSFR's one-year time horizon, the greater extent to which the proposed rule would require it to be supported by stable funding. By requiring a covered company to maintain more stable funding to support less liquid assets, the proposed rule would reduce the risk that the covered company may not be able to readily monetize the assets at a reasonable cost or could be required to monetize the assets at fire sale prices or in a manner that contributes to disorderly market conditions.

1. Calculation of the RSF Amount

The proposed rule would require a covered company to calculate its RSF amount as set forth in § ____.105. A covered company's RSF amount would equal the sum of two components: (i) The carrying values of a covered company's assets (other than assets included in the calculation of the covered company's derivatives RSF amount) and the undrawn amounts of its commitments, each multiplied by an RSF factor assigned under § ____.106 and described in section II.D.3 of this **SUPPLEMENTARY INFORMATION** section; and (ii) the covered company's derivatives RSF amount, as calculated under § ____.107 and described in section II.E of this **SUPPLEMENTARY INFORMATION** section.

2. RSF Factor Framework

The proposed rule would use a set of standardized weightings, or RSF factors, to determine the amount of stable funding a covered company must maintain. Specifically, a covered company would calculate its RSF amount by multiplying the carrying values of its assets, the undrawn amounts of its commitments, and its measures of derivative exposures (as discussed in section II.E of this **SUPPLEMENTARY INFORMATION** section) by the assigned RSF factors. This approach would promote consistency of the proposed NSFR measure across covered companies.

RSF factors would be scaled from zero percent to 100 percent based on the liquidity characteristics of an asset, derivative exposure, or commitment. A zero percent RSF factor means that the proposed rule would not require the asset, derivative exposure, or commitment to be supported by available stable funding, and a 100 percent RSF factor means that the proposed rule would require the asset, derivative exposure, or commitment to be fully supported by available stable funding. Accordingly, the proposed rule would generally assign a lower RSF factor to more liquid assets, exposures, and commitments and a higher RSF factor to less liquid assets, exposures, and commitments.

The proposed rule would categorize assets, derivatives exposures, and commitments and assign an RSF factor based on the following characteristics relating to their liquidity over the NSFR's one-year time horizon: (1) Credit quality, (2) tenor, (3) type of counterparty, (4) market characteristics, and (5) encumbrance.

Credit quality. Credit quality is a factor in an asset's liquidity because market participants tend to be more willing to purchase higher credit quality assets across a range of market and economic conditions, but especially in a stressed environment (sometimes called ''flight to quality''). The demand for higher credit quality assets, therefore, is more likely to persist and such assets are more likely to have resilient values, allowing a covered company to monetize them more readily. Assets of lower credit quality, in contrast, are more likely to become delinquent, and that increased credit risk makes these assets less likely to hold their value, particularly in times of market stress. As a result, the proposed rule would generally require assets of lower credit quality to be supported by more stable funding, to reduce the risk that a covered company may have to monetize the lower credit quality asset at a discount.

Tenor. In general, the proposed rule would require a covered company to maintain more stable funding to support assets that have a longer tenor because of the greater time remaining before the covered company will realize inflows associated with the asset. In addition, assets with a longer tenor may liquidate at a discount because of the increased market and credit risks associated with cash flows occurring further in the future. Assets with a shorter tenor, in contrast, would require a smaller amount of stable funding under the proposed rule because a covered company would have access to the inflows under these assets sooner. Thus, the proposed rule would generally require less stable funding for shorter-term assets compared to longer-term assets. The proposed rule would divide maturities into three categories for purposes of a covered company's RSF amount calculation: less than six months, six months or more but less than one year, and one year or more.

Counterparty type. A covered company may face pressure to roll over some portion of its assets in order to maintain its franchise value with customers and because a failure to roll over such assets could be perceived by market participants as an indicator of financial distress at the covered company. Typically, these risks are driven by the type of counterparty to the asset. For example, covered companies often consider their lending relationships with a wholesale, non-financial borrower to be important to maintain current business and generate additional business in the future. As a result, a covered company may have concerns about damaging future business prospects if it declines to roll over lending to such a customer for reasons other than a change in the financial condition of the borrower. More broadly, because market participants generally expect a covered company to roll over lending to wholesale, non-financial counterparties

based on relationships, a covered company's failure to do so could be perceived as a sign of liquidity stress at the company, which could itself cause such a liquidity stress.

These concerns are less likely to be a factor with respect to financial counterparties because financial counterparties typically have a wider range of alternate funding sources already in place and face lower transaction costs associated with arranging alternate funding and less expectation of stable lending relationships with any single provider of credit. Therefore, market participants are less likely to assume the covered company is under financial distress if the covered company declines to roll over funding to a financial sector counterparty. In light of these business and reputational considerations, the proposed rule would require a covered company to more stably fund lending to non-financial counterparties than lending to financial counterparties, all else being equal.[50]

Market characteristics. Assets that are traded in transparent, standardized markets with large numbers of participants and dedicated intermediaries tend to exhibit a higher degree of reliable liquidity. The proposed rule would, therefore, require less stable funding to support such assets than those traded in markets characterized by information asymmetry and relatively few participants.

Depending on the asset class and the market, relevant measures of liquidity may include bid-ask spreads, market size, average trading volume, and price volatility.[51] While no single metric is likely to provide for a complete assessment of market liquidity, multiple indicators taken together provide relevant information about the extent to which a liquid market exists for a particular asset class. For example, market data reviewed by the agencies show that securities that meet the criteria to qualify as HQLA typically trade with tighter bid-ask spreads than non-HQLA securities and in markets with significantly higher average daily trading volumes, both of which tend to indicate greater liquidity in the markets for HQLA securities.

Encumbrance. As described in section II.D.3 of this **SUPPLEMENTARY INFORMATION** section, whether and the degree to which an asset is encumbered will dictate the amount of stable funding the proposed rule would require a covered company to maintain to support the particular asset, as encumbered assets cannot be monetized during the period over which they are encumbered. For example, securities that a covered company has encumbered for a period of greater than one year in order to provide collateral for its longer-term borrowings are not available for the covered company to monetize in the shorter term. In general, the longer an asset is encumbered, the more stable funding the proposed rule would require.

Question 20: The agencies invite comment regarding the foregoing framework. Are the characteristics described above appropriate indicators of the liquidity of a covered company's assets, derivative exposures, and commitments for purposes of the proposed rule? Why or why not? What other characteristics should the proposed rule take into account for purposes of assigning RSF factors? Please provide data and analysis to support your conclusions.

3. RSF Factors

Section ____.106 of the proposed rule would assign RSF factors to a covered company's assets and commitments, other than certain assets relating to derivative transactions that are assigned an RSF factor under § ____.107. Section ____.106 would also set forth specific treatment for nonperforming assets, encumbered assets, assets held in certain segregated accounts, and certain assets relating to secured lending transactions and asset exchanges.

a. Treatment of Unencumbered Assets

i. Zero Percent RSF Factor

As noted above, a covered company's RSF amount reflects the liquidity characteristics of its assets, derivative exposures, and commitments. Section ____.106(a)(1) of the proposed rule would assign a zero percent RSF factor to certain assets that can be directly used to meet financial obligations, such as cash, or that are expected, based on contractual terms, to be converted to assets that can be directly used to meet financial obligations over the immediate term. By assigning a zero percent RSF factor to these assets, the proposed rule would not require a covered company to support them with stable funding.

Currency and Coin

Section ____.106(a)(1)(i) of the proposed rule would assign a zero percent RSF factor to currency and coin because they can be directly used to meet financial obligations. Currency and coin include U.S. and foreign currency and coin owned and held in all offices of a covered company; currency and coin in transit to a Federal Reserve Bank or to any other depository institution for which the covered company's subsidiaries have not yet received credit; and currency and coin in transit from a Federal Reserve Bank or from any other depository institution for which the accounts of the subsidiaries of the covered company have already been charged.[52]

Cash Items in the Process of Collection

Section ____.106(a)(1)(ii) of the proposed rule would assign a zero percent RSF factor to cash items in the process of collection. These items would include: (1) Checks or drafts in process of collection that are drawn on another depository institution (or a Federal Reserve Bank) and that are payable immediately upon presentation in the country where the covered company's office that is clearing or collecting the check or draft is located, including checks or drafts drawn on other institutions that have already been forwarded for collection but for which the covered company has not yet been given credit (known as cash letters), and checks or drafts on hand that will be presented for payment or forwarded for collection on the following business day; (2) government checks drawn on the Treasury of the United States or any other government agency that are payable immediately upon presentation and that are in process of collection; and (3) such other items in process of collection that are payable immediately upon presentation and that are customarily cleared or collected as cash items by depository institutions in the country where the covered company's office which is clearing or collecting the item is located.[53] Despite not being in a form that can be directly used to meet financial obligations at the calculation date, cash items in the process of collection will be in such a form in the immediate term. The proposed rule

[50] As noted *supra* note 37 for purposes of determining ASF and RSF factors assigned to assets, commitments, and liabilities where counterparty is relevant, an unconsolidated affiliate of a covered company would be treated as a financial sector entity.

[51] In general, tighter bid-ask spreads, larger market sizes, higher trading volumes, and more consistent pricing tend to indicate greater market liquidity. The agencies reviewed market data discussed in this section II.D of this **SUPPLEMENTARY INFORMATION** section from the following sources: Bloomberg Finance L.P., Financial Industry Regulatory Authority (FINRA) Trade Reporting and Compliance Engine (TRACE), and Securities Industry and Financial Market Association statistics (*http://www.sifma.org/research/statistics.aspx*).

[52] This description of currency and coin is consistent with the treatment of currency and coin in Federal Reserve form FR Y–9C.

[53] This description of cash items in the process of collection is consistent with the treatment of cash items in process of collection in Federal Reserve Form FR Y–9C.

would therefore not require these assets to be supported by stable funding.

Reserve Bank Balances and Other Claims on a Reserve Bank That Mature in Less Than Six Months

Section ____.106(a)(1)(iii) of the proposed rule would assign a zero percent RSF factor to a Reserve Bank balance or other claim on a Reserve Bank that matures in less than six months from the calculation date. The term ''Reserve Bank balances'' is defined in § ____.3 of the LCR rule and includes required reserve balances and excess reserves, but not other balances that a covered company maintains on behalf of another institution, such as balances it maintains on behalf of a respondent for which it acts as a pass-through correspondent [54] or on behalf of an excess balance account participant.[55]

The proposed rule would assign a zero percent RSF factor to Reserve Bank balances because these assets can be directly used to meet financial obligations through the Federal Reserve's payment system. The proposed rule would also assign a zero percent RSF factor to a claim on a Reserve Bank that does not meet the definition of a Reserve Bank balance if the claim matures in less than six months. In these cases, while the asset cannot be directly used to meet financial obligations of a covered company, a covered company faces little risk of a counterparty default or harm to its franchise value if it does not roll over the lending and it may therefore realize cash flows associated with the asset in the near term.

Claims on a Foreign Central Bank That Matures in Less Than Six Months

Section ____.106(a)(1)(iv) of the proposed rule would assign a zero percent RSF factor to claims on a foreign central bank that mature in less than six months. Similar to claims on a Reserve Bank, claims on a foreign central bank in this category may generally either be directly used to meet financial obligations or will be available for such use in the near term, and a covered company faces little risk of a counterparty default or harm to its franchise value if it does not roll over the lending. The proposed rule would therefore not require that they be supported by stable funding.

Trade Date Receivables

Similar to cash items in the process of collection, a covered company can reasonably expect that certain contractual ''trade date'' receivables will settle in the near term. These trade date receivables are limited to those due to the covered company that result from the sales of financial instruments, foreign currencies, or commodities that (1) are required to settle within the lesser of the market standard settlement period for the relevant type of transaction, without extension of the standard settlement period, and five business days from the date of the sale; and (2) have not failed to settle within the required settlement period.[56] Section ____.106(a)(1)(v) of the proposed rule would assign a zero percent RSF to these receivables because they are generally reliable, with standardized, widely used settlement procedures and standardized settlement periods that are no longer than five business days. Thus, a covered company will realize inflows from these receivables in the very near term.

Question 21: Given the one-year time horizon of the NSFR, the proposed rule would not require a covered company to support its current reserve balance requirement with stable funding. Because balances that meet reserve balance requirements are not immediately available to be used to directly meet financial obligations, what, if any, RSF factor (such as 100 percent) should be assigned to a covered company's reserve balance requirement and why?

Question 22: Should the proposed rule treat as a trade date receivable (instead of a derivative transaction) any transaction involving the sale of financial instruments, foreign currencies, or commodities, that has a market standard settlement period of greater than five business days from the date of the sale, and if so, why?

ii. 5 Percent RSF Factor

Unencumbered Level 1 Liquid Assets

Section ____.106(a)(2)(i) of the proposed rule would assign a 5 percent RSF factor to level 1 liquid assets that would not be assigned a zero percent RSF factor. The proposed rule would incorporate the definition of ''level 1 liquid assets'' set forth in § ____.20(a) of the LCR rule, which does not take into consideration the requirements under § ____.22. The following level 1 liquid assets would be assigned a 5 percent RSF factor: (1) Securities issued or unconditionally guaranteed as to the timely payment of principal and interest by the U.S. Department of the Treasury; (2) liquid and readily-marketable securities, as defined in § ____.3 of the LCR rule, issued or unconditionally guaranteed as to the timely payment of principal and interest by any other U.S. government agency (provided that its obligations are fully and explicitly guaranteed by the full faith and credit of the U.S. government); (3) certain liquid and readily-marketable securities that are claims on, or claims guaranteed by, a sovereign entity, a central bank, the Bank for International Settlements, the International Monetary Fund, the European Central Bank and European Community, or a multilateral development bank; and (4) certain liquid and readily-marketable debt securities issued by sovereign entities.

Section ____106(a)(2)(i) of the proposed rule would assign a relatively low RSF factor of 5 percent to these level 1 liquid assets based on their high credit quality and favorable market liquidity characteristics, which reflect their ability to serve as reliable sources of liquidity. For example, U.S. Treasury securities (a form of level 1 liquid assets) have among the highest credit quality of assets because they are backed by the full faith and credit of the U.S. government. In addition, the market for U.S. Treasury securities has a high average daily trading volume, large market size, and low bid-ask spreads relative to the markets in which other asset classes trade. Assignment of a 5 percent RSF factor would recognize that there are modest transaction costs related to selling U.S. Treasury securities and other level 1 liquid assets but that, other than assets that a covered company can use directly to meet financial obligations (or will be able to use within a matter of days), level 1 liquid assets generally represent the most readily monetizable asset types for a covered company.

[54] *See* 12 CFR 204.5(a)(1)(ii).

[55] *See* 12 CFR 204.10(d).

[56] Consistent with the definition of ''derivative transaction'' under § ____.3 of the LCR rule, the proposed rule would treat a trade date receivable that has a contractual settlement or delivery lag beyond this period as a derivative transaction under § ____.107. (The definition of ''derivative transaction'' under § ____.3 of the LCR rule includes ''unsettled securities, commodities, and foreign currency exchange transactions with a contractual settlement or delivery lag that is longer than the lesser of the market standard for the particular instrument or five business days.'') The proposed rule would not treat as a derivative transaction a trade date receivable that has a contractual settlement or delivery lag within the lesser of the market standard settlement period and five business days, but which fails to settle within this period; instead, the proposed rule would assign a 100 percent RSF factor to the trade date receivable under § ____.106(a)(8) as an asset not otherwise assigned an RSF factor under § ____.106(a)(1) through (7) or § ____.107.

Credit and Liquidity Facilities

Section ____.106(a)(2)(ii) of the proposed rule would assign a 5 percent RSF factor to the undrawn amount of committed credit and liquidity facilities that a covered company provides to its customers and counterparties. The proposed rule would require a covered company to support these facilities with stable funding, even though they are generally not included on its balance sheet, because of their widespread use and associated material liquidity risk based on the possibility of drawdowns across a range of economic environments. Research conducted by Board staff found increases in drawdowns of as much as 10 percent of committed amounts over a 12-month period from 2006–2011.[57] Given the proposed rule's application across all counterparties and economic environments, assignment of a 5 percent RSF factor would be appropriate based on the observed drawdowns during this period.

The terms ''credit facility'' and ''liquidity facility'' are defined in § ____.3 of the LCR rule and, as described in section I.D of this Supplementary Information section, the proposed rule would modify the definition of ''committed'' that is currently in the LCR rule to describe credit and liquidity facilities that cannot be unconditionally canceled by a covered company. Under § ____.106(a)(2) of the proposed rule, the undrawn amount is the amount that could be drawn upon within one year of the calculation date, whereas under § ____.32(e) of the LCR rule, the undrawn amount is the amount that could be drawn upon within 30 calendar days. When determining the undrawn amount over the proposed rule's one-year time horizon, a covered company would not include amounts that are contingent on the occurrence of a contractual milestone or other event that cannot be reasonably expected to be reached or occur within one year. For example, if a construction company can draw a certain amount from a credit facility only upon meeting a construction milestone that cannot reasonably be expected to be reached within one year, such as entering the final stage of a multi-year project that has just begun, then the undrawn amount would not include the amount that would become available only upon entering the final stage of the project.

Similarly, a letter of credit that meets the definition of credit or liquidity facility may entitle a seller to obtain funds from a covered company if a buyer fails to pay the seller. If, under the terms of the letter of credit, the seller is not legally entitled to obtain funds from the covered company as of the calculation date because the buyer has not failed to perform under the agreement with the seller, and the covered company does not reasonably expect nonperformance within the NSFR's one-year time horizon, then the funds potentially available under the letter of credit are not undrawn amounts. If the seller is legally entitled to obtain the funds available under the letter of credit as of the calculation date (because the buyer has defaulted) or if the buyer should reasonably be expected to default within the NSFR's one-year time horizon, then the funds available under the letter of credit are undrawn amounts.

Unlike the LCR rule, which permits covered companies to net certain level 1 and level 2A liquid assets that secure a committed credit or liquidity facility against the undrawn amount of the facility, the proposed rule would not allow netting of such assets because any draw upon a credit or liquidity facility would become an asset on a covered company's balance sheet regardless of the underlying collateral and would require stable funding.

Question 23: The agencies invite comment on the proposed assignment of a 5 percent RSF factor to the undrawn amount of committed credit and liquidity facilities. What, if any, additional factors should be considered in determining the treatment of unfunded commitments under the proposed rule?

Question 24: What, if any, modifications to the definitions of ''credit facility'' and ''liquidity facility'' or the description of the ''undrawn amount'' for purposes of the proposed rule should the agencies consider?

Question 25: If required to be posted as collateral upon a draw on a committed credit or liquidity facility, should certain level 1 and level 2A liquid assets be netted against the undrawn amount of the facility, and if so, why? Provide detailed explanations and supporting data.

iii. 10 Percent RSF Factor

Secured Lending Transactions With a Financial Sector Entity or a Subsidiary Thereof That Mature Within Six Months and Are Secured by Rehyphothecatable Level 1 Liquid Assets

Section ____.106(a)(3) of the proposed rule would assign a 10 percent RSF factor to a secured lending transaction[58] with a financial sector entity or a consolidated subsidiary thereof that matures within six months of the calculation date and is secured by level 1 liquid assets that are rehypothecatable for the duration of the secured lending transaction.

The proposed rule would require a covered company to support short-term lending between financial institutions, where the transaction is secured by rehypothecatable level 1 liquid assets, with a lower amount of available stable funding, relative to most other asset classes, because of a covered company's ability to monetize the level 1 liquid asset collateral for the duration of the transaction. Because of the financial nature of the counterparty, a transaction of this type also presents relatively lower reputational risk to a covered company if it chooses not to roll over the transaction when it matures, as discussed in section II.D.2 of this Supplementary Information section.

As provided in § ____.106(d) of the proposed rule and discussed in section II.D.3.d of this **SUPPLEMENTARY INFORMATION** section, the RSF factor applicable to a transaction in this category may increase if the covered company rehypothecates the level 1 liquid asset collateral securing the transaction for a period with more than six months remaining from the calculation date.

iv. 15 Percent RSF Factor

Unencumbered Level 2A Liquid Assets

Section ____.106(a)(4)(i) of the proposed rule would assign a 15 percent RSF factor to level 2A liquid assets, as set forth in § ____.20(b) of the LCR rule, but would not take into consideration the requirements in § ____.22 or the level 2 cap in § ____.21. As set forth in the LCR rule, level 2A liquid assets include certain obligations issued or guaranteed by a U.S. government-sponsored enterprise (GSE) and certain obligations issued or guaranteed by a sovereign entity or a multilateral development bank. The LCR rule requires these securities to be liquid and

[57] *See* Jose M. Berrospide, Ralf R. Meisenzahl, and Briana D. Sullivan, ''Credit Line Use and Availability in the Financial Crisis: The Importance of Hedging,'' Board of Governors of the Federal Reserve System, Finance and Economics Discussion Series 2012–27 (2012).

[58] The proposed rule would modify the definition of ''secured lending transaction'' that is currently in the LCR rule, as described in section I.D of this **SUPPLEMENTARY INFORMATION** section.

readily-marketable, as defined in § ____.3, to qualify as level 2A liquid assets.

The proposed rule would assign a 15 percent RSF factor to level 2A liquid assets based on the characteristics of these assets, including their high credit quality. This factor would reflect the relatively high level of liquidity of these assets compared to most other asset classes, but lower liquidity than level 1 liquid assets. For example, mortgage-backed securities issued by U.S. GSEs (a widely held form of level 2A liquid assets) have a higher credit quality, higher average daily trading volume, and lower bid-ask spreads relative to corporate debt securities.

Secured Lending Transactions and Unsecured Wholesale Lending With a Financial Sector Entity or a Subsidiary Thereof That Mature Within Six Months

Section ____.106(a)(4)(ii) of the proposed rule would assign a 15 percent RSF factor to a secured lending transaction with a financial sector entity or a consolidated subsidiary thereof that is secured by assets other than rehypothecatable level 1 liquid assets and matures within six months of the calculation date. It would assign the same RSF factor to unsecured wholesale lending to a financial sector entity or a consolidated subsidiary thereof that matures within six months of the calculation date.[59] Such transactions present relatively lower liquidity risk because of their shorter tenors relative to loans with a longer remaining maturity, providing for cash inflows upon repayment of the loan, and generally present lower reputational risk if a covered company chooses not to roll over the transaction because of the financial nature of the counterparties, as discussed in section II.D.2 above. Therefore, the proposed rule would assign a lower RSF factor to these assets than it would to longer-term loans to similar counterparties or to similar-term loans to non-financial counterparties, as described in sections II.D.3.a.v through II.D.3.a.vii below.

The proposed rule would assign a higher RSF factor to these transactions, however, than it would to a secured lending transaction with a similar maturity and similar counterparty type that is secured by level 1 liquid assets that are rehypothecatable for the duration of the transaction. As described in section II.D.3.a.iii above, the proposed rule would not require a covered company to fund a transaction secured by rehypothecatable level 1 liquid assets with the same level of available stable funding because of the increased liquidity benefit to the covered company from its ability to monetize the level 1 liquid assets securing the transaction for the duration of the transaction.

v. 50 Percent RSF Factor

Unencumbered Level 2B Liquid Assets

Section ____.106(a)(5)(i) of the proposed rule would assign a 50 percent RSF factor to level 2B liquid assets, as set forth in § ____.20(c) of the LCR rule, but would not take into consideration the requirements in § ____.22 or the level 2 caps in § ____.21. Level 2B liquid assets include certain publicly traded corporate debt securities and certain publicly traded common equity shares that are liquid and readily-marketable.[60]

Section ____.20 of the LCR rule requires an asset to meet certain criteria to qualify as a level 2B liquid asset. For example, equity securities must be part of a major index and corporate debt securities must be ''investment grade'' under 12 CFR part 1.[61] Therefore, the proposed rule would assign a lower RSF factor to these assets than it would assign to non-HQLA. The proposed rule would assign a higher RSF factor to level 2B liquid assets, however, than it would to level 1 and level 2A liquid assets, based on level 2B liquid assets' relatively higher credit risk, lower trading volumes, and elevated price volatility. For example, Russell 1000 equities, as a class, have lower average daily trading volume and higher price volatility than U.S. Treasury securities and mortgage-backed securities issued by U.S. GSEs. Similarly, investment grade corporate bonds have higher credit risk and lower average daily trading volume relative to level 1 and level 2A liquid assets. At the same time, the market for level 2B liquid assets is more liquid than the secondary market for longer-term loans, in terms of, for example, average daily trading volume. Accordingly, the proposed rule would assign a 50 percent RSF factor to a covered company's level 2B liquid assets.

Secured Lending Transactions and Unsecured Wholesale Lending to a Financial Sector Entity or a Subsidiary Thereof or a Central Bank That Mature in Six Months or More, but Less Than One Year

Section ____.106(a)(5)(ii) of the proposed rule would assign a 50 percent RSF factor to a secured lending transaction or unsecured wholesale lending that matures in six months or more, but less than one year from the calculation date, where the counterparty is a financial sector entity or a consolidated subsidiary thereof or the counterparty is a central bank.[62] As discussed above, a covered company faces lower reputational risk if it chooses not to roll over these loans to financial counterparties or claims on a central bank than it would with loans to non-financial counterparties. However, these loans have longer terms—beyond six months—which means that liquidity from principal repayments will not be available in the near term. Therefore, these loans require more stable funding than shorter-term loans, which would be assigned a lower RSF factor, as discussed above. At the same time, given that these loans mature within the NSFR's one-year time horizon, the proposed rule would not require them to be fully supported by stable funding and would assign them a 50 percent RSF factor.

Operational Deposits Held at Financial Sector Entities.

Section ____.106(a)(5)(iii) of the proposed rule would assign a 50 percent RSF factor to an operational deposit, as defined in § ____.3, placed by the covered company at another financial sector entity. Consistent with the reasoning for the ASF factor assigned to operational deposits held at a covered company, described in section II.C of this Supplementary Information section, such operational deposits placed by a covered company are less readily monetizable by the covered company. These deposits are placed for operational purposes, and a covered company would face legal or operational limitations to making significant withdrawals during the NSFR's one-year time horizon. Thus, the proposed rule would assign a 50 percent RSF factor to these operational deposits.

[59] As noted *supra* note 37 for purposes of determining ASF and RSF factors assigned to assets, commitments, and liabilities where counterparty is relevant, the proposed rule would treat an unconsolidated affiliate of a covered company as a financial sector entity.

[60] The agencies note that nothing in the proposed rule would grant a covered company the authority to engage in activities relating to debt securities and equities not otherwise permitted by applicable law.

[61] 12 CFR 1.2(d). In accordance with section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376, 1887 (2010) § 939A, codified at 15 U.S.C. 78o–7, the LCR rule does not rely on credit ratings as a standard of creditworthiness. Rather, the LCR rule relies on an assessment by the covered company of the capacity of the issuer of the corporate debt security to meet its financial commitments.

[62] As noted *supra* note 37 for purposes of determining ASF and RSF factors assigned to assets, commitments, and liabilities where counterparty is relevant, the proposed rule would treat an unconsolidated affiliate of a covered company as a financial sector entity.

General Obligation Securities Issued by a Public Sector Entity

Section ____.106(a)(5)(iv) of the proposed rule would assign a 50 percent RSF factor to general obligation securities issued by, or guaranteed as to the timely payment of principal and interest by, a public sector entity.[63] Consistent with the definition of ''general obligation'' in the agencies' risk-based capital rules, a general obligation security is a bond or similar obligation backed by the full faith and credit of a public sector entity.[64] Securities that are not backed by the full faith and credit of a public sector entity, including revenue bonds, would not be considered general obligation securities.

U.S. general obligation securities issued by a public sector entity,[65] which are backed by the general taxing authority of the issuer, are assigned a risk weight of 20 percent under subpart D of the agencies' risk-based capital rules.[66] These securities have more favorable credit risk characteristics than exposures that would receive a risk weight greater than 20 percent under the agencies' risk-based capital rules, such as revenue bonds, which are assigned a 50 percent risk weight.[67] Revenue bonds depend on revenue from a single source, or a limited number of sources, and therefore present greater credit risk relative to a U.S. general obligation security issued by a public sector entity. As discussed in section II.D.2 of this **SUPPLEMENTARY INFORMATION** section, high credit quality generally indicates that an asset will maintain liquidity, as market participants tend to be more willing to purchase higher credit quality assets across a range of market and economic conditions. Accordingly, the proposed rule would only assign a 50 percent RSF factor to those securities issued by a U.S. public sector entity with sufficiently high credit quality, which is reflected by the fact that they are assigned a risk weight of no greater than 20 percent under the standardized approach in the agencies' risk-based capital rules. Because the agencies expect that covered companies will be able to at least partially monetize these securities within the proposed rule's one-year time horizon, the proposed rule would not require a covered company to fully support these securities with stable funding.

Secured Lending Transactions and Unsecured Wholesale Lending to Counterparties That Are Not Financial Sector Entities and Are Not Central Banks and That Mature in Less Than One Year

Section ____.106(a)(5)(v) of the proposed rule would assign a 50 percent RSF factor to lending to a wholesale customer or counterparty that is not a financial sector entity or central bank, including a non-financial corporate, sovereign, or public sector entity, that matures in less than one year from the calculation date. Unlike with lending to financial sector entities and central banks, the proposed rule would assign the same RSF factor to lending with a remaining maturity of less than six months as it would assign to lending with a remaining maturity of six months or more, but less than one year. This treatment reflects the fact that a covered company is likely to have stronger incentives to continue to lend to these counterparties due to reputational risk and a covered company's need to maintain its franchise value, even when the lending is scheduled to mature in the nearer term, as discussed in section II.D.2 of this **SUPPLEMENTARY INFORMATION** section. Because of that need to continue lending for reputational reasons or the longer term of certain of these loans, the proposed rule would require significant stable funding to support such lending. However, the proposed rule would not require this lending to be fully supported by stable funding, based on its maturity within the NSFR's one-year time horizon and the assumption that a covered company may be able to reduce its lending to some degree over the NSFR's one-year time horizon. Thus, the proposed rule would assign an RSF factor of 50 percent to lending in this category.

Lending to Retail Customers and Counterparties That Matures in Less Than One Year

Section ____.106(a)(5)(v) of the proposed rule would assign a 50 percent RSF factor to lending to retail customers or counterparties (including certain small businesses), as defined in § ____.3 of the LCR rule, for the same reputational and franchise value maintenance reasons for which it would assign a 50 percent RSF factor to lending to wholesale customers and counterparties that are not financial sector entities or central banks, as discussed in section II.D.2 of this Supplementary Information section.

All Other Assets That Mature in Less Than One Year

Section ____.106(a)(5)(v) of the proposed rule would assign a 50 percent RSF factor to all other assets that mature within one year of the calculation date but are not described in the categories above. The shorter maturity of an asset in this category reduces its liquidity risk, since it provides for cash inflows upon repayment during the NSFR's one-year time horizon. However, a covered company may not be able to readily monetize assets that are not part of one of the identified asset classes addressed in the other provisions of the proposed rule. Thus, the proposed rule would require stable funding to support these assets by assigning a 50 percent RSF factor.

vi. 65 Percent RSF Factor

Retail Mortgages That Mature in One Year or More and Are Assigned a Risk Weight of No Greater Than 50 Percent

Section ____.106(a)(6)(i) of the proposed rule would assign a 65 percent RSF factor to retail mortgages that mature one year or more from the calculation date and are assigned a risk weight of no greater than 50 percent under subpart D of the agencies' risk-based capital rules. Under the agencies' risk-based capital rules, residential mortgage exposures secured by a first lien on a one-to-four family property that are prudently underwritten, are not 90 days or more past due or carried in nonaccrual status, and that are neither restructured nor modified generally receive a 50 percent risk weight.[68] These mortgage loans should be easier to monetize because of their less risky nature compared to mortgage loans that have a risk weight greater than 50 percent, but generally are not as liquid as lending that matures within the NSFR's one-year time horizon. Thus, the proposed rule would require a

[63] On April 1, 2016, the Board finalized an amendment to the Board's LCR rule to include certain municipal securities as level 2B liquid assets. 81 FR 21223 (April 11, 2016). As a result of this amendment, certain municipal securities held by covered companies that are Board-regulated institutions would be assigned the 50 percent RSF factor as level 2B liquid assets, notwithstanding this proposed treatment for all general obligation municipal securities.

[64] *See* 12 CFR 3.2 (OCC), 12 CFR 217.2 (Board), and 12 CFR 324.2 (FDIC).

[65] Section ____.3 of the LCR rule defines a ''public sector entity'' as a state, local authority, or other governmental subdivision below the U.S. sovereign entity level.

[66] *See* 12 CFR 3.32(e)(1)(i) (OCC), 12 CFR 217.32(e)(1)(i) (Board), and 12 CFR 324.32(e)(1)(i) (FDIC).

[67] *See* 12 CFR 3.32(e)(1)(ii) (OCC), 12 CFR 217.32(e)(1)(ii) (Board), and 12 CFR 324.32(e)(1)(ii) (FDIC).

[68] *See* 12 CFR 3.32(g) (OCC), 12 CFR 217.32(g) (Board), and 12 CFR 324.32(g) (FDIC). The proposed rule would be consistent with the Basel III NSFR, which assigns a 65 percent RSF factor to residential mortgages that receive a 35 percent risk weight under the Basel II standardized approach for credit risk, because the agencies' risk-based capital rules assign a 50 percent risk weight to residential mortgage exposures that meet the same criteria as those that receive a 35 percent risk weight under the Basel II standardized approach for credit risk.

substantial amount of stable funding to support these assets by assigning a 65 percent RSF factor to them.

Secured Lending Transactions, Unsecured Wholesale Lending, and Lending to Retail Customers and Counterparties That Mature in One Year or More and Are Assigned a Risk Weight of No Greater Than 20 Percent

Section ____.106(a)(6)(ii) of the proposed rule would assign a 65 percent RSF factor to secured lending transactions, unsecured wholesale lending, and lending to retail customers and counterparties that are not otherwise assigned an RSF factor, that mature one year or more from the calculation date, that are assigned a risk weight of no greater than 20 percent under subpart D of the agencies' risk-based capital rules, and where the borrower is not a financial sector entity or a consolidated subsidiary thereof.[69] These loans have more favorable liquidity characteristics because of their less risky nature compared to similar loans that have a risk weight greater than 20 percent. However, more stable funding would be required than for lending that matures and provides liquidity within the NSFR's one-year time horizon.

vii. 85 Percent RSF Factor

Retail Mortgages That Mature in One Year or More and Are Assigned a Risk Weight of Greater Than 50 Percent

Section ____.106(a)(7)(i) of the proposed rule would assign an 85 percent RSF factor to retail mortgages that mature one year or more from the calculation date and are assigned a risk weight of greater than 50 percent under subpart D of the agencies' risk-based capital rules. As noted above, under subpart D of the agencies' risk-based capital rules, a retail mortgage is assigned a risk weight of 50 percent if it is secured by a first lien on a one-to-four family property, prudently underwritten, not 90 days or more past due or carried in nonaccrual status, and has not been restructured or modified.[70] Mortgages that do not meet these criteria are assigned a risk weight of greater than 50 percent.[71] Because these exposures are generally riskier than mortgages that receive a risk weight of 50 percent or less and may, as a result, be more difficult to monetize, the proposed rule would require that they be supported by more stable funding and would assign an 85 percent RSF factor to them.

Secured Lending Transactions, Unsecured Wholesale Lending, and Lending to Retail Customers and Counterparties That Mature in One Year or More and Are Assigned a Risk Weight of Greater Than 20 Percent

Section ____.106(a)(7)(ii) of the proposed rule would assign an 85 percent RSF factor to secured lending transactions, unsecured wholesale lending, and lending to retail customers and counterparties that are not otherwise assigned an RSF factor (such as retail mortgages), that mature one year or more from the calculation date, that are assigned a risk weight greater than 20 percent under subpart D of the agencies' risk-based capital rules, and for which the borrower is not a financial sector entity or consolidated subsidiary thereof. These loans involve riskier exposures than similar loans with lower risk weights, and thus, have less favorable liquidity characteristics. Accordingly, the proposed rule would require a covered company to support this lending with more stable funding relative to loans that have lower risk weights or that are shorter term.

Publicly Traded Common Equity Shares That Are Not HQLA and Other Securities That Mature in One Year or More That Are Not HQLA

Sections ____.106(a)(7)(iii) and (iv) of the proposed rule would assign an 85 percent RSF factor to publicly traded common equity shares that are not HQLA and other non-HQLA securities that mature one year or more from the calculation date, which includes, for example, certain corporate debt securities, as well as private-label mortgage-backed securities, other asset-backed securities, and covered bonds. Relative to securities that are HQLA, these securities have less favorable credit and liquidity characteristics, as they do not meet the criteria required by the LCR rule to be treated as HQLA, such as the requirement that they be investment grade and liquid and readily-marketable. For example, high yield corporate debt securities that do not meet the investment grade criterion in the LCR rule to be treated as HQLA generally have a higher price volatility than other corporate bonds that qualify as HQLA. Despite the less liquid nature of these securities, however, they are tradable and can to some degree be monetized in the secondary market, so the proposed rule would assign an RSF factor of 85 percent to these assets.

Commodities

Section ____.106(a)(7)(v) of the proposed rule would assign an 85 percent RSF factor to commodities held by a covered company for which a liquid market exists, as indicated by whether derivative transactions for the commodity are traded on a U.S. board of trade or trading facility designated as a contract market (DCM) under sections 5 and 6 of the Commodity Exchange Act[72] or on a U.S. swap execution facility (SEF) registered under section 5h of the Commodity Exchange Act.[73] The proposal would assign a 100 percent RSF factor to all other commodities held by a covered company. In general, commodities as an asset class have historically experienced greater price volatility than other asset classes. As such, the proposed rule would require a covered company to support its commodities positions with a substantial amount of stable funding.

The proposed rule would assign an 85 percent RSF factor, rather than a 100 percent RSF factor, to commodities for which derivative transactions are traded on a U.S. DCM or U.S. SEF because the exchange trading of derivatives on a commodity tends to indicate a greater degree of standardization, fungibility, and liquidity in the market for the commodity.[74] For instance, a market for a commodity for which a derivative transaction is traded on a U.S. DCM or U.S. SEF is more likely to have established standards (for example, with respect to different grades of commodities) that are relied upon in determining the commodities that can be provided to effect physical settlement under a derivative transaction. In addition, the exchange-traded market for a commodity derivative transaction generally increases price transparency for the underlying commodity. A covered company could therefore more easily monetize a commodity that meets this requirement than a commodity that does not, either through the spot market or through derivative transactions based on the commodity. The proposed rule

[69] *See* 12 CFR 3.32 (OCC), 12 CFR 217.32 (Board), and 12 CFR 324.32 (FDIC). The proposed rule would be consistent with the Basel III NSFR, which assigns a 65 percent RSF factor to loans that receive a 35 percent or lower risk weight under the Basel II standardized approach for credit risk, because the standardized approach in the agencies' risk-based capital rules does not assign a risk weight that is between 20 and 35 percent to such loans.

[70] *See supra* note 68.

[71] Under the agencies' risk-based capital rules, the risk weight on mortgages may be reduced to less than 50 percent if certain conditions are satisfied. In these cases, the proposed rule would assign an RSF factor of 65 percent, which is the RSF factor assigned to retail mortgages that mature in one year or more and are assigned a risk weight of no greater than 50 percent. *See* 12 CFR 3.36 (OCC), 12 CFR 217.36 (Board), and 12 CFR 324.36 (FDIC).

[72] 7 U.S.C. 7 and 7 U.S.C. 8.

[73] 7 U.S.C. 7b-3.

[74] Examples of commodities that currently meet this requirement are gold, oil, natural gas, and various agricultural products.

would accordingly require less stable funding to support holdings of commodities for which derivative transactions are traded on a U.S. DCM or U.S. SEF than it would require for other commodities, which a covered company may not be able to monetize as easily.

The agencies note that nothing in the proposed rule would grant a covered company the authority to engage in any activities relating to commodities not otherwise permitted by applicable law.

Commodities that would be assigned an 85 percent RSF factor do not include commodity derivatives, which would be included with other derivatives under § ____.107 of the proposed rule.

Question 26: What, if any, commodities are traded in a liquid market, but for which there is not a derivative transaction traded on a U.S. DCM or U.S. SEF, such that the commodity should qualify for an 85 percent RSF factor, rather than a 100 percent RSF factor?

Question 27: What, if any, commodities would be assigned an 85 percent RSF factor under the proposed rule that should instead be assigned a 100 percent RSF factor?

Question 28: The Basel III NSFR assigns an RSF factor of 85 percent to secured lending transactions, unsecured wholesale lending, and lending to retail customers and counterparties that mature in one year or more and are assigned a risk weight of greater than 35 percent, whereas the proposed rule would assign an 85 percent RSF factor to the set of these transactions that are assigned a risk weight of greater than 20 percent. What assets, if any, receive a risk weight between 20 and 35 percent under the standardized approach in the agencies' risk-based capital rules and should be assigned a 65 percent RSF factor, instead of an 85 percent RSF factor?

viii. 100 Percent RSF Factor

All Other Assets Not Described Above

Section ____.106(a)(8) of the proposed rule would assign a 100 percent RSF factor to all other assets not otherwise assigned an RSF factor under § ____.106 or § ____.107. These assets include, but are not limited to, loans to financial institutions (including to an unconsolidated affiliate) that mature in one year or more; assets deducted from regulatory capital;[75] common equity shares that are not traded on a public exchange; unposted debits; and trade date receivables that have failed to settle within the lesser of the market standard settlement period for the relevant type of transaction, without extension of the standard settlement period, and five business days from the date of the sale. All assets that are not otherwise assigned an RSF factor of less than 100 percent may not consistently exhibit liquidity characteristics that would suggest a covered company should support them with anything less than full stable funding.

Question 29: The agencies invite comment on all aspects of the RSF calculation and the assignment of RSF factors to various assets, derivative exposures, and commitments. For example, what issues of domestic and international competitive equity, if any, might be raised by the proposed assignment of RSF factors? Is the proposed RSF amount calculation adequate to meet the agencies' goal of ensuring covered companies maintain appropriate amounts of stable funding? Why or why not? Provide detailed explanations and supporting data.

b. Nonperforming Assets

Section ____.106(b) of the proposed rule would assign a 100 percent RSF factor to any asset on a covered company's balance sheet that is past due by more than 90 days or nonaccrual.[76] Because cash inflows from these assets have an elevated risk of non-payment, these assets tend to be illiquid. The proposed rule would therefore require a covered company to fully support them with stable funding, in order to reduce its risk of having to liquidate them at a discount.

c. Treatment of Encumbered Assets

Under the proposed rule, the RSF factor assigned to an asset would depend on whether or not the asset is encumbered. As discussed in section I.D of this **SUPPLEMENTARY INFORMATION** section, the proposed rule would define ''encumbered'' (a newly defined term under § ____.3), as the converse of the term ''unencumbered'' currently used in the LCR rule.

Encumbered assets generally cannot be monetized during the period in which they are encumbered. Thus, the proposed rule would require encumbered assets to be supported by stable funding depending on the tenor of the encumbrance. An asset that is encumbered for less than six months from the calculation date would be assigned the same RSF factor as would be assigned to the asset if it were unencumbered. Because a covered company will have access to the asset and the ability to monetize it in the near term (*i.e.,* within six months), the proposed rule would not require additional stable funding to support it as a result of the encumbrance.

An asset that is encumbered for a period of six months or more, but less than one year, would be assigned an RSF factor equal to the greater of 50 percent and the RSF factor the asset would be assigned if it were not encumbered. This treatment would reflect a covered company's more limited ability to monetize an asset that is subject to an encumbrance period of this length and the corresponding need to support the asset with additional stable funding. For an asset that would receive an RSF factor of less than 50 percent if it were unencumbered, an RSF factor of 50 percent reflects the covered company's reduced ability to monetize the asset in the near term. For example, a security issued by a U.S. GSE that a covered company has encumbered for a remaining period of six months or more, but less than one year, would be assigned a 50 percent RSF factor, rather than the 15 percent RSF factor that would be assigned if the security were unencumbered. For an asset that would receive an RSF factor of greater than 50 percent if it were unencumbered, the proposed rule's treatment would reflect the less liquid nature of the asset, which an encumbrance period of less than one year would only marginally make less liquid. For example, a non-HQLA security would continue to be assigned an 85 percent RSF factor if it is encumbered for a remaining period of six months or more, but less than one year.

The proposed rule would assign a 100 percent RSF factor to an asset that is encumbered for a remaining period of one year or more because the asset would be unavailable to the covered company for the entirety of the NSFR's one-year time horizon, so it should be fully supported by stable funding. Table 1 sets forth the RSF factors for assets that are encumbered.

[75] Assets deducted from regulatory capital include, but are not limited to, goodwill, deferred tax assets, mortgage servicing assets, and defined benefit pension fund net assets. 12 CFR 3.22 (OCC), 12 CFR 217.22 (Board), and 12 CFR 324.22 (FDIC). These assets, as a class, tend to be difficult for a covered company to readily monetize.

[76] The proposed rule's description of nonperforming assets in § ____.106(b) would be consistent with the definition of ''nonperforming exposure'' in § ____.3 of the LCR rule.

TABLE 1—RSF FACTORS FOR ENCUMBERED ASSETS

Asset encumbered <6 months	Asset encumbered ≥6 months <1 year	Asset encumbered ≥1 year (percent)
If RSF factor for unencumbered asset is ≤50 percent:		
RSF factor for the asset as if it were unencumbered	50 percent	100
If RSF factor for unencumbered asset is > 50 percent:		
RSF factor for the asset as if it were unencumbered	RSF factor for the asset as if it were unencumbered	100

Under the proposed rule, the duration of an encumbrance of an asset may exceed the maturity of that asset, as short-dated assets may provide support for longer-dated transactions where the short-dated asset would have to be replaced upon its maturity. Because of this required replacement, a covered company would have to continue funding an eligible asset for the entirety of the encumbrance period. In these cases, although the maturity of the asset is short-term, because the asset provides support for a longer-dated transaction, the encumbrance period more accurately represents the duration of the covered company's funding requirement. For example, a U.S. Treasury security that matures in three months that is used as collateral in a one-year repurchase agreement would need to be replaced upon the maturity of the security with an asset that meets the requirements of the repurchase agreement. Thus, even though the collateral is short-dated, a covered company would need to fully support an asset with stable funding for the duration of the one-year repurchase agreement, so the required stable funding would be based on a one-year encumbrance period.

Assets Held in Certain Customer Protection Segregated Accounts

Section ____.106(c)(3) of the proposed rule specifies how a covered company would determine the RSF amount associated with an asset held in a segregated account maintained pursuant to statutory or regulatory requirements for the protection of customer assets. Specifically, the proposed rule would require a covered company to assign an RSF factor to an asset held in a segregated account of this type equal to the RSF factor that would be assigned to the asset under § ____.106 as if it were not held in a segregated account. For example, the proposed rule would not consider an asset held pursuant to the SEC's Rule 15c3–3 [77] or the Commodity Futures Trading Commission's Rule 1.20 or Part 22 [78] to be encumbered solely because it is held in a segregated account. Because the inability to monetize the assets in a segregated account is primarily based on the decisions and behaviors of a customer relating to the purpose for which the customer holds the account, the proposed rule would not treat the restriction as a longer-term encumbrance. For example, customer free credits, which are customer funds held prior to their investment, must be segregated until the customer decides to invest or withdraw the funds, so the duration of the restriction is solely based on the behavior of the customer. Accordingly, the proposed rule would treat cash that a covered company places on deposit with a third-party depository institution in accordance with segregation requirements as a short-term loan to a financial sector entity, which would be assigned a 15 percent RSF factor. Similarly, U.S. Treasury securities held by a covered company in a segregated account pursuant to applicable customer protection requirements would be assigned a 5 percent RSF factor.

d. Treatment of Rehypothecated Off-Balance Sheet Assets

Section ____.106(d) of the proposed rule specifies how a covered company would determine the RSF amount for a transaction involving either an off-balance sheet asset that secures an NSFR liability or the sale of an off-balance sheet asset that results in an NSFR liability (for instance, in the case of a short sale). For example, a covered company may obtain a security as collateral in a lending transaction (such as a reverse repurchase agreement) with rehypothecation rights and subsequently pledge the security in a borrowing transaction (such as a repurchase agreement). Under this arrangement, it may be the case that the asset obtained and pledged by the covered company is not included on the covered company's balance sheet under GAAP, in which case the asset would not have a carrying value that would be assigned an RSF factor under § ____.106(a) of the proposed rule.[79] Nevertheless, such arrangements still affect a covered company's liquidity risk profile. In cases where a covered company has rehypothecated the off-balance sheet collateral, it has reduced its ability to monetize or recognize inflows from the lending transaction for the duration of the rehypothecation.

For example, if a covered company obtains a security as collateral in a lending transaction and rehypothecates the security as collateral in a borrowing transaction, the covered company may need to roll over the lending transaction if it matures before the borrowing transaction. Alternatively, the covered company would need to obtain a replacement asset for the rehypothecated collateral to return to the counterparty under the lending transaction. At the same time, the NSFR liability generated by the borrowing transaction could increase the covered company's ASF amount, depending on the maturity and other characteristics of the NSFR liability and, absent the proposed treatment in § ____.106(d), the proposed rule would not properly account for the covered company's increased funding risk.

Section ____.106(d) of the proposed rule would address these considerations based on the manner in which the covered company obtained the off-balance sheet asset: Through a lending transaction, asset exchange, or other transaction.

Under § ____.106(d)(1) of the proposed rule, if a covered company has obtained the off-balance sheet asset under a lending transaction, the proposed rule would treat the lending transaction as encumbered for the longer of (1) the remaining maturity of the NSFR liability secured by the off-balance sheet asset or resulting from the sale of the off-balance asset, as the case may be, and (2) any other encumbrance period already applicable to the lending transaction. For example, § ____.106(d)(1) would apply if a covered company obtains a level 2A

[77] 17 CFR 240.15c3–3.

[78] 17 CFR 1.20; 17 CFR part 22.

[79] *See* § ____.102(a) of the proposed rule (rules of construction), as described in section II.A.1 of this **SUPPLEMENTARY INFORMATION** section.

liquid asset as collateral under an overnight reverse repurchase agreement with a financial counterparty, and subsequently pledges the level 2A liquid asset as collateral in a repurchase transaction with a maturity of one year or more, but does not include the level 2A liquid asset on its balance sheet. In this case, the proposed rule would treat the balance-sheet receivable associated with the reverse repurchase agreement as encumbered for a period of one year or more, since the remaining maturity of the repurchase agreement secured by the rehypothecated level 2A liquid is one year or more. Accordingly, the proposed rule would assign the reverse repurchase agreement an RSF factor of 100 percent instead of 15 percent. Under this example, the proposed rule would require the covered company to maintain additional stable funding to account for its need to roll over the overnight reverse repurchase agreement for the duration of the repurchase agreement's maturity or obtain an alternative level 2A liquid asset to return to the counterparty under the reverse repurchase agreement.

Under § ____.106(d)(2) of the proposed rule, if a covered company has obtained the off-balance sheet asset under an asset exchange, the proposed rule would treat the asset provided by the covered company in the asset exchange as encumbered for the longer of (1) the remaining maturity of the NSFR liability secured by the off-balance sheet asset or resulting from the sale of the off-balance asset, as the case may be, and (2) any encumbrance period already applicable to the provided asset. For example, § ____.106(d)(2) of the proposed rule would apply if a covered company, acting as a securities borrower, provides a level 2A liquid asset and obtains a level 1 liquid asset under an asset exchange with a remaining maturity of six months, and subsequently provides the level 1 liquid asset as collateral to secure a repurchase agreement that matures in one year or more without including the level 1 liquid asset on its balance sheet.[80] In this case, under § ____.106(d)(2), the proposed rule would treat the level 2A liquid asset provided by the covered company as encumbered for a period of one year or more (equal to the remaining maturity of the repurchase agreement secured by the rehypothecated level 1 liquid asset) instead of six months (equal to the remaining maturity of the asset exchange) and would assign an RSF factor of 100 percent instead of 50 percent to the level 2A liquid asset. In this case, the proposed rule would require the covered company to maintain additional stable funding to account for its need to roll over the asset exchange for the duration of the secured funding transaction's maturity or obtain an alternative level 1 liquid asset to return to the counterparty under the asset exchange.

If a covered company has an encumbered off-balance sheet asset that it did not obtain under either a lending transaction or an asset exchange, § ____.106(d)(3) of the proposed rule would require the covered company to treat the off-balance sheet asset as if it were on the covered company's balance sheet and encumbered for a period equal to the remaining maturity of the NSFR liability. This treatment would prevent a covered company from recognizing available stable funding amounts from the NSFR liability without recognizing corresponding required stable funding amounts associated with the encumbered off-balance sheet asset.

In cases where a covered company has provided an asset as collateral, and the company operationally could have provided either an off-balance sheet asset or an identical on-balance sheet asset from its inventory, the proposed rule would not restrict the covered company's ability to identify either the off-balance sheet asset or the identical on-balance sheet asset as the provided collateral, for purposes of determining encumbrance treatment under § ____.106(c) and (d). The covered company's identification for purposes of § ____.106(c) and (d) must be consistent with contractual and other applicable requirements and the rest of the covered company's NSFR calculations. For example, if a covered company receives a security in a reverse repurchase agreement that is identical to a security the covered company already owns, and the covered company provides one of these securities as collateral to secure a repurchase agreement, the proposed rule would not restrict the covered company from identifying, for purposes of determining encumbrance treatment under § ____.106(c) and (d), either the owned or borrowed security as the collateral for the repurchase agreement, provided that the covered company has the operational and legal capability to provide either one of the securities. If the covered company chooses to treat the off-balance sheet security received from the reverse repurchase agreement as the collateral securing the repurchase agreement, § ____.106(d)(1) would apply and the covered company would treat the reverse repurchase agreement as encumbered for purposes of assigning an RSF factor. If the covered company instead chooses to treat the owned security as the collateral encumbered by the repurchase agreement, the covered company would apply the appropriate RSF factor (reflecting the encumbrance) to the owned security under § ____.106(c) and no additional encumbrance would apply to the reverse repurchase agreement under § ____.106(d). The same treatment would apply for a covered company's sale of a security and the covered company's ability to identify whether it has sold a security from its inventory or an identical security received from a lending transaction, asset exchange, or other transaction.

Question 30: The agencies invite comment on possible alternative approaches relating to off-balance sheet assets that secure NSFR liabilities of the covered company. Please include discussion as to whether and why any alternative approach would more accurately reflect a covered company's funding risk, provide greater consistency across transactional structures, or be more operationally efficient than the approach in § ____.106(d) of the proposed rule.

Question 31: The agencies request comment on a possible alternative that would, instead of applying an additional encumbrance to a related on-balance sheet asset, assign an RSF factor to the off-balance sheet asset and an ASF factor to an obligation to return the asset as if both the off-balance sheet asset and the obligation to return the asset were included on the covered company's balance sheet. If adopted, should such an alternative apply in all cases, or only where the covered company encumbers the asset for a period longer than the maturity of the obligation to return it?

Question 32: Should the approach in § ____.106(d) of the proposed rule be modified to more specifically describe how the encumbrance treatment would apply if a covered company has rehypothecated only a portion of the

[80] Where a covered company engages in an asset exchange, acting as a securities borrower, under GAAP, the asset provided by the covered company typically remains on the covered company's balance sheet while the received asset, if not rehypothecated, would not be on the covered company's balance sheet. To the extent a covered company includes on its balance sheet an asset received in an asset exchange that the covered company uses as collateral to secure a separate NSFR liability, § ____.106(d) would not apply. Instead, the asset used as collateral would be assigned an RSF factor in the same manner as other assets on the covered company's balance sheet (including by taking into account that the asset would be encumbered) pursuant to § ____.106(a) through (c) or § ____.107, as applicable.

collateral received under a lending transaction or asset exchange?

Question 33: To the extent a covered company encumbers off-balance sheet assets received under a lending transaction or asset exchange and the value of the assets exceeds the value of the lending transaction or asset provided by the covered company, should an RSF factor be assigned to the excess value of the off-balance sheet assets as if they were included on the balance sheet of the covered company?

Question 34: Is it appropriate to apply any encumbrance treatment to transactions involving off-balance sheet collateral? Would the proposed approach in § ____.106(d) present operational difficulties, and if so, what modifications could be made to reduce such difficulties? To what extent would operational ease or difficulties vary based on the type of transactions involved, such as whether a covered company has obtained an off-balance sheet asset from a lending transaction or an asset exchange?

E. Derivative Transactions

Under the proposed rule, a covered company would calculate its required stable funding relating to its derivative transactions [81] (its derivatives RSF amount) separately from its other assets and commitments.[82] This calculation would be separate based on the generally more complex features of derivative transactions and variable nature of derivative exposures. For similar reasons, the proposed rule would not separately treat derivatives liabilities as available stable funding, as described below. A covered company's derivatives RSF amount would reflect three components: (1) The current value of a covered company's derivatives assets and liabilities, (2) initial margin provided by a covered company pursuant to derivative transactions and assets contributed by a covered company to a CCP's mutualized loss sharing arrangement in connection with cleared derivative transactions, and (3) potential future changes in the value of a covered company's derivatives portfolio. Section II.E.7 of this **SUPPLEMENTARY INFORMATION** section below includes an example of a derivatives RSF amount calculation.

1. NSFR Derivatives Asset or Liability Amount

Under the proposed rule, the stable funding requirement for the current value of a covered company's derivative assets and liabilities would be based on an aggregated measure of the covered company's derivatives portfolio. As described below, a covered company would sum its derivative asset and liability positions across transactions, taking into account variation margin.[83] A covered company would then net the derivative asset and liability totals against each other to determine whether its portfolio has an overall asset or liability position (an NSFR derivatives asset amount or NSFR derivatives liability amount, respectively). By netting across different counterparties and different derivative transactions (including different types of derivative transactions), the proposed rule would estimate the overall current position and funding needs associated with a covered company's derivatives portfolio in a manner that offers operational and administrative efficiencies relative to other approaches. In addition, use of a standardized measure would promote greater consistency and comparability across covered companies.

A covered company would determine its NSFR derivatives asset amount or NSFR derivatives liability amount, whichever the case may be, by the following calculation steps, which are set forth in § ____.107 of the proposed rule:

Step 1: Calculation of Derivatives Asset and Liability Values

Under § ____.107(f) of the proposed rule, a covered company would calculate the asset and liability values of its derivative transactions after netting certain variation margin received and provided. For each derivative transaction not subject to a qualifying master netting agreement and each QMNA netting set of a covered company, the derivatives asset value would equal the asset value to the covered company after netting any cash variation margin received by the covered company that meets the conditions of § ____.10(c)(4)(ii)(C)(*1*) through (*7*) of the SLR rule,[84] or the derivatives liability value would equal the liability value to the covered company after netting any variation margin provided by the covered company. (Each derivative transaction not subject to a qualifying master netting agreement and each QMNA netting set would have either a derivatives asset value or derivatives liability value.)

The proposed rule would restrict netting of variation margin received by a covered company but not variation margin provided by a covered company for purposes of this calculation in order to prevent understatement of the covered company's derivatives RSF amount. For variation margin received by a covered company, the proposed rule would recognize only netting of cash variation margin because other forms of variation margin, such as securities, may have associated risks, such as market risk, that are not present with cash. The proposed rule would also require variation margin received to meet the conditions of § ____.10(c)(4)(ii)(C)(*1*) through (*7*) the SLR rule in order to be recognized as netting the asset value of a derivative transaction.[85] The regular and timely

[81] As defined in § ____.3 of the LCR rule, ''derivative transaction'' means a financial contract whose value is derived from the values of one or more underlying assets, reference rates, or indices of asset values or reference rates. Derivative contracts include interest rate derivative contracts, exchange rate derivative contracts, equity derivative contracts, commodity derivative contracts, credit derivative contracts, forward contracts, and any other instrument that poses similar counterparty credit risks. Derivative contracts also include unsettled securities, commodities, and foreign currency exchange transactions with a contractual settlement or delivery lag that is longer than the lesser of the market standard for the particular instrument or five business days. A derivative does not include any identified banking product, as that term is defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)), that is subject to section 403(a) of that Act (7 U.S.C. 27a(a)).

[82] The proposed rule would include mortgage commitments that are derivative transactions in the general derivative transactions treatment, in contrast to the LCR rule, which excludes those transactions and applies a separate, self-contained mortgage treatment. *See* § ____.32(c) and (d) of the LCR rule.

[83] As discussed in section II.E.5 of this **SUPPLEMENTARY INFORMATION** section below, § ____.107(b)(5) of the proposed rule would require a covered company, when it calculates its required stable funding amount associated with potential future derivatives portfolio valuation changes, to disregard settlement payments based on changes in the value of its derivative transactions. This adjustment would apply only for purposes of the calculation under § ____.107(b)(5). Accordingly, a covered company would not exclude these settlement payments for purposes of calculating its required stable funding amount associated with the current value of its derivative transactions under § ____.107(b)(1) and (d) through (f).

[84] 12 CFR 3.10(c)(4)(ii)(C) (OCC), 12 CFR 217.10(c)(4)(ii)(C) (Board), and 12 CFR 324.10(c)(4)(ii)(C) (FDIC). *See infra* note 85.

[85] *Id.* These conditions are: (1) Cash collateral received is not segregated; (2) variation margin is calculated on a daily basis based on mark-to-fair value of the derivative contract; (3) variation margin transferred is the full amount necessary to fully extinguish the net current credit exposure to the counterparty, subject to the applicable threshold and minimum transfer amounts; (4) variation margin is cash in the same currency as the settlement currency in the contract; (5) the derivative contract and the variation margin are governed by a qualifying master netting agreement between the counterparties to the contract, which stipulates that the counterparties agree to settle any payment obligations on a net basis, taking into account any variation margin received or provided; (6) variation margin is used to reduce the current credit exposure of the derivative contract and not the PFE (as that term is defined in the SLR rule);

exchange of cash variation margin that meets these conditions helps to protect a covered company from the effects of a counterparty default.

In contrast to the treatment of variation margin received by a covered company, the proposed rule would recognize netting of all forms of variation margin provided by a covered company. As described in step 3 below, a covered company's derivatives liability values would ultimately be netted against its derivatives asset values, which are assigned a 100 percent RSF factor. Because variation margin provided by a covered company reduces its derivatives liability values, a limitation on netting variation margin provided would lower a covered company's derivatives RSF amount, which would be the opposite effect of the proposed rule's limitation on netting variation margin received and could lead to an understatement of a covered company's stable funding requirement. For this reason, all forms of variation margin provided by a covered company would be netted against its derivatives liabilities.

The proposed rule would not permit a covered company to net initial margin provided or received against its derivatives liability or asset values as part of its calculation of its NSFR derivatives asset or liability amount. Unlike variation margin, which the parties to a derivative transaction exchange to account for valuation changes of the transaction, initial margin is meant to cover a party's potential losses in connection with a counterparty's default (*e.g.,* the cost a party would incur to replace the defaulted transaction with a new, equivalent transaction with a different counterparty). Therefore, while variation margin is relevant to the calculation of the current value of a covered company's derivatives portfolio, initial margin would not factor into the proposed rule's measure of the current value of a covered company's derivatives portfolio. Initial margin would be subject to a separate treatment under the proposed rule, as described in further detail below.

Step 2: Calculation of Total Derivatives Asset and Liability Amounts

Under § ____.107(e) of the proposed rule, a covered company would sum all of its derivatives asset values, as calculated under § ____.107(f)(1), to arrive at its ''total derivatives asset amount'' and sum all of its derivatives liability values, as calculated under § ____.107(f)(2), to arrive at its ''total derivatives liability amount.'' These amounts would represent the covered company's aggregated derivatives assets and liabilities, inclusive of netting certain variation margin.

Step 3: Calculation of NSFR Derivatives Asset or Liability Amount

Under § ____.107(d) of the proposed rule, a covered company would net its total derivatives asset amount against its total derivatives liability amount, each as calculated under § ____.107(e). If a covered company's total derivatives asset amount exceeds its total derivatives liability amount, the covered company would have an ''NSFR derivatives asset amount.'' Conversely, if the total derivatives liability amount exceeds the total derivatives asset amount, the covered company would have an ''NSFR derivatives liability amount.''

Section ____.107(b)(1) of the proposed rule would assign a 100 percent RSF factor to a covered company's NSFR derivatives asset amount because, as an asset class, derivative assets have a wide range of risk and volatility, and, therefore, a covered company should have full stable funding for such assets. Section ____.107(c)(1) of the proposed rule would assign a zero percent ASF factor to a covered company's NSFR derivatives liability amount. Because of the variable nature of such liabilities, this amount would not represent stable funding.

Question 35: What changes, if any, should be made to the proposed rule's mechanics for calculating a covered company's RSF and ASF amounts associated with its current exposures under derivative transactions and why? What alternative approach, if any, would be more appropriate? For example, should ASF and RSF factors be assigned to the current asset or liability values of each separate derivative transaction or QMNA netting set using the frameworks specified in §§ ____.104 and ____.106?

2. Variation Margin Provided and Received and Initial Margin Received

As described in section II.E.1 above of this **SUPPLEMENTARY INFORMATION** section, a covered company's calculation of its current derivative transaction values would take into account netting due to variation margin received and provided by the covered company. The proposed rule would, in addition, require a covered company to maintain stable funding for assets on its balance sheet that it has received as variation margin and certain assets that it has provided as variation margin in connection with derivative transactions.

Variation margin provided by a covered company. Sections ____.107(b)(2) and (3) of the proposed rule would assign an RSF factor to variation margin provided by a covered company based on whether the variation margin reduces the covered company's derivatives liability value under the relevant derivative transaction or QMNA netting set or whether it is ''excess'' variation margin. If the variation margin reduces a covered company's derivatives liability value for a particular QMNA netting set or derivative transaction not subject to a qualifying master netting agreement, the proposed rule would assign the carrying value of such variation margin a zero percent RSF factor. As described above, such variation margin provided already reduces the covered company's derivatives liabilities that are able to net against its derivatives assets.

To the extent a covered company provides ''excess'' variation margin with respect to a derivative transaction or QMNA netting set—meaning, an amount of variation margin that does not reduce the covered company's derivatives liability value—and includes the excess variation margin asset on its balance sheet, the proposed rule would assign such excess variation margin an RSF factor under § ____.106, according to the characteristics of the asset or balance sheet receivable associated with the asset, as applicable. Because excess variation margin does not reduce a covered company's derivatives liabilities that are able to net against its derivatives assets, the covered company's NSFR derivatives asset or liability amount would not already account for these assets. The proposed rule would therefore assign RSF factors to excess variation margin remaining on a covered company's balance sheet to reflect the required stable funding appropriate for the assets.

Variation margin received by a covered company. Section ____.107(b)(4) of the proposed rule would require all variation margin received by a covered company that is on the covered company's balance sheet to be assigned an RSF factor under § ____.106, according to the characteristics of each asset received. Cash variation margin received, for example, would be assigned an RSF factor of zero percent. If that cash is used to purchase another asset, the new asset would be assigned the appropriate RSF factor under § ____.106.

The proposed rule would assign a zero percent ASF factor to any NSFR

and (7) variation margin may not reduce net or gross credit exposure for purposes of calculating the Net-to-gross Ratio (as that term is defined in the SLR rule).

liability that arises from an obligation to return initial margin or variation margin received by a covered company related to its derivative transactions. Given that these liabilities can change based on the underlying derivative transactions and remain, at most, only for the duration of the associated derivative transactions, they do not represent stable funding for a covered company. This treatment would apply regardless of the form of the initial margin or variation margin, whether securities or cash, because the liability is dependent on the underlying derivative transactions in either case.

Question 36: What changes, if any, should be made to the proposed rule's treatment of variation margin, including the RSF factors that are assigned to variation margin received or provided by a covered company?

Question 37: Are there alternative RSF factors that should be applied to variation margin received by a covered company that does not meet the conditions of § ____.10(c)(4)(ii)(C)(1) through (7) of the SLR rule and is not excess variation margin and, if so, why would the alternative RSF factor be more appropriate?

Question 38: Are there any liabilities associated with the obligation to return variation margin that should be assigned an alternative ASF factor and why? For example, the Basel III NSFR does not explicitly exclude assigning an ASF factor to obligations to return variation margin that meet the conditions of § ____.10(c)(4)(ii)(C)(1) through (7) of the SLR rule. Are there any liabilities associated with the obligations to return this variation margin that would have a sufficiently long maturity to be assigned an alternative ASF factor (i.e., six months or greater)?

3. Customer Cleared Derivative Transactions

For a covered company that is a clearing member of a CCP, the covered company's NSFR derivatives asset amount or NSFR derivatives liability amount would not include the value of a cleared derivative transaction that the covered company, acting as agent, has submitted to the CCP on behalf of the covered company's customer, including when the covered company has provided a guarantee to the CCP for the performance of the customer. These derivative transactions are assets or liabilities of a covered company's customer, and the proposed rule would not include them as derivative assets or liabilities of the covered company. Similarly, because variation margin provided or received in connection with customer derivative transactions would not impact the current value of the covered company's derivative transactions, these amounts would also not be included in the covered company's calculations under § ____.107.

To the extent a covered company includes on its balance sheet under GAAP a derivative asset or liability value (as opposed to a receivable or payable in connection with a derivative transaction, as discussed below) associated with a customer cleared derivative transaction, the derivative transaction would constitute a derivative transaction of the covered company for purposes of § ____.107 of the proposed rule. For example, if the covered company must perform according to a guarantee to the CCP of the performance of the customer such that the transaction becomes a derivative transaction of the covered company (*e.g.,* following a default by a covered company's customer), such transaction would typically be included on the balance sheet of the covered company and would fall within the proposed rule's derivatives treatment under § ____.107.

To the extent a covered company has an asset or liability on its balance sheet associated with a customer derivative transaction that is not a derivative asset or liability—for example, if a covered company has extended credit on behalf of a customer to cover a variation margin payment or a covered company holds customer funds relating to derivative transactions in a customer protection segregated account discussed in section II.D.3.c of this **SUPPLEMENTARY INFORMATION** section—such asset or liability of the covered company would be assigned an RSF factor under § ____.106 or an ASF factor under § ____.104, respectively. Accordingly, to the extent a covered company's balance sheet includes a receivable asset owed by a CCP or payable liability owed to a CCP in connection with customer receipts and payments under derivative transactions, this asset or liability would not constitute a derivative asset or liability of the covered company and would not be included in the covered company's calculations under § ____.107 of the proposed rule.

A covered company's NSFR derivatives asset amount or NSFR derivatives liability amount would include the asset or liability values of derivative transactions between a CCP and a covered company where the covered company has entered into an offsetting transaction (commonly known as a ''back-to-back'' transaction). Because a covered company would have obligations as a principal under both derivative transactions comprising the back-to-back transaction, any asset or liability values arising from these transactions, or any variation margin provided or received in connection with these transactions, would be included in the covered company's calculations under § ____.107.

Question 39: Under what circumstances, if any, should the asset or liability values of a covered company's customer's cleared derivative transactions be included in the calculation of a covered company's NSFR derivatives asset amount or NSFR derivatives liability amount?

Question 40: Other than in connection with a default by a covered company's customer, under what circumstances, if any, would the value of a cleared derivative transaction that the covered company, acting as agent, has submitted to a CCP on behalf of the covered company's customer, appear on a covered company's balance sheet? If there are such circumstances, should these derivative assets or liabilities be excluded from a covered company's calculation of its derivatives RSF amount under § ____.107 of the proposed rule, and why?

4. Assets Contributed to a CCP's Mutualized Loss Sharing Arrangement and Initial Margin

Section ____.107(b)(6) of the proposed rule would assign an 85 percent RSF factor to the fair value of assets contributed by a covered company to a CCP's mutualized loss sharing arrangement. Similarly, § ____.107(b)(7) of the proposed rule would assign to the fair value of initial margin provided by a covered company the higher of an 85 percent RSF factor or the RSF factor assigned to the initial margin asset pursuant to § ____.106. The proposed rule would assign an RSF factor of at least 85 percent to these forms of collateral based on the assumption that a covered company generally must maintain its initial margin or CCP mutualized loss sharing arrangement contributions in order to maintain its derivatives activities. The proposed rule would not set the RSF factor at 100 percent, however, because a covered company, to some degree, may be able to reduce or otherwise adjust its derivatives activities such that they require a smaller amount of contributions to CCP mutualized loss sharing arrangements or initial margin.

In cases where a covered company provides as initial margin an asset that would be assigned an RSF factor of greater than 85 percent if it were not provided as initial margin, the covered company would assign the normally

applicable RSF factor to the asset rather than reducing the RSF factor to 85 percent. For example, if a covered company provides as initial margin an asset that would otherwise be assigned a 100 percent RSF factor under § ____.106 of the proposed rule, the covered company's act of providing the asset as initial margin would not enhance the asset's liquidity such that the applicable RSF factor should be reduced to 85 percent. Instead, the asset would continue to be assigned an RSF factor of 100 percent.

The proposed rule would assign an RSF factor to the fair value of a covered company's contributions to a CCP's mutualized loss sharing arrangement or initial margin provided by a covered company regardless of whether the contribution or initial margin is included on the covered company's balance sheet. A covered company would face the same funding requirements and risks associated with these assets regardless of whether or not it includes the assets on its balance sheet. To the extent a covered company includes on its balance sheet a receivable for an asset contributed to a CCP's mutualized loss sharing arrangement or provided as initial margin, rather than the asset itself, the proposed rule would assign an RSF factor to the fair value of the asset, ignoring the receivable, in order to avoid double counting.

The proposed rule would not assign an RSF factor under § ____.107 of the proposed rule to initial margin provided by a covered company acting as an agent for a customer's cleared derivative transactions where the covered company does not provide a guarantee to the customer with respect to the return of the initial margin to the customer. A covered company would not include this form of initial margin in its derivatives RSF amount because the customer is obligated to fund the initial margin under the customer transaction for the duration of the transaction, so the covered company faces limited liquidity risk. To the extent a covered company includes on its balance sheet any such initial margin, this initial margin would instead be assigned an RSF factor pursuant to § ____.106 of the proposed rule and any corresponding liability would be assigned an ASF factor pursuant to § ____.104.

Question 41: What other RSF factor, if any, would be more appropriate for initial margin and assets contributed to a mutualized loss sharing arrangement? For example, would it be more appropriate to apply a 100 percent RSF factor, based on an assumption that a covered company would generally maintain its derivatives activities at current levels, such that the covered company should be required to fully support these obligations with stable funding?

Question 42: Should assets contributed by a covered company to a CCP's mutualized loss sharing arrangement be treated differently than initial margin provided by a covered company? If so, how should these assets be treated and why?

5. Derivatives Portfolio Potential Valuation Changes

As the value of a company's derivative transactions decline, the company may be required to provide variation margin or make settlement payments to its counterparty. The proposed rule would therefore require a covered company to maintain available stable funding to support these potential variation margin and settlement payment outflows. Specifically, a covered company's derivatives RSF amount would include an additional component that is intended to address liquidity risk associated with potential changes in the value of the covered company's derivative transactions.

Under § ____.107(b)(5) of the proposed rule, this additional component would equal 20 percent of the sum of a covered company's ''gross derivative values'' that are liabilities under each of its derivative transactions not subject to a qualifying master netting agreement and each of its QMNA netting sets, multiplied by an RSF factor of 100 percent.[86] For purposes of this calculation, the ''gross derivative value'' of a derivative transaction not subject to a qualifying master netting agreement or of a QMNA netting set would equal the value to the covered company, calculated as if no variation margin had been exchanged and no settlement payments had been made based on changes in the values of the derivative transaction or QMNA netting set.[87] A covered company would not include in the sum any gross derivative values that are assets.

For example, if a covered company has a derivative transaction not subject to a qualifying master netting agreement whose value on day 1 is $0, and the value moves to −$10 on day 2 and the covered company provides $10 of variation margin, the covered company's gross derivative value on day 2 (if day 2 is an NSFR calculation date) attributable to the derivative transaction for purposes of this calculation would be a liability of $10. If the value subsequently moves to −$8 on day 3 and the covered company receives $2 of variation margin returned (resulting in a net of $8 of variation margin provided by the covered company), the covered company's gross derivative value on day 3 (if day 3 is an NSFR calculation date) attributable to the derivative transaction for purposes of this calculation would be a liability of $8. The gross derivative values on day 2 and day 3 for purposes of this calculation would be the same if the covered company had provided a net of $10 and $8 in settlement payments, respectively, over the life of the same derivative transaction instead of $10 and $8 of variation margin.

In considering the appropriate measure to account for these risks in the NSFR calculation, the agencies reviewed public and supervisory information on the volatility of derivatives assets and liabilities and the associated value of collateral received and provided, including the fair value of derivatives assets and liabilities as reported on GAAP financial statements, the fair value of derivatives assets and liabilities excluding collateral received or provided, the proportion of collateralized and uncollateralized derivatives assets and liabilities, and the fair value of collateral provided and received. Over the periods reviewed, collateral inflows and outflows associated with derivative valuation changes—and consequent liquidity risks—exhibited material volatility. The proposed 20 percent factor falls within the range of observed volatility when measured relative to derivatives liabilities excluding collateral received or provided.

The proposed rule would treat variation margin and settlement payments based on changes in the value of a derivative transaction similarly because both variation margin and these settlement payments are intended to reduce a party's current exposure under a derivative transaction or QMNA

[86] As discussed in section II.E.3 of this **SUPPLEMENTARY INFORMATION** section, for a covered company that is a clearing member of a CCP, the company's calculation of its RSF measure for potential derivatives future valuation changes would generally not include gross derivative values of the covered company's customers' cleared derivative transactions where the covered company acts as agent for the customers. As with other components of a covered company's derivatives RSF amount calculation, however, the RSF measure for potential future valuation changes would include such derivative transactions that the covered company includes on its balance sheet under GAAP.

[87] Other payments made under a derivative transaction, such as periodic fixed-for-floating payments under an interest rate swap, would not be considered settlement payments based on changes in the value of a derivative transaction for purposes of this calculation.

netting set. This RSF measure for potential valuation changes would account for the different liquidity risks faced by a covered company that has little or no derivatives activity versus the liquidity risks of a covered company that has a significant amount of derivative transactions, but that has to date covered all changes in the value of derivative transactions with variation margin or settlement payments.

Question 43: The agencies are considering alternative methodologies for capturing the potential volatility of a covered company's derivatives portfolio, and associated funding needs, within the NSFR framework. One alternative to the proposed treatment would be to require an RSF amount based on a covered company's historical experience. Under such an alternative, a factor could be based on the historical changes in a covered company's aggregate derivatives position, such as the largest, 99th, or 95th percentile annual change in the value of a covered company's derivative transactions over the prior two or five years. Another alternative could be to require an RSF amount based on modeled estimates of potential future exposure. Commenters are encouraged to provide feedback on methodologies, both those discussed and other potential alternatives, that best capture the funding risk associated with potential valuation changes in a covered company's derivatives portfolio, are conceptually sound, and are supported by data.

Question 44: What operational challenges, if any, arise from the proposed measurement of gross derivatives liabilities?

Question 45: Is it appropriate to treat variation margin payments and settlement payments identically for purposes of the RSF measure for derivative portfolio potential future valuation changes? Should the agencies distinguish between variation margin payments that are treated as collateral and payments that settle an outstanding derivatives liability, and if so, why? If it is appropriate to distinguish between these types of payments, what legal, accounting, or other criteria should be used to distinguish between them?

6. Derivatives RSF Amount

Under the proposed rule, a covered company would sum the required stable funding amounts calculated under § ____.107 to determine the company's derivatives RSF amount. As described in section II.D.1 of this Supplementary Information section, a covered company would add its derivatives RSF amount to its other required stable funding amounts calculated under § ____.105(a) of the proposed rule to determine its overall RSF amount, which would be the denominator of its NSFR.

A covered company's derivatives RSF amount would include the following components under § ____.107(b) of the proposed rule:

(1) The required stable funding amount for the current value of a covered company's derivatives assets and liabilities, which, as described in section II.E.1 of this **SUPPLEMENTARY INFORMATION** section, is equal to the covered company's NSFR derivatives asset amount, multiplied by an RSF factor of 100 percent;

(2) The required stable funding amount for non-excess variation margin provided by the covered company, which, as described in section II.E.2 of this **SUPPLEMENTARY INFORMATION** section, equals the carrying value of variation margin provided by the covered company under each of its derivative transactions not subject to a qualifying master netting agreement and each of its QMNA netting sets that reduces the covered company's derivatives liability value of the relevant derivative transaction or QMNA netting set, multiplied by an RSF factor of zero percent;

(3) The required stable funding amount for excess variation margin provided by the covered company, which, as described in section II.E.2 of this **SUPPLEMENTARY INFORMATION** section, equals the sum of the carrying values of each excess variation margin asset provided by the covered company, multiplied by the RSF factor assigned to the asset pursuant to § ____.106;

(4) The required stable funding amount for variation margin received by the covered company, which, as described in section II.E.2 of this **SUPPLEMENTARY INFORMATION** section, equals the sum carrying values of each variation margin asset received by the covered company, multiplied by the RSF factor assigned to the asset pursuant to § ____.106;

(5) The required stable funding amount for potential future valuation changes of the covered company's derivatives portfolio, which, as described in section II.E.5 of this **SUPPLEMENTARY INFORMATION** section, equals 20 percent of the sum of the covered company's gross derivatives liabilities, when calculated as if no variation margin had been exchanged and no settlement payments had been made based on changes in the values of the derivative transactions, multiplied by an RSF factor of 100 percent;

(6) The required stable funding amount for the covered company's contributions to CCP mutualized loss sharing arrangements, which, as described in section II.E.4 of this **SUPPLEMENTARY INFORMATION** section, equals the sum of the fair values of the covered company's contributions to CCPs' mutualized loss sharing arrangements (regardless of whether a contribution is included on the covered company's balance sheet), multiplied by an RSF factor of 85 percent; and

(7) The required stable funding amount for initial margin provided by the covered company, which, as described in section II.E.4 of this **SUPPLEMENTARY INFORMATION** section, equals the sum of fair values of each initial margin asset provided by the covered company for derivative transactions (regardless of whether it is included on the covered company's balance sheet), multiplied by the higher of an RSF factor of 85 percent and the RSF factor assigned to the initial margin asset pursuant to § ____.106. As noted above, the covered company would not include as part of its derivatives RSF amount under § ____.107 initial margin provided for a derivative transaction under which the covered company acts as agent for a customer and does not guarantee the obligations of the customer's counterparty, such as a CCP, to the customer under the derivative transaction. (Such initial margin would instead be assigned an RSF factor pursuant to § ____.106 of the proposed rule, as described in section II.E.4 of this Supplementary Information section.)

Question 46: The agencies invite comment regarding the proposed rule's approach for determining RSF and ASF amounts with respect to derivative transactions. What alternative approach, if any, would be more appropriate?

7. Derivatives RSF Amount Numerical Example

The following is a numerical example illustrating the calculation of a covered company's derivatives RSF amount under the proposed rule. Table 2 sets forth the facts of the example, which assumes that: (1) A qualifying master netting agreement exists between each of the counterparties and each of the transactions thereunder are part of a single QMNA netting set, (2) any variation margin received is in the form of cash and meets the conditions of § ____.10(c)(4)(ii)(C)(*1*) through (*7*) of the SLR rule,[88] (3) no variation margin provided by the covered company remains on the covered company's balance sheet, (4) the covered company

[88] 12 CFR 3.10(c)(4)(ii)(C)(*1*)–(*7*) (OCC), 12 CFR 217.10(c)(4)(ii)(C)(*1*)–(*7*) (Board), and 12 CFR 324.10(c)(4)(ii)(C)(*1*)–(*7*) (FDIC).

has provided U.S. Treasuries as initial margin to its counterparties, and (5) the derivative transactions are not cleared through a CCP (*i.e.,* the covered company has not contributed any assets to a CCP's mutualized loss sharing arrangement).

TABLE 2—DERIVATIVE TRANSACTIONS NUMERICAL EXAMPLE FACT PATTERN

	Asset (liability) value for the covered company, prior to netting variation margin	Variation margin provided (received) by the covered company	Initial margin provided by the covered company
Counterparty A:			
Derivative 1A	10	(2)	2
Derivative 2A	(2)		
Counterparty B:			
Derivative 1B	(10)	3	1
Derivative 2B	5		
Counterparty C:			
Derivative 1C	(2)	0	0

Calculation of derivatives assets and liabilities.

(1) The derivatives asset value for counterparty A = (10 − 2) − 2 = 6.

(2) The derivatives liability value for counterparty B = (10 − 5) − 3 = 2.

The derivatives liability value for counterparty C = 2.

Calculation of total derivatives asset and liability amounts.

(1) The covered company's total derivatives asset amount = 6.

(2) The covered company's total derivatives liability amount = 2 + 2 = 4.

Calculation of NSFR derivatives asset or liability amount.

(1) The covered company's NSFR derivatives asset amount = max (0, 6 − 4) = 2.

(2) The covered company's NSFR derivatives liability amount = max (0, 4 − 6) = 0.

Required stable funding relating to derivative transactions.

The covered company's derivatives RSF amount is equal to the sum of the following:

(1) NSFR derivatives asset amount × 100% = 2 × 1.0 = 2;

(2) Non-excess variation margin provided × 0% = 3 × 0.0 = 0;

(3) Excess variation provided × applicable RSF factor(s) = 0;

(4) Variation margin received × applicable RSF factor(s) = 2 × 0.0 = 0;

(5) Gross derivatives liabilities × 20% × 100% = (5 + 2) × 0.2 × 1.0 = 1.4;

(6) Contributions to CCP mutualized loss-sharing arrangements × 85% = 0 × 0.85 = 0; and

(7) Initial margin provided × higher of 85% or applicable RSF factor(s) = (2 + 1) × max (0.85, 0.05) = 2.55.

The covered company's derivatives RSF amount = 2 + 0 + 0 + 0 + 1.4 + 0 + 2.55 = 5.95.

F. NSFR Consolidation Limitations

In general, the proposed rule would require a covered company to calculate its NSFR on a consolidated basis. When calculating ASF amounts from a consolidated subsidiary, however, the proposed rule would require a covered company to take into account restrictions on the availability of stable funding of the consolidated subsidiary to support assets, derivative exposures, and commitments of the covered company held at entities other than the subsidiary. Specifically, to the extent a covered company has an ASF amount associated with a consolidated subsidiary that exceeds the RSF amount associated with the subsidiary (each as calculated by the covered company for purposes of the covered company's NSFR),[89] the proposed rule would permit the covered company to include such ''excess'' ASF amounts in its consolidated ASF amount only to the extent the consolidated subsidiary may transfer assets to the top-tier entity of the covered company, taking into account statutory, regulatory, contractual, or supervisory restrictions.

For example, if a covered company calculates a required stable funding amount of $90 based on the assets, derivative exposures, and commitments of a consolidated subsidiary and an available stable funding amount of $100 based on the NSFR regulatory capital elements and NSFR liabilities of the consolidated subsidiary, the consolidated subsidiary would have an ''excess'' ASF amount of $10 for purposes of this consolidation restriction. The covered company may only include any of this $10 excess available stable funding in its consolidated ASF amount to the extent the consolidated subsidiary may transfer assets to the top-tier entity of the covered company (for example, through a loan from the subsidiary to the top-tier covered company), taking into account statutory, regulatory, contractual, or supervisory restrictions. Examples of restrictions on transfers of assets that a covered company would be required to take into account in calculating its NSFR include sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 12 U.S.C. 371c–1); the Board's Regulation W (12 CFR part 223); any restrictions imposed on a consolidated subsidiary by state or Federal law, such as restrictions imposed by a state banking or insurance supervisor; and any restrictions imposed on a consolidated subsidiary or branches of a U.S. entity domiciled outside the United States by a foreign regulatory authority, such as a foreign banking supervisor. This limitation on the ASF amount of a consolidated subsidiary includable in a covered company's NSFR would apply to both U.S. and non-U.S. consolidated subsidiaries.

The proposed rule would permit a covered company's ASF amount to include any portion of the ASF amount of a consolidated subsidiary that is less than or equal to the subsidiary's RSF amount because the subsidiary's NSFR liabilities and NSFR regulatory capital elements generating that ASF amount are available to stably fund the subsidiary's assets. The proposed rule

[89] ASF amounts associated with a consolidated subsidiary, in this context, refer to those amounts that would be calculated from the perspective of the covered company (*e.g.,* in calculating the ASF amount of a consolidated subsidiary that can be included in the covered company's consolidated ASF amount, the covered company would not include certain transactions between consolidated subsidiaries that are netted under GAAP). For this reason, an ASF amount of a consolidated subsidiary that is included in a covered company's consolidated NSFR calculation may not be equal to the ASF amount of the consolidated subsidiary when calculated on a standalone basis if the consolidated subsidiary is itself a covered company.

would limit inclusion of excess ASF amounts, however, because the proceeds of stable funding at one entity of the covered company may not always be available to support liquidity needs at another entity. Even though it may be consistent with sound risk management practices for a subsidiary to maintain an excess ASF amount, the proposed rule would not permit the excess ASF amount to count towards the covered company's consolidated NSFR if the subsidiary is unable to transfer assets to its parent. This approach to calculating a covered company's consolidated ASF amount would be similar to the approach taken in the LCR rule to calculate a covered company's HQLA amount.

The proposed rule would require a covered company that includes a consolidated subsidiary's excess ASF amount in its consolidated NSFR to implement and maintain written procedures to identify and monitor restrictions on transferring assets from its consolidated subsidiaries. In this case, the covered company would be required to document the types of transactions, such as loans or dividends, a covered company's consolidated subsidiary could use to transfer assets and how the transactions comply with applicable restrictions. The covered company should be able to demonstrate to the satisfaction of its appropriate Federal banking agency that such excess amounts may be transferred freely in compliance with statutory, regulatory, contractual, or supervisory restrictions that may apply in any relevant jurisdiction. A covered company that does not include any excess ASF amount from its consolidated subsidiaries in its NSFR would not be required to have such procedures in place.

Question 47: What alternative approaches, if any, should the agencies consider regarding the treatment of the excess ASF amount of a consolidated subsidiary of a covered company to appropriately reflect constraints on the ability of stable funding at one entity to support the assets of a different entity? Does the proposed rule's approach sufficiently reflect restrictions on transfers of assets between entities of a covered company, given that these constraints may vary, and why? For example, would the proposed rule's approach adequately address a situation in which, during an idiosyncratic or systemic liquidity stress event, one or more entities of a covered company becomes subject to more stringent restrictions on transferring assets than they might face during normal times, and why?

Question 48: What operational burdens would covered companies face from the proposed approach with respect to excess ASF amounts of consolidated subsidiaries?

Question 49: Should this approach regarding the treatment of the excess ASF amount of a consolidated subsidiary be limited to a certain set of covered companies, such as GSIBs? If so, please provide reasoning as to why the proposed consolidation provisions would be more appropriate for these covered companies as opposed to others.

G. Interdependent Assets and Liabilities

The Basel III NSFR provides that, in limited circumstances, it may be appropriate for an interdependent asset and liability to be assigned a zero percent RSF factor and a zero percent ASF factor, respectively, if they meet strict conditions. Currently, it does not appear that U.S. banking organizations engage in transactions that would meet these conditions in the Basel III NSFR. The proposed rule therefore does not include a framework for interdependent assets and liabilities.

In order for an asset and liability to be considered interdependent, the Basel III NSFR would require the following conditions to be met: (1) The interdependence of the asset and liability must be established on the basis of contractual arrangements, (2) the liability cannot fall due while the asset remains on the balance sheet, (3) the principal payment flows from the asset cannot be used for purposes other than repaying the liability, (4) the liability cannot be used to fund other assets, (5) the individual interdependent asset and liability must be clearly identifiable, (6) the maturity and principal amount of both the interdependent liability and asset must be the same, (7) the bank must be acting solely as a pass-through unit to channel the funding received from the liability into the corresponding interdependent asset, and (8) the counterparties for each pair of interdependent liabilities and assets must not be the same.[90]

The Basel III NSFR conditions for establishing interdependence are intended to ensure that the specific liability will, under all circumstances, remain for the life of the asset and all cash flows during the life of the asset and at maturity are perfectly matched with cash flows of the liability. Under such conditions, a covered company would face no funding risk or benefit arising from the interdependent asset or liability. For example, if a sovereign entity establishes a program where it provides funding through financial institutions that act as pass-through entities to make loans to third parties, and all the conditions set forth in the Basel III NSFR are met, the liquidity profile of a financial institution would not be affected by its participation in the program. As such, the assets of the financial institution created through such a program could be considered interdependent with the liabilities that would also be created through the program, and the assets and liabilities could be assigned a zero percent RSF factor and a zero percent ASF factor, respectively. Currently, no such programs exist in the United States.

Other transactional structures of covered companies reviewed by the agencies do not appear to meet the Basel III NSFR conditions for interdependent asset and liability treatment and present liquidity risks such that zero percent RSF and ASF factors would not be warranted. For example, a covered company may have a short position under an equity total return swap (TRS) with a customer that the covered company has hedged with a long position in the equity securities underlying the TRS. This set of transactions would not appear to meet the Basel III NSFR conditions for interdependent treatment on several bases, including: the liability funding the equity position could fall due while the equity position remains on the covered company's balance sheet; the maturity of the equity position and the liability funding the equity position would not be the same (the equity is perpetual and the liability could have a short-term maturity); and the covered company would not be acting solely as a pass-through unit to channel the funding received from the repurchase agreement.

As another example, a covered company might enter into a securities borrowing transaction to facilitate a customer short sale of securities. This set of transactions would also not appear to meet the Basel III NSFR conditions for interdependent treatment on several bases, including: The interdependence of the asset and liability may not be established on the basis of contractual arrangements; the liability could fall due while the asset remained on the balance sheet; and the maturity and principal amount of both the interdependent liability and asset may not be the same.

For the reasons described above, the proposed rule would not include a framework for interdependent assets and liabilities.

[90] Basel III NSFR, *supra* note 4 at para 45.

Question 50: What assets and liabilities of covered companies, if any, meet the conditions for the interdependent treatment described by the Basel III NSFR and merit zero percent RSF and ASF factors?

III. Net Stable Funding Ratio Shortfall

As noted above, the proposed rule would require a covered company to maintain an NSFR of at least 1.0 on an ongoing basis. The agencies expect circumstances where a covered company has an NSFR below 1.0 to arise only rarely. However, given the range of reasons, both idiosyncratic and systemic, a covered company could have an NSFR below 1.0 (for example, a covered company's NSFR might temporarily fall below 1.0 during a period of extreme liquidity stress), the proposed rule would not prescribe a particular supervisory response to address a violation of the NSFR requirement. Instead, the proposed rule would provide flexibility for the appropriate Federal banking agency to respond based on the circumstances of a particular case. Potential supervisory responses could include, for example, an informal supervisory action, a cease-and-desist order, or a civil money penalty.

The proposed rule would require a covered company to notify its appropriate Federal banking agency of an NSFR shortfall or potential shortfall. Specifically, a covered company would be required to notify its appropriate Federal banking agency no later than 10 business days, or such other period as the appropriate Federal banking agency may otherwise require by written notice, following the date that any event has occurred that has caused or would cause the covered company's NSFR to fall below the minimum requirement.

In addition, a covered company would be required to develop a plan for remediation in the event of an NSFR shortfall. The proposed rule would require a covered company to submit its remediation plan to its appropriate Federal banking agency no later than 10 business days, or such other period as the appropriate Federal banking agency may otherwise require by written notice, after: (1) The covered company's NSFR falls below, or is likely to fall below, the minimum requirement and the covered company has or should have notified the appropriate Federal banking agency, as required under the proposed rule; (2) the covered company's required NSFR disclosures or other regulatory reports or disclosures indicate that its NSFR is below the minimum requirement; or (3) the appropriate Federal banking agency notifies the covered company that it must submit a plan for NSFR remediation and the agency provides a reason for requiring such a plan. As set forth in § ____.110(b)(2), such a plan would be required to include an assessment of the covered company's liquidity profile, the actions the covered company has taken and will take to achieve full compliance with the proposed rule (including a plan for adjusting the covered company's liquidity profile to comply with the proposed rule's NSFR requirement and a plan for fixing any operational or management issues that may have contributed to the covered company's noncompliance), and an estimated time frame for achieving compliance.

Moreover, the covered company would be required to report to the appropriate Federal banking agency no less than monthly (or other frequency, as required by the agency) on its progress towards achieving full compliance with the proposed rule. These reports would be mandatory until the firm's NSFR is equal to or greater than 1.0.

Supervisors would retain the authority to take supervisory action against a covered company that fails to comply with the NSFR requirement.[91] Any action taken would depend on the circumstances surrounding the funding shortfall, including, but not limited to operational issues at a covered company, the frequency or magnitude of the noncompliance, the nature of the event that caused a shortfall, and whether such an event was temporary or unusual.

The proposed rule's framework would be similar to the shortfall framework in the LCR rule, which does not prescribe a particular supervisory response to address an LCR shortfall, and provides flexibility for the appropriate Federal banking agency to respond based on the circumstances of a particular case.

Question 51: Is the proposed NSFR shortfall supervisory procedure appropriate to address instances when a covered company is out of compliance with the proposed NSFR requirement? Why or why not? If not, please provide justifications supporting that view as well as procedures that may be more appropriate.

Question 52: The agencies invite comment on all aspects of the proposed NSFR shortfall supervisory procedures. Should a de minimis exception to an NSFR shortfall be implemented, such that a covered company would not need to report such a shortfall, provided its NSFR returns to the required minimum within a short grace period? If so, what de minimis amount would be appropriate and why? What duration of grace period would be appropriate and why?

Question 53: What amount of time would be most appropriate for a covered company that is noncompliant with the NSFR requirement to prepare a plan for working towards compliance? The proposed rule provides 10 business days (or such other period as the appropriate Federal banking agency may require), but would a longer period, such as 20 business days, be more appropriate and, if so, why?

IV. Modified Net Stable Funding Ratio Applicable to Certain Covered Depository Institution Holding Companies

A. Overview and Applicability

The Board is proposing a modified NSFR requirement that would be tailored for modified NSFR holding companies and would be less stringent than the proposed NSFR requirement that would apply to covered companies. A modified NSFR holding company would be required to maintain a lower minimum amount of stable funding, equivalent to 70 percent of the amount that would be required for a covered company. As discussed in section I.A of this Supplementary Information section, a modified NSFR holding company would be a bank holding company or savings and loan holding company without significant insurance or commercial operations that, in either case, has $50 billion or more, but less than $250 billion, in total consolidated assets and less than $10 billion in total on-balance sheet foreign exposure.[92]

Modified NSFR holding companies are large financial companies, and many have sizable operations in banking, brokerage, or other financial activities. Compared to covered companies, however, they are smaller in size and

[91] *See also* the discussion of the agencies' reservation of authority in section I.C.2 of the Supplementary Information section.

[92] The proposed modified NSFR requirement would not apply to: (i) A grandfathered unitary savings and loan holding company (as described in section 10(c)(9)(A) of the Home Owners' Loan Act, 12 U.S.C. 1467a(c)(9)(A)) that derives 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k)); (ii) a top-tier bank holding company or savings and loan holding company that is an insurance underwriting company; or (iii) a top-tier bank holding company or savings and loan holding company that has 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies. For purposes of (iii), the company must calculate its total consolidated assets in accordance with GAAP or estimate its total consolidated assets, subject to review and adjustment by the Board.

generally less complex in structure, less interconnected with other financial companies, and less reliant on riskier forms of funding. Their activities tend to be more limited in scope and they tend to have fewer international activities. Modified NSFR holding companies also tend to have simpler balance sheets, which, in the event of disruptions to a company's regular sources of funding, better enables the company's management and its supervisors to identify risks and take corrective actions more quickly, as compared to covered companies. For many of these same reasons, modified NSFR holding companies also would likely not present as great a risk to U.S. financial stability as covered companies.

Nevertheless, modified NSFR holding companies do face more complex liquidity risk management challenges than smaller banking organizations and are important providers of credit in the U.S. economy. The failure or distress of one or more modified NSFR holding companies could still pose risks to U.S. financial stability, though to a lesser degree than the failure or distress of one or more covered companies. Therefore, the Board is proposing a minimum stable funding requirement for modified NSFR holding companies that would not be as stringent as the proposed NSFR requirement that would apply to covered companies.

A modified NSFR holding company that becomes subject to the proposed rule pursuant to § 249.1(b)(v) after the effective date would be required to comply with the proposed modified NSFR requirement one year after the date it meets the applicable thresholds. This one-year transition period would provide newly subject modified NSFR holding companies sufficient time to adjust to the requirements of the proposal.

Other than the lower RSF amount requirement and longer transition period, the proposed modified NSFR requirement would be identical to the proposed NSFR requirement for covered companies. Modified NSFR holding companies would also be subject to the public disclosure requirements under §§ ____.130 and ____.131 of the proposed rule, described in section V of this **SUPPLEMENTARY INFORMATION** section.

B. Available Stable Funding

A modified NSFR holding company would calculate its ASF amount in the same manner as a covered company, pursuant to § ____.103 of the proposed rule. The ASF amount would comprise the equity and liabilities held by a modified NSFR holding company multiplied by the same standardized ASF factors as those that would be used by a covered company to determine the expected stability of its funding over a one-year time horizon. These ASF factors would be applicable to modified NSFR holding companies because they represent the proportionate amount of NSFR equity and liabilities that can be considered stable funding available to support assets, derivative exposures, and commitments.

C. Required Stable Funding

A modified NSFR holding company would calculate its RSF amount in the same manner as a covered company, pursuant to § ____.105 of the proposed rule, except that a modified NSFR holding company would multiply its RSF amount by 70 percent. As discussed above, the modified NSFR requirement would not require these firms to maintain as high an amount of stable funding as covered companies, based on the different risks of these firms.

Question 54: What, if any, modifications to the modified NSFR requirement should the Board consider? Is the proposed 70 percent of the RSF amount appropriate for the modified NSFR holding companies based on their relative complexity and size? Please provide justification and supporting data.

Question 55: What operational burdens would modified NSFR holding companies face in complying with the proposed modified NSFR requirement?

Question 56: Should the rules for consolidation under § ____.108 of the proposed rule be limited to covered companies, rather than applying to both covered companies and modified NSFR holding companies, and, if so, why?

V. Disclosure Requirements

A. Proposed NSFR Disclosure Requirements

The disclosure requirements of the proposed rule would apply to covered companies that are bank holding companies and savings and loan holding companies and to modified NSFR holding companies. The disclosure requirements of the proposed rule would not apply to depository institutions that are subject to the proposed rule.[93]

The proposed rule would require public disclosures of a company's NSFR and the components of its NSFR in a standardized tabular format (NSFR disclosure template). The proposed rule would also require sufficient discussion of certain qualitative features of a company's NSFR and its components to facilitate an understanding of the company's calculation and results. The NSFR disclosure template is similar to the common disclosure template published by the BCBS as part of the Basel III Disclosure Standards (BCBS common template). The proposed rule would require a company to provide timely public disclosures each calendar quarter of the information in the NSFR disclosure template and the qualitative disclosures in a direct and prominent manner on its public internet site or in a public financial report or other public regulatory report. Such disclosures would need to remain publicly available for at least five years after the date of the disclosure.

In order to reduce compliance costs and provide relevant information to the public about the funding profile of a company, the proposed rule's quantitative disclosures would reflect data that a company would be required to calculate in order to comply with the proposed rule.

Question 57: The agencies invite comment on all aspects of the disclosure requirements of the proposed rule. Specifically, what changes, if any, could improve the clarity and utility of the disclosures?

B. Quantitative Disclosure Requirements

The proposed rule would require a company subject to the proposed disclosure requirements to publicly disclose the company's NSFR and its components. By using a standardized tabular format that is similar to the BCBS common template, the NSFR disclosure template would enable market participants to compare funding characteristics of covered companies in the United States and other banking organizations subject to similar stable funding requirements in other jurisdictions. However, the disclosure requirements of the proposed rule and the accompanying NSFR disclosure template also reflect differences between the proposed rule and the Basel III NSFR, as discussed below.

The NSFR disclosure template would include components of a company's ASF and RSF calculations (ASF components and RSF components, respectively), as well as the company's ASF amount, RSF amount, and NSFR. For most ASF and RSF components, the proposed rule would require disclosure of both ''unweighted'' and ''weighted'' amounts. The ''unweighted'' amount

[93] In the future, the agencies may develop a different or modified reporting form that would be required for both depository institutions and depository institution holding companies subject to the proposed rule. The agencies anticipate that they would solicit public comment on any such new reporting form.

generally refers to values of ASF or RSF components prior to applying the ASF or RSF factors assigned under §§ ____.104, ____.106, or ____.107, as applicable, whereas the ''weighted'' amount generally refers to the amounts resulting after applying the ASF or RSF factors. For certain line items in the proposed NSFR disclosure template relating to derivative transactions that include components of multi-step calculations before an ASF or RSF factor is applied, as described in section II.E of this Supplementary Information section, a company would only be required to disclose a single amount for the component.

For most ASF or RSF components, the proposed NSFR disclosure template would require the unweighted amount to be separated based on maturity categories relevant to the NSFR requirement: Open maturity; less than six months after the calculation date; six months or more, but less than one year after the calculation date; one year or more after the calculation date; and perpetual. For purposes of comparability of disclosures across jurisdictions, while the BCBS common template does not distinguish between the ''open'' and ''perpetual'' maturity categories (grouping them together under the heading ''no maturity''), the proposed rule would require a company to disclose amounts in those two maturity categories separately because the categories are on opposite ends of the maturity spectrum for purposes of the proposed rule. As noted in section II.B of this **SUPPLEMENTARY INFORMATION** section, the ''open'' maturity category is meant to capture instruments that do not have a stated contractual maturity and may be closed out on demand, such as demand deposits. The ''perpetual'' category is intended to capture instruments that contractually never mature and may not be closed out on demand, such as equity securities. Separating these two categories into two disclosure columns improves the transparency and quality of the disclosure without undermining the ability to compare the NSFR component disclosures of banking organizations in other jurisdictions that utilize the BCBS common template, because these two columns can be summed for comparison purposes. For certain ASF and RSF components that represent calculations that do not depend on maturities, such as the NSFR derivatives asset or liability amount, the proposed NSFR disclosure template would not require a company to separate its disclosed amount by maturity category.

As described further below, the proposed rule identifies the ASF and RSF components that a company must include in each row of the proposed NSFR disclosure template, including cross-references to the relevant sections of the proposed rule. The numbered rows of the proposed NSFR disclosure template do not always map on a one-to-one basis with provisions of the proposed rule relating to the calculation of a company's NSFR. In some cases, the proposed NSFR disclosure template requires instruments that are assigned identical ASF or RSF factors to be disclosed in different rows or columns, and some rows and columns combine disclosure of instruments that are assigned different ASF or RSF factors. For example, the proposed NSFR disclosure template includes all level 1 liquid assets in a single row, even though the proposed rule would assign a zero percent, 5 percent, or higher RSF factor to various level 1 liquid assets under § ____.106(a)(1) (such as Reserve Bank balances), § ____.106(a)(2) (such as unencumbered U.S. Treasury securities), or § _____. 106(c) (if the level 1 liquid asset is encumbered), respectively.[94]

For consistency, the proposed NSFR disclosure template would require a company to clearly indicate the as-of date for disclosed amounts and report all amounts on a consolidated basis and expressed in millions of U.S. dollars or as a percentage, as applicable.

Question 58: What, if any, unintended consequences might result from publicly disclosing a company's NSFR and its components, particularly in terms of liquidity risk? What modifications should be made to the proposed disclosure requirements to address any unintended consequences?

1. Disclosure of ASF Components

The proposed rule would require a company to disclose its ASF components, separated into the following categories: (1) Capital and securities, which includes NSFR regulatory capital elements and other capital elements and securities; (2) retail funding, which includes stable retail deposits, less stable retail deposits, retail brokered deposits, and other retail funding; (3) wholesale funding, which includes operational deposits and other wholesale funding; and (4) other liabilities, which include the company's NSFR derivatives liability amount and any other liabilities not included in other categories.

The proposed NSFR disclosure template would differ from the BCBS common template by including some additional ASF categories that are not separately broken out under the Basel III NSFR, such as retail brokered deposits. The proposed template would also provide market participants with additional information relevant to understanding a company's liquidity profile, such as the total derivatives liabilities amount (a component of the NSFR derivatives liabilities amount). These differences from the BCBS common template would provide greater public transparency without reducing comparability across jurisdictions, since the broken-out line items could simply be added back together to produce a comparable total and the extra line items can simply be ignored.

2. Disclosure of RSF Components

The proposed disclosure requirements would require a company to disclose its RSF components, separated into the following categories: (1) Total HQLA and each of its component asset categories (*i.e.,* level 1, level 2A, and level 2B liquid assets); (2) assets other than HQLA that are assigned a zero percent RSF factor; (3) operational deposits; (4) loans and securities, separated into categories including retail mortgages and securities that are not HQLA; (5) other assets, which include commodities, certain components of the company's derivatives RSF amount, and all other assets not included in another category (including nonperforming assets);[95] and (6) undrawn amounts of committed credit and liquidity facilities.

Similar to the proposed disclosure format with respect to ASF components, the proposed NSFR disclosure template would differ in some respects from the BCBS common template to provide more granular information regarding RSF components without undermining comparability across jurisdictions. For example, the proposed rule would require disclosure of a company's level 1, level 2A, and level 2B liquid assets by maturity category, which is not required by the BCBS common template, to assist market participants and other parties in assessing the composition of a company's HQLA.[96] Additionally, because some assets that would be assigned a zero percent RSF factor are not included as HQLA under the LCR rule, such as ''currency and coin'' and certain ''trade date

[94] *See* discussion in sections II.D.3.a.i, II.D.3.a.ii, and II.D.3.c of this **SUPPLEMENTARY INFORMATION** section.

[95] A company would be required to disclose nonperforming assets as part of the line item for other assets and nonperforming assets, rather than as part of a line item based on the type of asset that has become nonperforming.

[96] *See* § ____.20 of the LCR rule.

receivables,'' the proposed template includes a distinct category for ''zero percent RSF assets that are not level 1 liquid assets'' that the BCBS common template does not include. The proposed NSFR disclosure template also differs from the BCBS common template in its presentation of the components of a company's derivatives RSF amount, generally to improve the clarity of disclosure by separating components into distinct rows and by including the total derivatives asset amount so that market participants can better understand a company's NSFR derivatives calculation.

As discussed in sections II.D.3.c and d of this **SUPPLEMENTARY INFORMATION** section, the proposed rule would assign RSF factors to encumbered assets under § ____.106(c) and (d). A company would be required to include encumbered assets in a cell of the NSFR disclosure template based on the asset category and asset maturity rather than based on the encumbrance period. For example, a level 2A liquid asset that matures in one year or more that is encumbered for a remaining period of nine months would be included in the level 2A liquid asset row and maturity of one year or more column, along with other level 2A liquid assets that have a similar maturity. This location in the NSFR disclosure template would not change the RSF factor assigned to the asset. In the preceding example, therefore, the covered company's weighted amount for the row would reflect an RSF factor of 50 percent assigned to the encumbered level 2A liquid asset. Similar treatment would apply for an asset provided or received by a company as variation margin to which an RSF factor is assigned under § ____.107. Disclosure by asset category and maturity would provide market participants a better understanding of the actual assets of a company rather than having rows that combine asset categories.

C. Qualitative Disclosure Requirements

A covered company subject to the proposed disclosure requirements would be required to provide a qualitative discussion of the company's NSFR and its components sufficient to facilitate an understanding of the calculation and results. This qualitative discussion would supplement the quantitative information disclosures in a company's NSFR disclosure template described above and would enable market participants and other parties to better understand a company's NSFR and its components. The proposed rule would not prescribe the content or format of a company's qualitative disclosures; rather, it would allow flexibility for discussion based on each company's particular circumstances. The proposed rule would, however, provide guidance through examples of topics that a company may discuss. These examples include (1) the main drivers of the company's NSFR; (2) changes in the company's NSFR over time and the causes of such changes (for example, changes in strategies or circumstances); (3) concentrations of funding sources and changes in funding structure; (4) concentrations of available and required stable funding within a covered company's corporate structure (for example, across legal entities); and (5) other sources of funding or other factors in the NSFR calculation that the company considers to be relevant to facilitate an understanding of its liquidity profile.

The Board recently proposed disclosure requirements under the LCR rule, which also include a qualitative disclosure section.[97] Given that the proposed rule and the LCR rule would be complementary quantitative liquidity requirements, a company subject to both disclosure requirements would be permitted to combine the two qualitative disclosures, as long as the specific qualitative disclosure requirements of each are satisfied by such a combined qualitative disclosure section.

D. Frequency and Timing of Disclosure

The proposed rule would require a company to provide timely public disclosures after each calendar quarter. Disclosure on a quarterly basis would provide market participants and other parties with information to help assess the liquidity risk profiles of companies making the disclosures, while reducing compliance costs that could result from more frequent public disclosure. A quarterly disclosure period would alleviate burden by aligning with the frequency of periodic public disclosures in other contexts, such as those required under Federal securities laws and regulations.

The purpose of the proposed rule's public disclosure requirements would be to provide market participants and the public with periodic information regarding a company's funding structure, rather than real-time information or event-driven disclosures regarding a company's liquidity profile. The agencies will have access to other sources of information to enable ongoing monitoring of companies' liquidity risk profiles and compliance with the proposed rule.

The proposed rule would recognize that the timing of disclosures required under the Federal banking laws may not always coincide with the timing of disclosures required under other Federal laws, including disclosures required under the Federal securities laws. For calendar quarters that do not correspond to a company's fiscal year or quarter end, the agencies would consider those disclosures that are made within 45 days of the end of the calendar quarter (or within 60 days for the limited purpose of the company's first reporting period in which it is subject to the proposed rule's disclosure requirements) as timely. In general, where a company's fiscal year end coincides with the end of a calendar quarter, the agencies consider disclosures to be timely if they are made no later than the applicable SEC disclosure deadline for the corresponding Form 10–K annual report. In cases where a company's fiscal year end does not coincide with the end of a calendar quarter, the agencies would consider the timeliness of disclosures on a case-by-case basis.

This approach to timely disclosures is consistent with the approach to public disclosures that the agencies have taken in the context of other regulatory reporting and disclosure requirements. For example, the agencies have used the same indicia of timeliness with respect to public disclosures required under the agencies' risk-based capital rules and proposed under the LCR rule.[98]

As noted above, a company must publicly disclose, in a direct and prominent manner, the information required by the proposed rule on its public internet site or in its public financial or other public regulatory reports. The agencies are not proposing specific criteria for what it means for a disclosure to be ''direct and prominent,'' but the agencies expect that the disclosures should be readily accessible to the general public for a period of at least five years after the disclosure date.

The first reporting period for which a company would be required to disclose the company's NSFR and its components is the calendar quarter that begins on the date the company becomes subject to the proposed NSFR requirement. For example, a company that becomes subject to the proposed NSFR requirement on January 1, 2018, would be required to commence providing the public disclosures for the calendar quarter that ends on March 31,

[97] ''Liquidity Coverage Ratio: Public Disclosure Requirements; Extension of Compliance Period for Certain Companies to Meet the Liquidity Coverage Ratio Requirements,'' 80 FR 75010 (December 1, 2015).

[98] *See* 78 FR 62018, 62129 (October 11, 2013); 80 FR 75010, 75013 (December 1, 2015).

2018. Its disclosures for this period would then be required to remain publicly available until at least March 31, 2023.

Question 59: Under what circumstances, if any, should the agencies require more frequent or less frequent public disclosures of a company's NSFR and its components? What benefits or negative effects may result if, in addition to required quarterly public disclosures, the agencies require a company to publicly disclose qualitative or quantitative information about the company's NSFR or its components with 30 days' prior written notice within a calendar quarter?

Question 60: Should the agencies issue any guidance regarding the term ''direct and prominent?'' If so, what factors should be included in such guidance?

VI. Impact Assessment

The agencies assessed the potential impact of the proposed rule [99] and, based on available information, expect the benefits to exceed the costs.[100] As discussed in section I of this **SUPPLEMENTARY INFORMATION** section, the proposed rule is designed to reduce the likelihood that disruptions to a covered company or modified NSFR holding company's regular sources of funding will compromise its liquidity position, as well as to promote improvements in the measurement and management of liquidity risk. By requiring covered companies and modified NSFR holding companies to maintain stable funding profiles, the proposed rule is intended to reduce liquidity risk in the financial sector and provide for a safer and more resilient financial system.

The potential costs considered by the agencies include the extent to which covered companies and modified NSFR holding companies would currently fall short of the proposed NSFR requirement and any costs associated with balance-sheet adjustments that would be necessary to come into compliance or future balance-sheet adjustments to maintain compliance in the future; [101] ongoing operational and administrative costs related to the proposed rule's calculation, disclosure, and shortfall notification requirements; possible costs to customers in the form of increased borrowing costs; and the possibility of reduced financial intermediation or economic output in the United States.

The potential benefits considered include a reduction in the likelihood, relative to a banking system without an NSFR requirement, that a covered company or modified NSFR holding company would fail or experience material financial distress; the reduced likelihood of a financial crisis occurring and the reduced severity of a financial crisis if one were to occur; and the improved transparency and improved market discipline due to the proposed rule's public disclosure requirements.

A. Analysis of Potential Costs

The agencies considered the extent to which any covered companies or modified NSFR holding companies would fall short of the proposed NSFR requirement or modified NSFR requirement, respectively, if they were currently in effect and would need to make balance-sheet adjustments, such as reducing short-term funding or increasing holdings of liquid assets, in order to come into compliance.

To estimate shortfall amounts, the agencies calculated ASF and RSF amounts at the consolidated level for depository institution holding companies that would be subject to the NSFR requirement or modified NSFR requirement. These estimates were based on information submitted by certain depository institution holding companies for inclusion in the most recent Basel III Quantitative Impact Study (QIS), as well as other available information, including data collected on the FR 2052a report and publicly available data.[102] In addition, for covered companies and modified NSFR holding companies that did not submit data through the QIS process, the estimates were based on information collected on Federal Reserve forms FR Y–9C and FR 2052b, as well as other supervisory data.

As of December 2015, 15 depository institution holding companies would be covered companies under the proposed rule and 20 depository institution holding companies would be modified NSFR holding companies. Using the approach described above, the agencies estimate that nearly all of these companies would be in compliance with the proposed NSFR or modified NSFR requirement if those requirements were in effect today. In the aggregate, the agencies estimate that covered companies and modified NSFR holding companies would face a shortfall of approximately $39 billion, equivalent to 0.5 percent of the aggregate RSF amount that would apply across all firms. For the limited number of firms that would have a shortfall, the $39 billion shortfall would be equivalent to 4.3 percent of their total RSF amount.

Because nearly all covered companies and modified NSFR holding companies are estimated to be in compliance with the proposed NSFR requirement and modified NSFR requirement, respectively, and because the aggregated ASF shortfall amount is estimated to be small relative to the aggregate size of these companies, the agencies do not expect most companies to incur significant costs in connection with making changes to their funding structures, assets, commitments, or derivative exposures to comply with the proposed NSFR requirement.[103] If the companies with a shortfall elect to eliminate it by replacing liabilities that are assigned a lower ASF factor with liabilities that are assigned a higher ASF factor, they would likely incur a greater interest expense. If all companies with a shortfall were to take this approach, the agencies currently estimate an increase in those companies' interest expense of approximately $519 million per year.[104] This $519 million increase

[99] As discussed in section XI of this **SUPPLEMENTARY INFORMATION** section, the OCC also analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532).

[100] The BCBS recently published a review of the literature on the costs and benefits of liquidity regulation and found that existing literature, although limited given that many liquidity requirements are relatively new, supports the view that the net social benefit of liquidity regulation is expected to be significantly positive. *See* Basel Committee on Banking Supervision, ''Literature review on integration of regulatory capital and liquidity instruments'' (March 2016), available at *https://www.bis.org/bcbs/publ/wp30.pdf* (BCBS literature review).

[101] Analysis of potential shortfalls focused on the consolidated level for covered companies that are depository institution holding companies and did not include separate shortfall analyses for covered companies that are depository institutions. *See infra* note 103. The OCC's impact analysis, discussed in section XI of this **SUPPLEMENTARY INFORMATION** section estimates the shortfall and costs for national banks and Federal savings associations.

[102] *See https://www.bis.org/bcbs/qis* for additional QIS information. Individual company submission data is confidential supervisory information. Shortfall analysis used QIS data as of June 30, 2015.

[103] The agencies expect similar results for covered companies that are depository institutions, given the lack of a shortfall at these companies' parent holding companies; the extent to which the consolidated assets, liabilities, commitments, and exposures of the parent holding companies are attributable to the depository institution subsidiary; and the greater focus of depository institutions on traditional banking activities such as deposit-taking that tend to result in a higher NSFR than a consolidated NSFR that may also include non-bank entities and activities, such as broker-dealer or derivatives business lines.

[104] This approximate cost is based on an estimated difference in relative interest expense between funding from financial sector entities that matures in 90 days or less (assigned a zero percent ASF factor) and unsecured debt that matures in 3 years (assigned a 100 percent ASF factor) of approximately 1.33 percent, based on rates as of

Continued

per year in interest expense is only 0.38 percent of the total net income of $138 billion for all covered companies and modified NSFR holding companies, as reported for calendar year 2015 on form FR Y–9C. However, for the companies with a shortfall, it is a materially higher percentage of their total net income for calendar year 2015.

In addition, it is possible that covered companies and modified NSFR holding companies could incur marginal costs in the future if they must make balance-sheet adjustments that they would not otherwise make in order to maintain compliance with the proposed rule. For example, a company subject to the proposed rule may fund expansion of its balance sheet with more equity or long-term debt than it otherwise would have. On the margin, such equity or long-term debt could be more expensive than alternative, less stable forms of funding, such as short-term wholesale funding. At the same time, however, a company subject to the proposed rule may have lower funding costs due to a more stable funding profile, which could offset some of the increased funding costs. Thus, the agencies do not expect covered companies and modified NSFR holding companies to incur significant costs in connection with balance-sheet adjustments to maintain compliance with the proposed requirements; however, these costs may increase depending on a variety of factors, including future differences between the rates on short- and long-term liabilities.

As noted above in this **SUPPLEMENTARY INFORMATION** section, operational and administrative compliance costs in connection with the proposed rule are expected to be relatively modest. Calculation and disclosure requirements under the proposed rule would be based largely on the carrying values, as determined under GAAP, of the assets, liabilities, and equity of covered companies and modified NSFR holding companies. As a result, in most cases these firms should be able to leverage existing management information systems to comply with the proposed rule's calculation and disclosure requirements. The agencies therefore expect any additional operational costs associated with ongoing compliance with the proposed rule to be relatively minor.

Because most covered companies and modified NSFR holding companies are not expected to incur significant costs in connection with balance-sheet adjustments to comply with the proposed requirements or manage operational compliance, the agencies do not expect the proposed rule to result in material costs being passed on to customers, for example in the form of higher interest rates or fees.[105] Similarly, the agencies do not expect covered companies or modified NSFR holding companies to materially alter their levels of lending as a result of the proposed rule. Accordingly, the agencies also do not expect the proposed rule to cause a material reduction in aggregate financial intermediation or economic output in the United States.

It is possible that the proposed rule could impose some macroeconomic costs. For example, it is possible that covered companies and modified NSFR holding companies could respond to the proposed requirements by ''hoarding'' liquidity to some degree rather than using it to relieve funding needs during a period of significant stress—possibly out of fear that dipping below a certain NSFR could project weakness to counterparties, investors, or market analysts. Incentives to hoard liquidity already exist in the market, even without the proposed requirement, as demonstrated by the hoarding of liquidity by financial firms during the 2007–2009 financial crisis.[106] Potential effects of the proposed rule on this dynamic are difficult to assess and quantify given the degree of uncertainty that exists during periods of significant stress, but there are factors that may mitigate or counter it. For example, existing market incentives to hoard liquidity may be lessened to some degree based on a covered company's or modified NSFR holding company's stronger funding position going into a period of significant stress based on compliance with the proposed rule.[107] The proposed rule's supervisory response framework is also designed to mitigate incentives that would cause firms to hoard liquidity; as discussed in section III of this **SUPPLEMENTARY INFORMATION** section, the proposed rule would provide flexibility for the appropriate Federal banking agency to respond based on the circumstances of a particular case—for example, if a covered company's NSFR were to fall below 1.0 based on the company's use of liquidity during a period of market stress.

B. Analysis of Potential Benefits

The proposed rule is designed to reduce the likelihood that disruptions to a covered company's or a modified NSFR holding company's regular sources of funding will compromise its liquidity position and lead to or exacerbate an idiosyncratic or systemic stress. For example, the proposed NSFR requirement would limit overreliance on short-term wholesale funding from financial sector entities (which would be assigned a low ASF factor) to fund holdings of illiquid assets (which would be assigned high RSF factors). The proposed rule's quantitative requirements are also designed to facilitate better management of liquidity risks beyond the LCR rule's 30-calendar day period, complementing the LCR rule and other aspects of the agencies' liquidity risk regulatory framework, and provide a consistent and comparable metric to measure funding stability across covered companies, modified NSFR holding companies, and other banking organizations subject to similar stable funding requirements in other jurisdictions.

To estimate the potential macroeconomic benefits of the proposed rule, the agencies considered the extent to which the proposed rule could reduce the likelihood or severity of a financial crisis. A BCBS study entitled, ''An Assessment of the Long-Term Economic Impact of Stronger Capital and Liquidity Requirements'' (the BCBS Economic Impact report) estimated that, prior to the regulatory reforms undertaken since 2009, the probability that a financial crisis could occur in a given year was between 3.5 percent and 5.2 percent and that the cumulative economic cost of any single crisis was between 20 percent and 100 percent of

March 31, 2016. $39 billion × 0.0133 = $519 million.

[105] The BCBS literature review reports that existing studies tend to show that, to the extent banking organizations incur costs in connection with liquidity requirements, these firms typically face market constraints on their ability to pass along these costs to customers in the form of higher lending charges. *See supra* note 100. The combination of these constraints and the fact that most covered companies and modified NSFR holding companies currently exceed the proposed rule's minimum stable funding requirement (meaning these companies in the aggregate are likely to face only relatively modest costs in connection with coming into compliance with the proposed NSFR requirement or modified NSFR requirement), suggest that the proposed rule should not result in significant costs being passed on to customers.

[106] *See* Markus Brunnermeier, ''Deciphering the Liquidity and Credit Crunch 2007–2008,'' 23 Journal of Economic Perspectives 77 (2009); Mark Carlson, ''Lessons from the Historical Use of Reserve Requirements in the United States to Promote Bank Liquidity,'' Board of Governors of the Federal Reserve System, Finance and Economics Discussion Series 2013–11 (2013).

[107] As discussed further below, a more resilient funding profile heading into a period of significant stress can alleviate pressure on a covered company or modified NSFR holding company to reduce credit availability in response to the stress. *See infra* note 111.

annual global economic output.[108] If the NSFR reduces the probability of a financial crisis even slightly, then the benefits of avoiding the costs of a crisis, specifically a decline in output, would outweigh the relatively modest aggregate cost of the rule.

As the 2007–2009 financial crisis demonstrated, unstable funding structures at major financial institutions can play a very large role in causing and deepening financial crises.[109] For example, a large banking organization that relies heavily on unstable funding may be forced to sell illiquid assets at fire sale prices to meet its current obligations, which could further contribute to the firm's liquidity deterioration, exacerbate fire sale conditions in the broader financial markets, and amplify stresses at other financial firms. Conversely, maintenance of a more resilient funding profile heading into a period of significant stress can lessen pressure on a covered company or modified NSFR holding company to sell illiquid assets or reduce credit availability in response to the stress.[110] The BCBS Economic Impact report estimated significant net benefits from the Basel III reforms, including the Basel III NSFR, in connection with reducing the likelihood and severity of financial crises.[111]

In addition, the proposed rule's public disclosure requirements are designed to improve transparency to the public and market participants regarding a covered company's or modified NSFR holding company's funding profile, including with respect to drivers of a company's liquidity risk. As discussed in section V.B of this **SUPPLEMENTARY INFORMATION** section, the proposed rule's use of a consistent, quantitative metric across covered companies and a standardized disclosure format should enable market participants to better assess and compare funding characteristics of covered companies in the United States and other banking organizations subject to similar stable funding requirements in other jurisdictions.

Question 61: The agencies invite comment on all aspects of the foregoing impact assessment associated with the proposed rule. What, if any, additional costs and benefits should be considered? Commenters are encouraged to submit data on potential shortfalls of covered companies or modified NSFR holding companies, as well as potential costs or benefits of the proposed rule that the agencies may not have considered.

VII. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), 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 this proposal 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 proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?*
- *Does the proposed rule contain language or jargon that is not clear? If so, which language requires clarification?*
- *Would a different format (e.g., grouping and order of sections, use of headings, paragraphing) make the proposed rule easier to understand? If so, what changes to the format would make the proposed rule easier to understand?*
- *What else could the agencies do to make the regulation easier to understand?*

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act[112] (RFA) requires an agency to either provide an initial regulatory flexibility analysis with a proposed rule for which general notice of proposed rulemaking is required or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banks with assets less than or equal to $550 million). In accordance with section 3(a) of the RFA, the Board is publishing an initial regulatory flexibility analysis with respect to the proposed rule. The OCC and FDIC are certifying that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Board

Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after comments received during the public comment period have been considered.

The proposed rule is intended to implement a quantitative liquidity requirement applicable for certain bank holding companies, savings and loan holding companies, and state member banks.

Under regulations issued by the Small Business Administration, a ''small entity'' includes firms within the ''Finance and Insurance'' sector with asset sizes that vary from $7.5 million or less in assets to $550 million or less in assets.[113] The Board believes that the Finance and Insurance sector constitutes a reasonable universe of firms for these purposes because such firms generally engage in activities that are financial in nature. Consequently, bank holding companies, savings and loan holding companies, and state member banks with asset sizes of $550 million or less are small entities for purposes of the RFA. As of December 31, 2015, there were approximately 606 small state member banks, 3,268 small bank holding companies, and 166 small savings and loan holding companies.

As discussed in section I.C.2 of this **SUPPLEMENTARY INFORMATION** section, the proposed rule would generally apply to Board-regulated institutions with: (i) Consolidated total assets equal to $250 billion or more; (ii) consolidated total on-balance sheet foreign exposure equal to $10 billion or more; or (iii) consolidated total assets equal to $10 billion or more if that Board-regulated institution is a consolidated subsidiary of a company described in (i) or (ii). The

[108] Basel Committee on Bank Supervision, ''An assessment of the long-term economic impact of stronger capital and liquidity requirements'' (August 2010), available at *http://www.bis.org/publ/bcbs173.pdf.*

[109] *See, e.g.,* Brunnermeier *supra* note 106; Gary Gorton and Andrew Metrick, ''Securitized Banking and the Run on Repo,'' National Bureau of Economic Research Working Paper 15223 (2009); and Marcin Kacperczyk and Philipp Schnabl, ''When Safe Proved Risky: Commercial Paper during the Financial Crisis of 2007–2009,'' 34 Journal of Economic Perspectives 29 (2010).

[110] The BCBS literature review discusses studies of lending by banking organizations in the United States and France during the 2007–2009 financial crisis, which showed that banking organizations with more stable funding profiles continued lending during the crisis to a greater degree than banking organizations that had weaker profiles. *See* BCBS literature review, *supra* note 100, pp. 26–27. *See also* Marcia Millon Cornett, Jamie John McNutt, Philip E. Strahan, and Hassan Tehranian, ''Liquidity Risk Management and Credit Supply in the Financial Crisis,'' 101 Journal of Financial Economics 297 (2011), and Pierre Pessarossi and Frédéric Vinas, ''The Supply of Long-Term Credit after a Funding Shock: Evidence from 2007–2009,'' Banque de France, Débat économiques et financiers (2014, updated 2015).

[111] *See* BCBS Economic Impact report. While the BCBS Economic Impact report was based on an earlier version of the Basel III NSFR, its conclusions are also consistent with the final version issued by the BCBS.

[112] 5 U.S.C. 601 *et seq.*

[113] 13 CFR 121.201.

Board is also proposing to implement a modified NSFR requirement for top-tier bank holding companies and savings and loan holding companies that have consolidated total assets of $50 billion or more, but less than $250 billion, and that have less than $10 billion of consolidated total on-balance sheet foreign exposure. Neither the proposed NSFR requirement nor the proposed modified NSFR requirement would apply to (i) a grandfathered unitary savings and loan holding company [114] that derives 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act; [115] (ii) a top-tier bank holding company or savings and loan holding company that is an insurance underwriting company; or (iii) a top-tier bank holding company or savings and loan holding company that has 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies.[116]

Companies that are subject to the proposed rule therefore substantially exceed the $550 million asset threshold at which a banking entity is considered a ''small entity'' under SBA regulations. Because the proposed rule, if adopted in final form, would not apply to any company with assets of $550 million or less, the proposed rule is not expected to apply to any small entity for purposes of the RFA. The Board does not believe that the proposed rule duplicates, overlaps, or conflicts with any other Federal rules. In light of the foregoing, the Board does not believe that the proposed rule, if adopted in final form, would have a significant economic impact on a substantial number of small entities supervised. Nonetheless, the Board seeks comment on whether the proposed rule would impose undue burdens on, or have unintended consequences for, small organizations, and whether there are ways such potential burdens or consequences could be minimized.

OCC

The RFA requires an agency to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banking entities with total assets of $550 million or less and trust companies with assets of $38.5 million or less).

As discussed previously in this **SUPPLEMENTARY INFORMATION** section, the proposed rule generally would apply to national banks and Federal savings associations with: (i) Consolidated total assets equal to $250 billion or more; (ii) consolidated total on-balance sheet foreign exposure equal to $10 billion or more; or (iii) consolidated total assets equal to $10 billion or more if a national bank or Federal savings association is a consolidated subsidiary of a company subject to the proposed rule. As of March 25, 2016, the OCC supervises 1,032 small entities. Since the proposed rule would only apply to institutions that have consolidated total assets or consolidated total on-balance sheet foreign exposure equal to $10 billion or more, the proposed rule would not have any impact on small banks and small Federal savings associations. Therefore, the proposed rule would not have a significant economic impact on a substantial number of small OCC-supervised entities.

The OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of small national banks and small Federal savings associations.

FDIC

The RFA requires an agency to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banking entities with total assets of $550 million or less).

As described in section I of this **SUPPLEMENTARY INFORMATION** section, the proposed rule would establish a quantitative liquidity standard for large and internationally active banking organizations with $250 billion or more in total assets or $10 billion or more of on-balance sheet foreign exposure and their consolidated subsidiary depository institutions with $10 billion or more in total consolidated assets. One FDIC-supervised institution satisfies the foregoing criteria, and it is not a small entity. As of December 31, 2015, based on a $550 million threshold, 2 (out of 3,262) small FDIC-supervised institutions were subsidiaries of a covered company. Therefore, the proposed rule will not have a significant economic impact on a substantial number of small entities under its supervisory jurisdiction.

The FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small FDIC-supervised institutions.

IX. Riegle Community Development and Regulatory Improvement Act of 1994

The Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, new regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally must 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.[117]

The agencies note that comment on these matters has been solicited in other sections of this **SUPPLEMENTARY INFORMATION** section, and that the requirements of RCDRIA will be considered as part of the overall rulemaking process. In addition, the agencies also invite any other comments that further will inform the agencies' consideration of RCDRIA.

X. Paperwork Reduction Act

Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies 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 OMB control number for the Board is 7100–0367 and will be extended, with revision. The information collection requirements contained in this proposed rulemaking have been submitted by the OCC and FDIC to OMB for review and approval under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section

[114] As described in section 10(c)(9)(A) of the Home Owners' Loan Act, 12 U.S.C. 1467a(c)(9)(A).

[115] 12 U.S.C. 1843(k).

[116] For purposes of (iii), the company must calculate its total consolidated assets in accordance with GAAP or estimate its total consolidated assets, subject to review and adjustment by the Board.

[117] 12 U.S.C. 4802.

1320.11 of the OMB's implementing regulations (5 CFR 1320). The OCC and FDIC are seeking a new control number. The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the 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 services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of this document. A copy of the comments may also be submitted to the OMB desk officer for the agencies: by mail to U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503; by facsimile to (202) 395–5806; or by email to: *oira_submission@omb.eop.gov*, Attention, Federal Banking Agency Desk Officer.

Proposed Information Collection

Title of Information Collection: Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements

Frequency of Response: Quarterly, monthly, and event generated.

Affected Public: Businesses or other for-profit.

Respondents:

FDIC: Insured state nonmember banks and state savings associations, insured state branches of foreign banks, and certain subsidiaries of these entities.

OCC: National banks, Federal savings associations, or, pursuant to 12 CFR 5.34(e)(3), an operating subsidiary thereof.

Board: Insured state member banks, bank holding companies, and savings and loan holding companies.

Abstract: The reporting requirements in the proposed rule are found in § ____.110, the recordkeeping requirements are found in §§ ____.108(b) and ____.110(b), and the disclosure requirements are found in §§ ____.130 and ____.131. The disclosure requirements are only for Board supervised entities.

Section ____.110 would require a covered company to take certain actions following any NSFR shortfall. A covered company would be required to notify its appropriate Federal banking agency of the shortfall no later than 10 business days (or such other period as the appropriate Federal banking agency may otherwise require by written notice) following the date that any event has occurred that would cause or has caused the covered company's NSFR to be less than 1.0. It must also submit to its appropriate Federal banking agency its plan for remediation of its NSFR to at least 1.0, and submit at least monthly reports on its progress to achieve compliance.

Section ____.108(b) provides that if an institution includes an ASF amount in excess of the RSF amount of the consolidated subsidiary, it must implement and maintain written procedures to identify and monitor applicable statutory, regulatory, contractual, supervisory, or other restrictions on transferring assets from the consolidated subsidiaries. These procedures must document which types of transactions the institution could use to transfer assets from a consolidated subsidiary to the institution and how these types of transactions comply with applicable statutory, regulatory, contractual, supervisory, or other restrictions. Section ____.110(b) requires preparation of a plan for remediation to achieve an NSFR of at least equal to 1.0, as required under § ____.100.

Section ____.130 requires that a depository institution holding company subject to the proposed NSFR or modified NSFR requirements publicly disclose its NSFR calculated on the last business day of each calendar quarter, in a direct and prominent manner on its public internet site or in its public financial or other public regulatory reports. These disclosures must remain publicly available for at least five years after the date of disclosure. Section ____.131 specifies the quantitative and qualitative disclosures required and provides the disclosure template to be used.

PRA Burden Estimates

Estimated average hour per response:

Reporting Burden:

§ ____.110(a)—0.25 hours.

§ ____.110(b)—0.50 hours.

Recordkeeping Burden:

§ ____.108(b)—20 hours.

§ ____.110(b)—100 hours.

Disclosure Burden (Board only):

§§ ____.130 and ____.131—24 hours.

OCC

Number of Respondents: 17 (17 for reporting requirements and § ____.40(b) and § ____.110(b) recordkeeping requirements; 17 for § ____.22(a)(2), § ____.22(a)(5), and § ____.108(b) recordkeeping requirements).

Total Estimated Annual Burden: 2,112 hours.

Board

Number of Respondents: 39 (3 for reporting requirements and § ____.40(b) and § ____.110(b) recordkeeping requirements; 39 for § ____.22(a)(2), § ____.22(a)(5), and § ____.108(b) recordkeeping requirements; 35 for disclosure requirements).

Current Total Estimated Annual Burden: 1,153 hours.

Proposed Total Estimated Annual Burden: 4,453 hours.

FDIC

Number of Respondents: 1 (1 for reporting requirements and § ____.40(b) and § ____.110(b) recordkeeping requirements; 1 for § ____.22(a)(2), § ____.22(a)(5), and § ____.108(b) recordkeeping requirements).

Total Estimated Annual Burden: 124.25 hours.

XI. OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation).

The OCC has determined this proposed rule is likely to result in the expenditure by the private sector of $100 million or more in any one year (adjusted annually for inflation). The OCC has prepared a budgetary impact analysis and identified and considered alternative approaches. When the proposed rule is published in the **Federal Register**, the full text of the OCC's analysis will be available at: *http://www.regulations.gov*, Docket ID OCC–2014–0029.

Text of Common Rule

(All agencies)

PART [INSERT PART]—LIQUIDITY RISK MEASUREMENT, STANDARDS, AND MONITORING

Subparts H, I, and J—Reserved

Subpart K—Net Stable Funding Ratio

§ ____.100 Net stable funding ratio.

(a) *Minimum net stable funding ratio requirement.* Beginning January 1, 2018, a [BANK] must maintain a net stable funding ratio that is equal to or greater than 1.0 on an ongoing basis in accordance with this subpart.

(b) *Calculation of the net stable funding ratio.* For purposes of this part, a [BANK]'s net stable funding ratio equals:

(1) The [BANK]'s ASF amount, calculated pursuant to § ____.103 of this part, as of the calculation date; *divided by*

(2) The [BANK]'s RSF amount, calculated pursuant to § ____.105 of this part, as of the calculation date.

§ ____.101 Determining maturity.

For purposes of calculating its net stable funding ratio, including its ASF amount and RSF amount, under subparts K through N, a [BANK] shall assume each of the following:

(a) With respect to any NSFR liability, the NSFR liability matures according to § ____.31(a)(1) of this part without regard to whether the NSFR liability is subject to § ____.32 of this part;

(b) With respect to an asset, the asset matures according to § ____.31(a)(2) of this part without regard to whether the asset is subject to § ____.33 of this part;

(c) With respect to an NSFR liability or asset that is perpetual, the NSFR liability or asset matures one year or more after the calculation date;

(d) With respect to an NSFR liability or asset that has an open maturity, the NSFR liability or asset matures on the first calendar day after the calculation date, except that in the case of a deferred tax liability, the NSFR liability matures on the first calendar day after the calculation date on which the deferred tax liability could be realized; and

(e) With respect to any principal payment of an NSFR liability or asset, such as an amortizing loan, that is due prior to the maturity of the NSFR liability or asset, the payment matures on the date on which it is contractually due.

§ ____.102 Rules of construction.

(a) *Balance-sheet metric.* Unless otherwise provided in this subpart, an NSFR regulatory capital element, NSFR liability, or asset that is not included on a [BANK]'s balance sheet is not assigned an RSF factor or ASF factor, as applicable; and an NSFR regulatory capital element, NSFR liability, or asset that is included on a [BANK]'s balance sheet is assigned an RSF factor or ASF factor, as applicable.

(b) *Netting of certain transactions.* Where a [BANK] has secured lending transactions, secured funding transactions, or asset exchanges with the same counterparty and has offset the gross value of receivables due from the counterparty under the transactions by the gross value of payables under the transactions due to the counterparty, the receivables or payables associated with the offsetting transactions that are not included on the [BANK]'s balance sheet are treated as if they were included on the [BANK]'s balance sheet with carrying values, unless the criteria in [§ ____.10(c)(4)(ii)(E)(*1*) through (*3*) of the AGENCY SUPPLEMENTARY LEVERAGE RATIO RULE] are met.

(c) *Treatment of Securities Received in an Asset Exchange by a Securities Lender.* Where a [BANK] receives a security in an asset exchange, acts as a securities lender, includes the carrying value of the security on its balance sheet, and has not rehypothecated the security received:

(1) The security received by the [BANK] is not assigned an RSF factor; and

(2) The obligation to return the security received by the [BANK] is not assigned an ASF factor.

§ ____.103 Calculation of available stable funding amount.

A [BANK]'s ASF amount equals the sum of the carrying values of the [BANK]'s NSFR regulatory capital elements and NSFR liabilities, in each case multiplied by the ASF factor applicable in § ____.104 or § ____.107(c) and consolidated in accordance with § ____.108.

§ ____.104 ASF factors.

(a) *NSFR regulatory capital elements and NSFR liabilities assigned a 100 percent ASF factor.* An NSFR regulatory capital element or NSFR liability of a [BANK] is assigned a 100 percent ASF factor if it is one of the following:

(1) An NSFR regulatory capital element; or

(2) An NSFR liability that has a maturity of one year or more from the calculation date, is not described in paragraph (e)(3) of this section, and is not a retail deposit or brokered deposit provided by a retail customer or counterparty.

(b) *NSFR liabilities assigned a 95 percent ASF factor.* An NSFR liability of a [BANK] is assigned a 95 percent ASF factor if it is a stable retail deposit (regardless of maturity or collateralization) held at the [BANK].

(c) *NSFR liabilities assigned a 90 percent ASF factor.* An NSFR liability of a [BANK] is assigned a 90 percent ASF factor if it is funding provided by a retail customer or counterparty that is:

(1) A retail deposit (regardless of maturity or collateralization) other than a stable retail deposit or brokered deposit;

(2) A reciprocal brokered deposit where the entire amount is covered by deposit insurance;

(3) A brokered sweep deposit that is deposited in accordance with a contract between the retail customer or counterparty and the [BANK], a controlled subsidiary of the [BANK], or a company that is a controlled subsidiary of the same top-tier company of which the [BANK] is a controlled subsidiary, where the entire amount of the deposit is covered by deposit insurance; or

(4) A brokered deposit that is not a reciprocal brokered deposit or a brokered sweep deposit, that is not held in a transactional account, and that matures one year or more from the calculation date.

(d) *NSFR liabilities assigned a 50 percent ASF factor.* An NSFR liability of a [BANK] is assigned a 50 percent ASF factor if it is one of the following:

(1) Unsecured wholesale funding that:

(i) Is not provided by a financial sector entity, a consolidated subsidiary of a financial sector entity, or a central bank;

(ii) Matures less than one year from the calculation date; and

(iii) Is not a security issued by the [BANK] or an operational deposit placed at the [BANK];

(2) A secured funding transaction with the following characteristics:

(i) The counterparty is not a financial sector entity, a consolidated subsidiary of a financial sector entity, or a central bank;

(ii) The secured funding transaction matures less than one year from the calculation date; and

(iii) The secured funding transaction is not a collateralized deposit that is an operational deposit placed at the [BANK];

(3) Unsecured wholesale funding that:

(i) Is provided by a financial sector entity, a consolidated subsidiary of a financial sector entity, or a central bank;

(ii) Matures six months or more, but less than one year, from the calculation date; and

(iii) Is not a security issued by the [BANK] or an operational deposit;

(4) A secured funding transaction with the following characteristics:

(i) The counterparty is a financial sector entity, a consolidated subsidiary of a financial sector entity, or a central bank;

(ii) The secured funding transaction matures six months or more, but less than one year, from the calculation date; and

(iii) The secured funding transaction is not a collateralized deposit that is an operational deposit;

(5) A security issued by the [BANK] that matures six months or more, but less than one year, from the calculation date;

(6) An operational deposit placed at the [BANK];

(7) A brokered deposit provided by a retail customer or counterparty that is not described in paragraphs (c) or (e)(2) of this section; or

(8) Any other NSFR liability that matures six months or more, but less than one year, from the calculation date and is not described in paragraphs (a) through (c), (d)(1) through (d)(7), or (e)(3) of this section.

(e) *NSFR liabilities assigned a zero percent ASF factor.* An NSFR liability of a [BANK] is assigned a zero percent ASF factor if it is one of the following:

(1) A trade date payable that results from a purchase by the [BANK] of a financial instrument, foreign currency, or commodity that is contractually required to settle within the lesser of the market standard settlement period for the particular transaction and five business days from the date of the sale;

(2) A brokered deposit provided by a retail customer or counterparty that is not a reciprocal brokered deposit or brokered sweep deposit, is not held in a transactional account, and matures less than six months from the calculation date;

(3) An NSFR liability owed to a retail customer or counterparty that is not a deposit and is not a security issued by the [BANK];

(4) A security issued by the [BANK] that matures less than six months from the calculation date; or

(5) An NSFR liability with the following characteristics:

(i) The counterparty is a financial sector entity, a consolidated subsidiary, or a central bank;

(ii) The NSFR liability matures less than six months from the calculation date or has an open maturity; and

(iii) The NSFR liability is not a security issued by the [BANK] or an operational deposit placed at the [BANK]; or

(6) Any other NSFR liability that matures less than six months from the calculation date and is not described in paragraphs (a) through (d) or (e)(1) through (5) of this section.

§ ____.105 Calculation of required stable funding amount.

A [BANK]'s RSF amount equals the sum of:

(a) The carrying values of a [BANK]'s assets (other than amounts included in the calculation of the derivatives RSF amount pursuant to § ____.107(b)) and the undrawn amounts of a [BANK]'s credit and liquidity facilities, in each case multiplied by the RSF factors applicable in § ____.106; and

(b) The [BANK]'s derivatives RSF amount calculated pursuant to § ____.107(b).

§ ____.106 RSF Factors.

(a) *Unencumbered assets and commitments.* All assets and undrawn amounts under credit and liquidity facilities, unless otherwise provided in § ____.107(b) relating to derivative transactions or paragraphs (b) through (d) of this section, are assigned RSF factors as follows:

(1) *Unencumbered assets assigned a zero percent RSF factor.* An asset of a [BANK] is assigned a zero percent RSF factor if it is one of the following:

(i) Currency and coin;

(ii) A cash item in the process of collection;

(iii) A Reserve Bank balance or other claim on a Reserve Bank that matures less than six months from the calculation date;

(iv) A claim on a foreign central bank that matures less than six months from the calculation date; or

(v) A trade date receivable due to the [BANK] resulting from the [BANK]'s sale of a financial instrument, foreign currency, or commodity that is required to settle within the lesser of the market standard settlement period, without extension, for the particular transaction and five business days from the date of the sale, and that has not failed to settle within the required settlement period.

(2) *Unencumbered assets and commitments assigned a 5 percent RSF factor.* An asset or undrawn amount under a credit or liquidity facility of a [BANK] is assigned a 5 percent RSF factor if it is one of the following:

(i) A level 1 liquid asset, other than a level 1 liquid asset described in paragraph (a)(1) of this section; or

(ii) The undrawn amount of any committed credit facility or committed liquidity facility extended by the [BANK]. For the purposes of this paragraph (a)(2)(ii), the undrawn amount of a committed credit facility or committed liquidity facility is the entire unused amount of the facility that could be drawn upon within one year of the calculation date under the governing agreement.

(3) *Unencumbered assets assigned a 10 percent RSF factor.* An asset of a [BANK] is assigned a 10 percent RSF factor if it is a secured lending transaction with the following characteristics:

(i) The secured lending transaction matures less than six months from the calculation date;

(ii) The secured lending transaction is secured by level 1 liquid assets;

(iii) The borrower is a financial sector entity or a consolidated subsidiary thereof; and

(iv) The [BANK] retains the right to rehypothecate the collateral provided by the counterparty for the duration of the secured lending transaction.

(4) *Unencumbered assets assigned a 15 percent RSF factor.* An asset of a [BANK] is assigned a 15 percent RSF factor if it is one of the following:

(i) A level 2A liquid asset; or

(ii) A secured lending transaction or unsecured wholesale lending with the following characteristics:

(A) The asset matures less than six months from the calculation date;

(B) The borrower is a financial sector entity or a consolidated subsidiary thereof; and

(C) The asset is not described in paragraph (a)(3) of this section and is not an operational deposit described in paragraph (a)(5)(iii) of this section.

(5) *Unencumbered assets assigned a 50 percent RSF factor.* An asset of a [BANK] is assigned a 50 percent RSF factor if it is one of the following:

(i) A level 2B liquid asset;

(ii) A secured lending transaction or unsecured wholesale lending with the following characteristics:

(A) The asset matures six months or more, but less than one year, from the calculation date;

(B) The borrower is a financial sector entity, a consolidated subsidiary thereof, or a central bank; and

(C) The asset is not an operational deposit described in paragraph (a)(5)(iii) of this section;

(iii) An operational deposit placed by the [BANK] at a financial sector entity or a consolidated subsidiary thereof;

(iv) A general obligation security issued by, or guaranteed as to the timely payment of principal and interest by, a public sector entity that is not described in paragraph (a)(5)(i); or

(v) An asset that is not described in paragraphs (a)(1) through (a)(4) or (a)(5)(i) through (a)(5)(iv) of this section

that matures less than one year from the calculation date, including:

(A) A secured lending transaction or unsecured wholesale lending where the borrower is a wholesale customer or counterparty that is not a financial sector entity, a consolidated subsidiary thereof, or a central bank; or

(B) Lending to a retail customer or counterparty.

(6) *Unencumbered assets assigned a 65 percent RSF factor.* An asset of a [BANK] is assigned a 65 percent RSF factor if it is one of the following:

(i) A retail mortgage that matures one year or more from the calculation date and is assigned a risk weight of no greater than 50 percent under subpart D of [AGENCY CAPITAL REGULATION]; or

(ii) A secured lending transaction, unsecured wholesale lending, or lending to a retail customer or counterparty with the following characteristics:

(A) The asset is not described in paragraphs (a)(1) through (a)(6)(i) of this section;

(B) The borrower is not a financial sector entity or a consolidated subsidiary thereof;

(C) The asset matures one year or more from the calculation date; and

(D) The asset is assigned a risk weight of no greater than 20 percent under subpart D of [AGENCY CAPITAL REGULATION].

(7) *Unencumbered assets assigned an 85 percent RSF factor.* An asset of a [BANK] is assigned an 85 percent RSF factor if it is one of the following:

(i) A retail mortgage that matures one year or more from the calculation date and is assigned a risk weight of greater than 50 percent under subpart D of [AGENCY CAPITAL REGULATION]; or

(ii) A secured lending transaction, unsecured wholesale lending, or lending to a retail customer or counterparty with the following characteristics:

(A) The asset is not described in paragraphs (a)(1) through (a)(7)(i) of this section;

(B) The borrower is not a financial sector entity or a consolidated subsidiary thereof;

(C) The asset matures one year or more from the calculation date; and

(D) The asset is assigned a risk weight of greater than 20 percent under subpart D of [AGENCY CAPITAL REGULATION];

(iii) A publicly traded common equity share that is not HQLA;

(iv) A security, other than a common equity share, that matures one year or more from the calculation date and is not HQLA; and

(v) A commodity for which derivative transactions are traded on a U.S. board of trade or trading facility designated as a contract market under sections 5 and 6 of the Commodity Exchange Act (7 U.S.C. 7 and 8) or on a U.S. swap execution facility registered under section 5h of the Commodity Exchange Act (7 U.S.C. 7b–3).

(8) *Unencumbered assets assigned a 100 percent RSF factor.* An asset of a [BANK] is assigned a 100 percent RSF factor if it is not described in paragraphs (a)(1) through (a)(7) of this section, including a secured lending transaction or unsecured wholesale lending where the borrower is a financial sector entity or a consolidated subsidiary thereof and that matures one year or more from the calculation date.

(b) *Nonperforming assets.* An RSF factor of 100 percent is assigned to any asset that is past due by more than 90 days or nonaccrual.

(c) *Encumbered assets.* An encumbered asset, unless otherwise provided in § ____.107(b) relating to derivative transactions, is assigned an RSF factor as follows:

(1)(i) *Encumbered assets with less than six months remaining in the encumbrance period.* For an encumbered asset with less than six months remaining in the encumbrance period, the same RSF factor is assigned to the asset as would be assigned if the asset were not encumbered.

(ii) *Encumbered assets with six months or more, but less than one year, remaining in the encumbrance period.* For an encumbered asset with six months or more, but less than one year, remaining in the encumbrance period:

(A) If the asset would be assigned an RSF factor of 50 percent or less under paragraphs (a)(1) through (a)(5) of this section if the asset were not encumbered, an RSF factor of 50 percent is assigned to the asset.

(B) If the asset would be assigned an RSF factor of greater than 50 percent under paragraphs (a)(6) through (a)(8) of this section if the asset were not encumbered, the same RSF factor is assigned to the asset as would be assigned if it were not encumbered.

(iii) *Encumbered assets with one year or more remaining in the encumbrance period.* For an encumbered asset with one year or more remaining in the encumbrance period, an RSF factor of 100 percent is assigned to the asset.

(2) If an asset is encumbered for an encumbrance period longer than the asset's maturity, the asset is assigned an RSF factor under paragraph (c)(1) of this section based on the length of the encumbrance period.

(3) *Segregated account assets.* An asset held in a segregated account maintained pursuant to statutory or regulatory requirements for the protection of customer assets is not considered encumbered for purposes of this paragraph solely because such asset is held in the segregated account.

(d) *Off-balance sheet rehypothecated assets.* For an NSFR liability of a [BANK] that is secured by an off-balance sheet asset or results from the [BANK] selling an off-balance sheet asset (for instance, in the case of a short sale):

(1) If the [BANK] received the off-balance sheet asset under a lending transaction, an RSF factor is assigned to the lending transaction as if it were encumbered for the longer of (A) the remaining maturity of the NSFR liability and (B) any other encumbrance period applicable to the lending transaction;

(2) If the [BANK] received the off-balance asset under an asset exchange, an RSF factor is assigned to the asset provided by the [BANK] in the asset exchange as if the provided asset were encumbered for the longer of (A) the remaining maturity of the NSFR liability and (B) any other encumbrance period applicable to the provided asset; or

(3) If the [BANK] did not receive the off-balance sheet asset under a lending transaction or asset exchange, the off-balance sheet asset is assigned an RSF factor as if it were included on the balance sheet of the [BANK] and encumbered for the longer of (A) the remaining maturity of the NSFR liability and (B) any other encumbrance period applicable to the off-balance sheet asset.

§ ____.107 Calculation of NSFR derivatives amounts.

(a) *General requirement.* A [BANK] must calculate its derivatives RSF amount and certain components of its ASF amount relating to the [BANK]'s derivative transactions (which includes cleared derivative transactions of a customer with respect to which the [BANK] is acting as agent for the customer that are included on the [BANK]'s balance sheet under GAAP) in accordance with this section.

(b) *Calculation of required stable funding amount relating to derivative transactions.* A [BANK]'s derivatives RSF amount equals the sum of:

(1) *Current derivative transaction values.* The [BANK]'s NSFR derivatives asset amount, as calculated under paragraph (d)(1) of this section, multiplied by an RSF factor of 100 percent;

(2) *Variation margin provided.* The carrying value of variation margin provided by the [BANK] under each derivative transaction not subject to a

qualifying master netting agreement and each QMNA netting set, to the extent the variation margin reduces the [BANK]'s derivatives liability value under the derivative transaction or QMNA netting set, as calculated under paragraph (f)(2) of this section, multiplied by an RSF factor of zero percent;

(3) *Excess variation margin provided.* The carrying value of variation margin provided by the [BANK] under each derivative transaction not subject to a qualifying master netting agreement and each QMNA netting set in excess of the amount described in section (b)(2) for each derivative transaction or QMNA netting set, multiplied by the RSF factor assigned to each asset comprising the variation margin pursuant to § ____.106;

(4) *Variation margin received.* The carrying value of variation margin received by the [BANK], multiplied by the RSF factor assigned to each asset comprising the variation margin pursuant to § ____.106;

(5) *Potential valuation changes.*

(i) An amount equal to 20 percent of the sum of the gross derivative values of the [BANK] that are liabilities, as calculated under paragraph (ii), for each of the [BANK]'s derivative transactions not subject to a qualifying master netting agreement and each of its QMNA netting sets, multiplied by an RSF factor of 100 percent;

(ii) For purposes of paragraph (i), the gross derivative value of a derivative transaction not subject to a qualifying master netting agreement or of a QMNA netting set is equal to the value to the [BANK], calculated as if no variation margin had been exchanged and no settlement payments had been made based on changes in the value of the derivative transaction or QMNA netting set.

(6) *Contributions to central counterparty mutualized loss sharing arrangements.* The fair value of a [BANK]'s contribution to a central counterparty's mutualized loss sharing arrangement (regardless of whether the contribution is included on the [BANK]'s balance sheet), multiplied by an RSF factor of 85 percent; and

(7) *Initial margin provided.* The fair value of initial margin provided by the [BANK] for derivative transactions (regardless of whether the initial margin is included on the [BANK]'s balance sheet), which does not include initial margin provided by the [BANK] for cleared derivative transactions with respect to which the [BANK] is acting as agent for a customer and the [BANK] does not guarantee the obligations of the customer's counterparty to the customer under the derivative transaction (such initial margin would be assigned an RSF factor pursuant to § ____.106 to the extent the initial margin is included on the [BANK]'s balance sheet), multiplied by an RSF factor equal to the higher of 85 percent or the RSF factor assigned to each asset comprising the initial margin pursuant to § ____.106.

(c) *Calculation of available stable funding amount relating to derivative transactions.* The following amounts of a [BANK] are assigned a zero percent ASF factor:

(1) The [BANK]'s NSFR derivatives liability amount, as calculated under paragraph (d)(2) of this section; and

(2) The carrying value of NSFR liabilities in the form of an obligation to return initial margin or variation margin received by the [BANK].

(d) *Calculation of NSFR derivatives asset or liability amount.*

(1) A [BANK]'s NSFR derivatives asset amount is the greater of:

(i) Zero; and

(ii) The [BANK]'s total derivatives asset amount, as calculated under paragraph (e)(1) of this section, less the [BANK]'s total derivatives liability amount, as calculated under paragraph (e)(2) of this section.

(2) A [BANK]'s NSFR derivatives liability amount is the greater of:

(i) Zero; and

(ii) The [BANK]'s total derivatives liability amount, as calculated under paragraph (e)(2) of this section, less the [BANK]'s total derivatives asset amount, as calculated under paragraph (e)(1) of this section.

(e) *Calculation of total derivatives asset and liability amounts.*

(1) A [BANK]'s total derivatives asset amount is the sum of the [BANK]'s derivatives asset values, as calculated under paragraph (f)(1) of this section, for each derivative transaction not subject to a qualifying master netting agreement and each QMNA netting set.

(2) A [BANK]'s total derivatives liability amount is the sum of the [BANK]'s derivatives liability values, as calculated under paragraph (f)(2) of this section, for each derivative transaction not subject to a qualifying master netting agreement and each QMNA netting set.

(f) *Calculation of derivatives asset and liability values.* For each derivative transaction not subject to a qualifying master netting agreement and each QMNA netting set:

(1) The derivatives asset value is equal to the asset value to the [BANK], after taking into account any variation margin received by the [BANK] that meets the conditions of [§ ____.10(c)(4)(ii)(C)(*1*) through (*7*) of the AGENCY SUPPLEMENTARY LEVERAGE RATIO RULE]; or

(2) The derivatives liability value is equal to the liability value to the [BANK], after taking into account any variation margin provided by the [BANK].

§ ____.108 Rules for consolidation.

(a) *Consolidated subsidiary available stable funding amount.* For available stable funding of a legal entity that is a consolidated subsidiary of a [BANK], including a consolidated subsidiary organized under the laws of a foreign jurisdiction, the [BANK] may include the available stable funding of the consolidated subsidiary in its ASF amount up to:

(1) The RSF amount of the consolidated subsidiary, as calculated by the [BANK] for the [BANK]'s net stable funding ratio under this part; *plus*

(2) Any amount in excess of the RSF amount of the consolidated subsidiary, as calculated by the [BANK] for the [BANK]'s net stable funding ratio under this part, to the extent the consolidated subsidiary may transfer assets to the top-tier [BANK], taking into account statutory, regulatory, contractual, or supervisory restrictions, such as sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 12 U.S.C. 371c–1) and Regulation W (12 CFR part 223).

(b) *Required consolidation procedures.* To the extent a [BANK] includes an ASF amount in excess of the RSF amount of the consolidated subsidiary, the [BANK] must implement and maintain written procedures to identify and monitor applicable statutory, regulatory, contractual, supervisory, or other restrictions on transferring assets from any of its consolidated subsidiaries. These procedures must document which types of transactions the [BANK] could use to transfer assets from a consolidated subsidiary to the [BANK] and how these types of transactions comply with applicable statutory, regulatory, contractual, supervisory, or other restrictions.

Subpart L—Net Stable Funding Shortfall

§ ____.110 NSFR shortfall: supervisory framework.

(a) *Notification requirements.* A [BANK] must notify the [AGENCY] no later than 10 business days, or such other period as the [AGENCY] may otherwise require by written notice, following the date that any event has occurred that would cause or has caused the [BANK]'s net stable funding ratio to

be less than 1.0 as required under § ____.100.

(b) *Liquidity Plan.* (1) A [BANK] must within 10 business days, or such other period as the [AGENCY] may otherwise require by written notice, provide to the [AGENCY] a plan for achieving a net stable funding ratio equal to or greater than 1.0 as required under § ____.100 if:

(i) The [BANK] has or should have provided notice, pursuant to § ____.110(a), that the [BANK]'s net stable funding ratio is, or will become, less than 1.0 as required under § ____.100;

(ii) The [BANK]'s reports or disclosures to the [AGENCY] indicate that the [BANK]'s net stable funding ratio is less than 1.0 as required under § ____.100; or

(iii) The [AGENCY] notifies the [BANK] in writing that a plan is required and provides a reason for requiring such a plan.

(2) The plan must include, as applicable:

(i) An assessment of the [BANK]'s liquidity profile;

(ii) The actions the [BANK] has taken and will take to achieve a net stable funding ratio equal to or greater than 1.0 as required under § ____.100, including:

(A) A plan for adjusting the [BANK]'s liquidity profile;

(B) A plan for remediating any operational or management issues that contributed to noncompliance with subpart K of this part; and

(iii) An estimated time frame for achieving full compliance with § ____.100.

(3) The [BANK] must report to the [AGENCY] at least monthly, or such other frequency as required by the [AGENCY], on progress to achieve full compliance with § ____. 100.

(c) *Supervisory and enforcement actions.* The [AGENCY] may, at its discretion, take additional supervisory or enforcement actions to address noncompliance with the minimum net stable funding ratio and other requirements of subparts K through N of this part (see also § ____.2(c)).

Subpart M—Reserved

Subpart N—NSFR Public Disclosure

§ ____.130 Timing, method, and retention of disclosures.

(a) *Applicability.* A covered depository institution holding company that is subject to the minimum stable funding requirement in § ____.100 of this part must publicly disclose the information required under this subpart.

(b) *Timing of disclosure.* A covered depository institution holding company must provide timely public disclosures each calendar quarter of all of the information required under this subpart, beginning when the covered depository institution holding company is first required to comply with the requirements of this part pursuant to § ____.100 and continuing thereafter.

(c) *Disclosure method.* A covered depository institution holding company must publicly disclose, in a direct and prominent manner, the information required under this subpart on its public internet site or in its public financial or other public regulatory reports.

(d) *Availability.* The disclosures provided under this subpart must remain publicly available for at least five years after the date of disclosure.

§ ____.131 Disclosure requirements.

(a) *General.* A covered depository institution holding company must publicly disclose the information required by this subpart in the format provided in Table 1 below.

(b) *Calculation of disclosed amounts.*

(1) General.

(i) A covered depository institution holding company must calculate its disclosed amounts:

(A) On a consolidated basis and presented in millions of U.S. dollars or as a decimal, as applicable; and

(B) As of the last business day of each calendar quarter.

(ii) A covered depository institution holding company must include the as-of date for the disclosed amounts.

(2) Calculation of unweighted amounts.

(i) For each component of a covered depository institution holding company's ASF amount calculation, other than the NSFR derivatives liability amount and total derivatives liability amount, the ''unweighted amount'' means the sum of the carrying values of the covered depository institution holding company's NSFR regulatory capital elements and NSFR liabilities, as applicable, determined before applying the appropriate ASF factors, and subdivided into the following maturity categories, as applicable: Open maturity; less than six months after the calculation date; six months or more, but less than one year, after the calculation date; one year or more after the calculation date; and perpetual.

(ii) For each component of a covered depository institution holding company's RSF amount calculation, other than amounts included in paragraphs (c)(2)(xvi) through (xix) of this section, the ''unweighted amount'' means the sum of the carrying values of the covered depository institution holding company's assets and undrawn amounts of committed credit facilities and committed liquidity facilities extended by the covered depository institution holding company, as applicable, determined before applying the appropriate RSF factors, and subdivided by maturity into the following maturity categories, as applicable: Open maturity; less than six months after the calculation date; six months or more, but less than one year, after the calculation date; one year or more after the calculation date; and perpetual.

(3) Calculation of weighted amounts.

(i) For each component of a covered depository institution holding company's ASF amount calculation, other than the NSFR derivatives liability amount and total derivatives liability amount, the ''weighted amount'' means the sum of the carrying values of the covered depository institution holding company's NSFR regulatory capital elements and NSFR liabilities, as applicable, multiplied by the appropriate ASF factors.

(ii) For each component of a covered depository institution holding company's RSF amount calculation, other than amounts included in paragraphs (c)(2)(xvi) through (xix) of this section, the ''weighted amount'' means the sum of the carrying values of the covered depository institution holding company's assets and undrawn amounts of committed credit facilities and committed liquidity facilities extended by the covered depository institution holding company, multiplied by the appropriate RSF factors.

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Table 1 to § __.131(a) – Disclosure Template

Quarter ended XX/XX/XXXX In millions of U.S. dollars		Unweighted Amount					Weighted Amount
		Open Maturity	< 6 months	6 months to < 1 year	≥ 1 year	Perpetual	
ASF ITEM							
1	Capital and securities:						
2	NSFR regulatory capital elements						
3	Other capital elements and securities						
4	Retail funding:						
5	Stable deposits						
6	Less stable deposits						
7	Retail brokered deposits						
8	Other retail funding						
9	Wholesale funding:						
10	Operational deposits						
11	Other wholesale funding						
	Other liabilities:						
12	NSFR derivatives liability amount						
13	Total derivatives liability amount						
14	All other liabilities not included in the above categories						
15	**TOTAL ASF**						
RSF ITEM							
16	Total high-quality liquid assets (HQLA)						
17	Level 1 liquid assets						
18	Level 2A liquid assets						
19	Level 2B liquid assets						
20	Zero percent RSF assets that are not level 1 liquid assets						
21	Operational deposits placed at financial sector entities or their consolidated subsidiaries						
22	Loans and securities:						

Quarter ended XX/XX/XXXX In millions of U.S. dollars		Unweighted Amount					Weighted Amount
		Open Maturity	< 6 months	6 months to < 1 year	≥ 1 year	Perpetual	
23	Loans to financial sector entities secured by level 1 liquid assets						
24	Loans to financial sector entities secured by assets other than level 1 liquid assets and unsecured loans to financial sector entities						
25	Loans to wholesale customers or counterparties that are not financial sector entities and loans to retail customers or counterparties						
26	Of which: With a risk weight no greater than 20 percent under [AGENCY CAPITAL REGULATION]						
27	Retail mortgages						
28	Of which: With a risk weight of no greater than 50 percent under [AGENCY CAPITAL REGULATION]						
29	Securities that do not qualify as HQLA						
	Other assets:						
30	Commodities						
31	Assets provided as initial margin for derivative transactions and contributions to CCPs' mutualized loss-sharing arrangements						

Quarter ended XX/XX/XXXX In millions of U.S. dollars		Unweighted Amount					Weighted Amount
		Open Maturity	< 6 months	6 months to < 1 year	≥ 1 year	Perpetual	
32	NSFR derivatives asset amount						
33	Total derivatives asset amount						
34	RSF for potential derivatives portfolio valuation changes						
35	All other assets not included in the above categories, including nonperforming assets						
36	Undrawn commitments						
37	**TOTAL RSF**						
38	**NET STABLE FUNDING RATIO**						

BILLING CODE C

(c) *Quantitative disclosures.* A covered depository institution holding company must disclose all of the information required under Table 1 to § ____.131(a)—Disclosure Template, including:

(1) Disclosures of ASF amount calculations:

(i) The sum of the weighted amounts and, for each applicable maturity category, the sum of the unweighted amounts of paragraphs (c)(1)(ii) and (iii) of this section (row 1);

(ii) The weighted amount and, for each applicable maturity category, the unweighted amount of NSFR regulatory capital elements described in § ____104(a)(1) (row 2);

(iii) The weighted amount and, for each applicable maturity category, the unweighted amount of securities described in §§ ____.104(a)(2), ____.104(d)(5), and ____.104(e)(4) (row 3);

(iv) The sum of the weighted amounts and, for each applicable maturity category, the sum of the unweighted amounts of paragraphs (c)(1)(v) through (viii) of this section (row 4);

(v) The weighted amount and, for each applicable maturity category, the unweighted amount of stable retail deposits held at the covered depository institution holding company described in § ____.104(b) (row 5);

(vi) The weighted amount and, for each applicable maturity category, the unweighted amount of retail deposits other than stable retail deposits or brokered deposits, described in § ____.104(c)(1) (row 6);

(vii) The weighted amount and, for each applicable maturity category, the unweighted amount of brokered deposits provided by a retail customer or counterparty described in §§ ____.104(c)(2), ____.104(c)(3), ____.104(c)(4), ____.104(d)(7), and ____.104(e)(2) (row 7);

(viii) The weighted amount and, for each applicable maturity category, the unweighted amount of other funding provided by a retail customer or counterparty described in § ____.104(e)(3) (row 8);

(ix) The sum of the weighted amounts and, for each applicable maturity category, the sum of the unweighted amounts of paragraphs (c)(1)(x) and (xi) of this section (row 9);

(x) The weighted amount and, for each applicable maturity category, the unweighted amount of operational deposits placed at the covered depository institution holding company described in § ____.104(d)(6) (row 10);

(xi) The weighted amount and, for each applicable maturity category, the unweighted amount of other wholesale funding described in §§ ____.104(a)(2), ____.104(d)(1), ____.104(d)(2), ____.104(d)(3), ____.104(d)(4), ____.104(d)(8), and ____.104(e)(5) (row 11);

(xii) In the ''unweighted'' cell, the NSFR derivatives liability amount described in § ____.107(d)(2) (row 12);

(xiii) In the ''unweighted'' cell, the total derivatives liability amount described in § ____.107(e)(2) (row 13);

(xiv) The weighted amount and, for each applicable maturity category, the unweighted amount of all other liabilities not included in amounts disclosed under paragraphs (c)(1)(i) through (xiii) of this section (row 14);

(xv) The ASF amount described in § ____.103 (row 15);

(2) Disclosures of RSF amount calculations, including to reflect any encumbrances under §§ ____.106(c) and ____.106(d):

(i) The sum of the weighted amounts and the sum of the unweighted amounts of paragraphs (c)(2)(ii) through (iv) of this section (row 16);

(ii) The weighted amount and, for each applicable maturity category, the unweighted amount of level 1 liquid assets described in §§ ____.106(a)(1) and ____.106(a)(2)(i) (row 17);

(iii) The weighted amount and, for each applicable maturity category, the unweighted amount of level 2A liquid assets described in § ____.106(a)(4)(i) (row 18);

(iv) The weighted amount and, for each applicable maturity category, the unweighted amount of level 2B liquid assets described in § ____.106(a)(5)(i) (row 19);

(v) The weighted amount and, for each applicable maturity category, the unweighted amount of assets described in § ____.106(a)(1), other than level 1 liquid assets included in amounts disclosed under paragraph (c)(2)(ii) of this section (row 20);

(vi) The weighted amount and, for each applicable maturity category, the unweighted amount of operational

deposits placed at financial sector entities or consolidated subsidiaries thereof described in § ____.106(a)(5)(iii) (row 21);

(vii) The sum of the weighted amounts and, for each applicable maturity category, the sum of the unweighted amounts of paragraphs (c)(2)(viii), (ix), (x), (xii), and (xiv) of this section (row 22);

(viii) The weighted amount and, for each applicable maturity category, the unweighted amount of secured lending transactions where the borrower is a financial sector entity or a consolidated subsidiary of a financial sector entity and the secured lending transaction is secured by level 1 liquid assets, described in §§ ____.106(a)(3), ____.106(a)(4)(ii), ____.106(a)(5)(ii), and ____.106(a)(8) (row 23);

(ix) The weighted amount and, for each applicable maturity category, the unweighted amount of secured lending transactions that are secured by assets other than level 1 liquid assets and unsecured wholesale lending, in each case where the borrower is a financial sector entity or a consolidated subsidiary of a financial sector entity, described in §§ ____.106(a)(4)(ii), ____.106(a)(5)(ii), and ____.106(a)(8) (row 24);

(x) The weighted amount and, for each applicable maturity category, the unweighted amount of secured lending transactions and unsecured wholesale lending to wholesale customers or counterparties that are not financial sector entities or consolidated subsidiaries thereof, and lending to retail customers and counterparties other than retail mortgages, described in §§ ____.106(a)(5)(ii), ____.106(a)(5)(v), ____.106(a)(6)(ii), and ____.106(a)(7)(ii) (row 25);

(xi) The weighted amount and, for each applicable maturity category, the unweighted amount of secured lending transactions, unsecured wholesale lending, and lending to retail customers or counterparties that are assigned a risk weight of no greater than 20 percent under subpart D of [AGENCY CAPITAL REGULATION] described in §§ ____.106(a)(5)(ii), ____.106(a)(5)(v), and ____.106(a)(6)(ii) (row 26);

(xii) The weighted amount and, for each applicable maturity category, the unweighted amount of retail mortgages described in §§ ____.106(a)(5)(v), ____.106(a)(6)(i), and ____.106(a)(7)(i) (row 27);

(xiii) The weighted amount and, for each applicable maturity category, the unweighted amount of retail mortgages assigned a risk weight of no greater than 50 percent under subpart D of [AGENCY CAPITAL REGULATION] described in §§ ____.106(a)(5)(v) and ____.106(a)(6)(i) (row 28);

(xiv) The weighted amount and, for each applicable maturity category, the unweighted amount of publicly traded common equity shares and other securities that are not HQLA and are not nonperforming assets described in §§ ____.106(a)(5)(iv), ____.106(a)(7)(iii), and ____.106(a)(7)(iv) (row 29);

(xv) The weighted amount and unweighted amount of commodities described in §§ ____.106(a)(7)(v) and ____.106(a)(8) (row 30);

(xvi) The unweighted amount and weighted amount of the sum of (A) assets contributed by the covered depository institution holding company to a central counterparty's mutualized loss-sharing arrangement described in § ____.107(b)(6) (in which case the ''unweighted amount'' shall equal the fair value and the ''weighted amount'' shall equal the unweighted amount multiplied by 85 percent) and (B) assets provided as initial margin by the covered depository institution holding company for derivative transactions described in § ____.107(b)(7) (in which case the ''unweighted amount'' shall equal the fair value and the ''weighted amount'' shall equal the unweighted amount multiplied by the higher of 85 percent or the RSF factor assigned to the asset pursuant to § ____.106) (row 31);

(xvii) In the ''unweighted'' cell, the covered depository institution holding company's NSFR derivatives asset amount under § ____.107(d)(1) and in the ''weighted'' cell, the covered depository institution holding company's NSFR derivatives asset amount multiplied by 100 percent (row 32);

(xviii) In the ''unweighted'' cell, the covered depository institution holding company's total derivatives asset amount described in § ____.107(e)(1) (row 33);

(xix) (A) In the ''unweighted'' cell, the sum of the gross derivative liability values of the covered depository institution holding company that are liabilities for each of its derivative transactions not subject to a qualifying master netting agreement and each of its QMNA netting sets, described in § ____.107(b)(5) and (B) in the ''weighted'' cell, such sum multiplied by 20 percent, as described in § ____.107(b)(5) (row 34);

(xx) The weighted amount and, for each applicable maturity category, the unweighted amount of all other asset amounts not included in amounts disclosed under paragraphs (c)(2)(i) through (xix) of this section, including nonperforming assets (row 35);

(xxi) The weighted and unweighted amount of undrawn credit and liquidity facilities described in § ____.106(a)(2)(ii) (row 36);

(xxii) The RSF amount described in § ____.105 (row 37);

(3) The net stable funding ratio under § ____.100(b) (row 38);

(d) *Qualitative disclosures.*

(1) A covered depository institution holding company must provide a sufficient qualitative discussion to facilitate an understanding of the covered depository institution holding company's net stable funding ratio and its components.

(2) For purposes of paragraph (d)(1) of this section, a covered depository institution holding company's qualitative discussion may include, but need not be limited to, the following items, to the extent they are significant to the covered depository institution holding company's net stable funding ratio and facilitate an understanding of the data provided:

(i) The main drivers of the net stable funding ratio;

(ii) Changes in the net stable funding ratio results over time and the causes of such changes (for example, changes in strategies and circumstances);

(iii) Concentrations of funding sources and changes in funding structure;

(iv) Concentrations of available and required stable funding within a covered company's corporate structure (for example, across legal entities); or

(iv) Other sources of funding or other factors in the net stable funding ratio calculation that the covered depository institution holding company considers to be relevant to facilitate an understanding of its liquidity profile.

[End of Proposed Common Rule Text]

List of Subjects

12 CFR Part 50

Administrative practice and procedure; Banks, banking; Liquidity; Reporting and recordkeeping requirements; Savings associations.

12 CFR Part 249

Administrative practice and procedure; Banks, banking; Federal Reserve System; Holding companies; Liquidity; Reporting and recordkeeping requirements.

12 CFR Part 329

Administrative practice and procedure; Banks, banking; Federal Deposit Insurance Corporation, FDIC; Liquidity; Reporting and recordkeeping requirements; Savings associations.

Adoption of the Common Rule Text

The proposed adoption of the common rules by the agencies, as modified by agency-specific text, is set forth below:

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the common preamble, the OCC proposes to amend part 50 of chapter I of title 12 to add the text of the common rule as set forth at the end of the **SUPPLEMENTARY INFORMATION** section and is further amended as follows:

PART 50—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 1. The authority citation for part 50 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 93a, 481, 1818, and 1462 *et seq.*

■ 2. Amend § 50.1 by:
■ a. Revising paragraph (a) and (b)(1);
■ b. Redesignating paragraphs (b)(3) through (5) as paragraphs (b)(4) through (6) respectively and adding new paragraph (b)(3);

The additions and revisions read as follows:

§ 50.1 Purpose and applicability.

(a) *Purpose.* This part establishes a minimum liquidity standard and a minimum stable funding standard for certain national banks and Federal savings associations on a consolidated basis, as set forth herein.

(b) *Applicability.* (1) A national bank or Federal savings association is subject to the minimum liquidity standard and the minimum stable funding standard, and other requirements of this part if:

(i) The national bank or Federal savings association has total consolidated assets equal to $250 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income;

(ii) The national bank or Federal savings association has total consolidated on-balance sheet foreign exposure at the most recent year end equal to $10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of the head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report);

(iii) The national bank or Federal savings association is a depository institution that has total consolidated assets equal to $10 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income and is a consolidated subsidiary of one of the following:

(A) A covered depository institution holding company that has total assets equal to $250 billion or more, as reported on the most recent year-end Consolidated Financial Statements for Holding Companies reporting form (FR Y–9C), or, if the covered depository institution holding company is not required to report on the FR Y–9C, its estimated total consolidated assets as of the most recent year-end, calculated in accordance with the instructions to the FR Y–9C;

(B) A depository institution that has total consolidated assets equal to $250 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income;

(C) A covered depository institution holding company or depository institution that has total consolidated on-balance sheet foreign exposure at the most recent year-end equal to $10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of the head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative transaction products, calculated in accordance with Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report); or

(D) A covered nonbank company; or

(iv) The OCC has determined that application of this part is appropriate in light of the national bank's or Federal savings association's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

* * * * *

(3)(i) A national bank or Federal savings association that becomes subject to the minimum stable funding standard and other requirements of subparts K through N of this part under paragraphs (b)(1)(i) through (iii) of this section after the effective date must comply with the requirements of subparts K through N of this part beginning on April 1 of the year in which the national bank or Federal savings association becomes subject to the minimum stable funding standard and the requirements of subparts K through N of this part; and

(ii) A national bank or Federal savings association that becomes subject to the minimum stable funding standard and other requirements of subparts K through N of this part under paragraph (b)(1)(iv) of this section after the effective date must comply with the requirements of subparts K through N of this part on the date specified by the OCC.

* * * * *

■ 3. Amend § 50.2, by redesignating paragraph (b) as paragraph (c), adding new paragraph (b), and revising newly-redesignated paragraph (c) to read as follows:

§ 50.2 Reservation of authority.

* * * * *

(b) The OCC may require a national bank or Federal savings association to hold an amount of available stable funding (ASF) greater than otherwise required under this part, or to take any other measure to improve the national bank's or Federal savings association's stable funding, if the OCC determines that the national bank's or Federal savings association's stable funding requirements as calculated under this part are not commensurate with the national bank's or Federal savings association's funding risks. In making determinations under this section, the OCC will apply notice and response procedures as set forth in 12 CFR 3.404.

(c) Nothing in this part limits the authority of the OCC under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, deficient liquidity levels, deficient stable funding levels, or violations of law.

■ 4. Amend § 50.3 by:
■ a. Revising the definition for ''Calculation date'';
■ b. Adding the definition ''Carrying value'';
■ c. Revising the definitions for ''Collateralized deposit'', ''Committed'' and ''Covered nonbank company'';
■ d. Adding the definitions for ''Encumbered'', ''NSFR liability'' and ''NSFR regulatory capital element'';
■ e. Revising the definition for ''Operational Deposit'';
■ f. Adding the definition for ''QMNA netting set'';
■ g. Revising the definitions for:Secured funding transaction'' and ''Secured lending transaction'';

■ h. Adding the definition for ''Unconditionally cancelable'';
■ i. Revising the definition for ''Unsecured wholesale funding''; and
■ j. Adding the definition for ''Unsecured wholesale lending''.

The additions and revisions read as follows:

§ 50.3 Definitions.

* * * * *

Calculation date means, for subparts B through J of this part, any date on which a national bank or Federal savings association calculates its liquidity coverage ratio under § 50.10, and for subparts K through N of this part, any date on which a national bank or Federal savings association calculates its net stable funding ratio under § 50.100.

Carrying value means, with respect to an asset, NSFR regulatory capital element, or NSFR liability, the value on the balance sheet of the national bank or Federal savings association, each as determined in accordance with GAAP.

* * * * *

Collateralized deposit means:

(1) A deposit of a public sector entity held at the national bank or Federal savings association that is required to be secured under applicable law by a lien on assets owned by the national bank or Federal savings association and that gives the depositor, as holder of the lien, priority over the assets in the event the national bank or Federal savings association enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding;

(2) A deposit of a fiduciary account awaiting investment or distribution held at the national bank or Federal savings association for which the national bank or Federal savings association is a fiduciary and is required under 12 CFR 9.10(b) (national banks), 12 CFR 150.300 through 150.320 (Federal savings associations), or applicable state law (state member and nonmember banks, and state savings associations) to set aside assets owned by the national bank or Federal savings association as security, which gives the depositor priority over the assets in the event the national bank or Federal savings association enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding; or

(3) A deposit of a fiduciary account awaiting investment or distribution held at the national bank or Federal savings association for which the national bank's or Federal savings association's affiliated insured depository institution is a fiduciary and where the national bank or Federal savings association under 12 CFR 9.10(c) (national banks) or 12 CFR 150.310 (Federal savings associations) has set aside assets owned by the national bank or Federal savings association as security, which gives the depositor priority over the assets in the event the national bank or Federal savings association enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding.

Committed means, with respect to a credit or liquidity facility, that under the terms of the facility, it is not unconditionally cancelable.

* * * * *

Covered nonbank company means a designated company that the Board of Governors of the Federal Reserve System has required by separate rule or order to comply with the requirements of 12 CFR part 249.

* * * * *

Encumbered means, with respect to an asset, that the asset:

(1) Is subject to legal, regulatory, contractual, or other restriction on the ability of the national bank or Federal savings association to monetize the asset; or

(2) Is pledged, explicitly or implicitly, to secure or to provide credit enhancement to any transaction, not including when the asset is pledged to a central bank or a U.S. government-sponsored enterprise where:

(i) Potential credit secured by the asset is not currently extended to the national bank or Federal savings association or its consolidated subsidiaries; and

(ii) The pledged asset is not required to support access to the payment services of a central bank.

* * * * *

NSFR liability means any liability or equity reported on a national bank's or Federal savings association's balance sheet that is not an NSFR regulatory capital element.

NSFR regulatory capital element means any capital element included in a national bank's or Federal savings association's common equity tier 1 capital, additional tier 1 capital, and tier 2 capital, in each case as defined in 12 CFR 3.20, prior to application of capital adjustments or deductions as set forth in 12 CFR 3.22, excluding any debt or equity instrument that does not meet the criteria for additional tier 1 or tier 2 capital instruments in 12 CFR 3.22 and is being phased out of tier 1 capital or tier 2 capital pursuant to subpart G of 12 CFR part 3.

Operational deposit means short-term unsecured wholesale funding that is a deposit, unsecured wholesale lending that is a deposit, or a collateralized deposit, in each case that meets the requirements of § 50.4(b) with respect to that deposit and is necessary for the provision of operational services as an independent third-party intermediary, agent, or administrator to the wholesale customer or counterparty providing the deposit.

* * * * *

QMNA netting set means a group of derivative transactions with a single counterparty that is subject to a qualifying master netting agreement and is netted under the qualifying master netting agreement.

* * * * *

Secured funding transaction means any funding transaction that is subject to a legally binding agreement that gives rise to a cash obligation of the national bank or Federal savings association to a wholesale customer or counterparty that is secured under applicable law by a lien on securities or loans provided by the national bank or Federal savings association, which gives the wholesale customer or counterparty, as holder of the lien, priority over the securities or loans in the event the national bank or Federal savings association enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding. Secured funding transactions include repurchase transactions, securities lending transactions, other secured loans, and borrowings from a Federal Reserve Bank. Secured funding transactions do not include securities.

Secured lending transaction means any lending transaction that is subject to a legally binding agreement that gives rise to a cash obligation of a wholesale customer or counterparty to the national bank or Federal savings association that is secured under applicable law by a lien on securities or loans provided by the wholesale customer or counterparty, which gives the national bank or Federal savings association, as holder of the lien, priority over the securities or loans in the event the counterparty enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding. Secured lending transactions include reverse repurchase transactions and securities borrowing transactions. Secured lending transactions do not include securities.

* * * * *

Unconditionally cancelable means, with respect to a credit or liquidity facility, that a national bank or Federal savings association may, at any time, with or without cause, refuse to extend credit under the facility (to the extent permitted under applicable law).

Unsecured wholesale funding means a liability or general obligation of the national bank or Federal savings association to a wholesale customer or counterparty that is not a secured funding transaction. Unsecured wholesale funding includes wholesale deposits.

Unsecured wholesale lending means a liability or general obligation of a wholesale customer or counterparty to the national bank or Federal savings association that is not a secured lending transaction or a security.

* * * * *

■ 5. Amend § 50.22, by revising paragraph (b)(1) to read as follows:

§ 50.22 Requirements for eligible high-quality liquid assets.

* * * * *

(b) * * *

(1) The assets are not encumbered.

* * * * *

■ 6. Amend § 50.30, by revising paragraph (b)(3) to read as follows:

§ 50.30 Total net cash outflow amount.

(b) * * *

(3) Other than the transactions identified in § 50.32(h)(2), (h)(5), or (j) or § 50.33(d) or (f), the maturity of which is determined under § 50.31(a), transactions that have an open maturity are not included in the calculation of the maturity mismatch add-on.

■ 7. Amend § 50.31, by revising paragraphs (a)(1), (a)(2), and (a)(4) to read as follows:

§ 50.31 Determining maturity.

(a) * * *

(1) With respect to an instrument or transaction subject to § 50.32, on the earliest possible contractual maturity date or the earliest possible date the transaction could occur, taking into account any option that could accelerate the maturity date or the date of the transaction, except that when considering the earliest possible contractual maturity date or the earliest possible date the transaction could occur, the national bank or Federal savings association should exclude any contingent options that are triggered only by regulatory actions or changes in law or regulation, as follows:

* * * * *

(2) With respect to an instrument or transaction subject to § 50.33, on the latest possible contractual maturity date or the latest possible date the transaction could occur, taking into account any option that could extend the maturity date or the date of the transaction, except that when considering the latest possible contractual maturity date or the latest possible date the transaction could occur, the national bank or Federal savings association may exclude any contingent options that are triggered only by regulatory actions or changes in law or regulation, as follows:

* * * * *

(4) With respect to a transaction that has an open maturity, is not an operational deposit, and is subject to the provisions of § 50.32(h)(2), (h)(5), (j), or (k) or § 50.33(d) or (f), the maturity date is the first calendar day after the calculation date. Any other transaction that has an open maturity and is subject to the provisions of § 50.32 shall be considered to mature within 30 calendar days of the calculation date.

* * * * *

Subpart G [Added and Reserved]

■ 8. Add and reserve subpart G.

Subparts H, I, J, K, L, M, and N [Added]

■ 8a. Part 50 is amended by adding subparts H, I, J, K, L, M, and N as set forth at the end of the common preamble.

Subparts K and L [Amended]

■ 9. Subparts K and L to part 50 are amended by:

■ a. Removing ''[AGENCY]'' and adding ''OCC'' in its place wherever it appears.

■ b. Removing ''[AGENCY CAPITAL REGULATION]'' and adding ''12 CFR part 3'' in its place wherever it appears.

■ c. Removing ''[BANK]'' and adding ''national bank or Federal savings association'' in its place wherever it appears.

■ d. Removing ''[BANK]'s'' and adding ''national bank's or Federal savings association's'' in its place wherever it appears.

■ e. Removing ''[§ ____.10(c)(4)(ii)(C)(*1*) through (*7*) of the AGENCY SUPPLEMENTARY LEVERAGE RATIO RULE]'' and adding ''12 CFR 3.10(c)(4)(ii)(C)(*1*) through (*7*)'' in its place wherever it appears.

■ f. Removing ''[§ ____.10(c)(4)(ii)(E)(*1*) through (*3*) of the AGENCY SUPPLEMENTARY LEVERAGE RATIO RULE]'' and adding ''12 CFR 3.10(c)(4)(ii)(E)(*1*) through (*3*)'' in its place wherever it appears.

■ g. Removing ''[INSERT PART]'' and adding ''50'' in its place wherever it appears.

Subpart N [Removed and Reserved]

■ 10. Remove and reserve subpart N.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the common preamble, part 249 of chapter II of title 12 of the Code of Federal Regulations is amended to add the text of the common rule as set forth at the end of the **SUPPLEMENTARY INFORMATION** section and is further amended as follows:

PART 249—LIQUIDITY RISK MEASUREMENT, STANDARDS, AND MONITORING (REGULATION WW)

■ 11. The authority citation for part 249 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1467a(g)(1), 1818, 1828, 1831p–1, 1831o–1, 1844(b), 5365, 5366, 5368.

■ 12. Revise the heading for part 249 as set forth above.

■ 13. Amend § 249.1 by:

■ a. Revising paragraphs (a) and (b)(1);

■ b. Redesignating paragraphs (b)(3) through (5) as paragraphs (b)(4) through (6), respectively, and adding paragraph (b)(3);

The additions and revisions read as follows:

§ 249.1 Purpose and applicability.

(a) *Purpose.* This part establishes a minimum liquidity standard and a minimum stable funding standard for certain Board-regulated institutions on a consolidated basis, as set forth herein.

(b) *Applicability.* (1) A Board-regulated institution is subject to the minimum liquidity standard and the minimum stable funding standard, and other requirements of this part if:

(i) It has total consolidated assets equal to $250 billion or more, as reported on the most recent year end (as applicable):

(A) Consolidated Financial Statements for Holding Companies reporting form (FR Y–9C), or, if the Board-regulated institution is not required to report on the FR Y–9C, its estimated total consolidated assets as of the most recent year end, calculated in accordance with the instructions to the FR Y–9C; or

(B) Consolidated Report of Condition and Income (Call Report);

(ii) It has total consolidated on-balance sheet foreign exposure at the most recent year end equal to $10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of

the head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report);

(iii) It is a depository institution that is a consolidated subsidiary of a company described in paragraphs (b)(1)(i) or (ii) of this section and has total consolidated assets equal to $10 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income;

(iv) It is a covered nonbank company;

(v) It is a covered depository institution holding company that meets the criteria in section 249.60(a) or section 249.120(a) but does not meet the criteria in paragraphs (b)(1)(i) or (ii) of this section, and is subject to complying with the requirements of this part in accordance with subpart G or M of this part, respectively; or

(vi) The Board has determined that application of this part is appropriate in light of the Board-regulated institution's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

* * * * *

(3)(i) A Board-regulated institution that becomes subject to the minimum stable funding standard and other requirements of subparts K through N of this part under paragraphs (b)(1)(i) through (iii) of this section after the effective date must comply with the requirements of subparts K through N of this part beginning on April 1 of the year in which the Board-regulated institution becomes subject to the minimum stable funding standard and the requirements of subparts K through N of this part; and

(ii) A Board-regulated institution that becomes subject to the minimum stable funding standard and other requirements of subparts K through N of this part under paragraph (b)(1)(iv) of this section after the effective date must comply with the requirements of subparts K through N of this part on the date specified by the Board.

* * * * *

■ 14. Amend § 249.2, by redesignating paragraph (b) as paragraph (c), adding new paragraph (b), and revising newly-redesignated paragraph (c) to read as follows:

§ 249.2 Reservation of authority.

* * * * *

(b) The Board may require a Board-regulated institution to hold an amount of available stable funding (ASF) greater than otherwise required under this part, or to take any other measure to improve the Board-regulated institution's stable funding, if the Board determines that the Board-regulated institution's stable funding requirements as calculated under this part are not commensurate with the Board-regulated institution's funding risks. In making determinations under this section, the Board will apply notice and response procedures as set forth in 12 CFR 263.202.

(c) Nothing in this part limits the authority of the Board under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, deficient liquidity levels, deficient stable funding levels, or violations of law.

■ 15. Amend § 249.3 by:

■ a. Revising the definition for ''Calculation date'';

■ b. Adding the definition for ''Carrying value'';

■ c. Revising the definitions for ''Collateralized deposit'', ''Committed'', and ''Covered nonbank company'';

■ d. Adding the definitions for ''Encumbered'', ''NSFR liability'', and ''NSFR regulatory capital element'';

■ e. Revising the definition for ''Operational Deposit'';

■ f. Adding the definition for ''QMNA netting set'';

■ g. Revising the definitions for ''Secured funding transaction'' and ''Secured lending transaction'';

■ h. Adding the definition for ''Unconditionally cancelable'';

■ i. Revising the definition for ''Unsecured wholesale funding''; and

■ j. Adding the definition for ''Unsecured wholesale lending''.

The additions and revisions read in alphabetical order as follows:

§ 249.3 Definitions.

* * * * *

Calculation date means, for subparts B through J of this part, any date on which a Board-regulated institution calculates its liquidity coverage ratio under § 249.10, and for subparts K through N of this part, any date on which a Board-regulated institution calculates its net stable funding ratio under § 249.100.

Carrying value means, with respect to an asset, NSFR regulatory capital element, or NSFR liability, the value on the balance sheet of the Board-regulated institution, each as determined in accordance with GAAP.

* * * * *

Collateralized deposit means:

(1) A deposit of a public sector entity held at the Board-regulated institution that is required to be secured under applicable law by a lien on assets owned by the Board-regulated institution and that gives the depositor, as holder of the lien, priority over the assets in the event the Board-regulated institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding;

(2) A deposit of a fiduciary account awaiting investment or distribution held at the Board-regulated institution for which the Board-regulated institution is a fiduciary and is required under 12 CFR 9.10(b) (national banks), 12 CFR 150.300 through 150.320 (Federal savings associations), or applicable state law (state member and nonmember banks, and state savings associations) to set aside assets owned by the Board-regulated institution as security, which gives the depositor priority over the assets in the event the Board-regulated institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding; or

(3) A deposit of a fiduciary account awaiting investment or distribution held at the Board-regulated institution for which the Board-regulated institution's affiliated insured depository institution is a fiduciary and where the Board-regulated institution under 12 CFR 9.10(c) (national banks) or 12 CFR 150.310 (Federal savings associations) has set aside assets owned by the Board-regulated institution as security, which gives the depositor priority over the assets in the event the Board-regulated institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding.

Committed means, with respect to a credit or liquidity facility, that under the terms of the facility, it is not unconditionally cancelable.

* * * * *

Covered nonbank company means a designated company that the Board of Governors of the Federal Reserve System has required by separate rule or order to comply with the requirements of 12 CFR part 249.

* * * * *

Encumbered means, with respect to an asset, that the asset:

(1) Is subject to legal, regulatory, contractual, or other restriction on the ability of the Board-regulated institution to monetize the asset; or

(2) Is pledged, explicitly or implicitly, to secure or to provide credit enhancement to any transaction, not including when the asset is pledged to a central bank or a U.S. government-sponsored enterprise where:

(i) Potential credit secured by the asset is not currently extended to the

Board-regulated institution or its consolidated subsidiaries; and

(ii) The pledged asset is not required to support access to the payment services of a central bank.

* * * * *

NSFR liability means any liability or equity reported on a Board-regulated institution's balance sheet that is not an NSFR regulatory capital element.

NSFR regulatory capital element means any capital element included in a Board-regulated institution's common equity tier 1 capital, additional tier 1 capital, and tier 2 capital, in each case as defined in § 217.20 of Regulation Q (12 CFR part 217), prior to application of capital adjustments or deductions as set forth in § 217.22 of Regulation Q (12 CFR part 217), excluding any debt or equity instrument that does not meet the criteria for additional tier 1 or tier 2 capital instruments in § 217.22 of Regulation Q (12 CFR part 217) and is being phased out of tier 1 capital or tier 2 capital pursuant to subpart G of Regulation Q (12 CFR part 217).

Operational deposit means short-term unsecured wholesale funding that is a deposit, unsecured wholesale lending that is a deposit, or a collateralized deposit, in each case that meets the requirements of § 249.4(b) with respect to that deposit and is necessary for the provision of operational services as an independent third-party intermediary, agent, or administrator to the wholesale customer or counterparty providing the deposit.

* * * * *

QMNA netting set means a group of derivative transactions with a single counterparty that is subject to a qualifying master netting agreement and is netted under the qualifying master netting agreement.

* * * * *

Secured funding transaction means any funding transaction that is subject to a legally binding agreement that gives rise to a cash obligation of the Board-regulated institution to a wholesale customer or counterparty that is secured under applicable law by a lien on securities or loans provided by the Board-regulated institution, which gives the wholesale customer or counterparty, as holder of the lien, priority over the securities or loans in the event the Board-regulated institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding. Secured funding transactions include repurchase transactions, securities lending transactions, other secured loans, and borrowings from a Federal Reserve Bank. Secured funding transactions do not include securities.

Secured lending transaction means any lending transaction that is subject to a legally binding agreement that gives rise to a cash obligation of a wholesale customer or counterparty to the Board-regulated institution that is secured under applicable law by a lien on securities or loans provided by the wholesale customer or counterparty, which gives the Board-regulated institution, as holder of the lien, priority over the securities or loans in the event the counterparty enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding. Secured lending transactions include reverse repurchase transactions and securities borrowing transactions. Secured lending transactions do not include securities.

* * * * *

Unconditionally cancelable means, with respect to a credit or liquidity facility, that a Board-regulated institution may, at any time, with or without cause, refuse to extend credit under the facility (to the extent permitted under applicable law).

Unsecured wholesale funding means a liability or general obligation of the Board-regulated institution to a wholesale customer or counterparty that is not a secured funding transaction. Unsecured wholesale funding includes wholesale deposits.

Unsecured wholesale lending means a liability or general obligation of a wholesale customer or counterparty to the Board-regulated institution that is not a secured lending transaction or a security.

* * * * *

■ 16. Amend § 249.22, by revising paragraph (b)(1) to read as follows:

§ 249.22 Requirements for eligible high-quality liquid assets.

* * * * *

(b) * * *

(1) The assets are not encumbered.

* * * * *

■ 17. Amend § 249.30, by revising paragraph (b)(3) to read as follows:

§ 249.30 Total net cash outflow amount.

(b) * * *

(3) Other than the transactions identified in § 249.32(h)(2), (h)(5), or (j) or § 249.33(d) or (f), the maturity of which is determined under § 249.31(a), transactions that have an open maturity are not included in the calculation of the maturity mismatch add-on.

■ 18. Amend § 249.31, by revising paragraphs (a)(1), (a)(2), and (a)(4) to read as follows:

§ 249.31 Determining maturity.

(a) * * *

(1) With respect to an instrument or transaction subject to § 249.32, on the earliest possible contractual maturity date or the earliest possible date the transaction could occur, taking into account any option that could accelerate the maturity date or the date of the transaction, except that when considering the earliest possible contractual maturity date or the earliest possible date the transaction could occur, the Board-regulated institution should exclude any contingent options that are triggered only by regulatory actions or changes in law or regulation, as follows:

* * * * *

(2) With respect to an instrument or transaction subject to § 249.33, on the latest possible contractual maturity date or the latest possible date the transaction could occur, taking into account any option that could extend the maturity date or the date of the transaction, except that when considering the latest possible contractual maturity date or the latest possible date the transaction could occur, the Board-regulated institution may exclude any contingent options that are triggered only by regulatory actions or changes in law or regulation, as follows:

* * * * *

(4) With respect to a transaction that has an open maturity, is not an operational deposit, and is subject to the provisions of § 249.32(h)(2), (h)(5), (j), or (k) or § 249.33(d) or (f), the maturity date is the first calendar day after the calculation date. Any other transaction that has an open maturity and is subject to the provisions of § 249.32 shall be considered to mature within 30 calendar days of the calculation date.

* * * * *

Subparts H, I, J, K, and L, M, and N [Added]

■ 19. Amend part 249 by adding subparts H, I, J, K, L, M, and N as set forth at the end of the common preamble.

Subparts K, L, and N [Amended]

■ 20. Amend subparts K, L, and N of part 249 by:

■ a. Removing ''[AGENCY]'' and adding ''Board'' in its place wherever it appears.

■ b. Removing ''[AGENCY CAPITAL REGULATION]'' and adding ''Regulation Q (12 CFR part 217)'' in its place wherever it appears.

■ c. Removing ''[§ ____.10(c)(4)(ii)(C)(*1*) through (*7*) of the AGENCY

SUPPLEMENTARY LEVERAGE RATIO RULE]'' and adding ''12 CFR 217.10(c)(4)(ii)(C)(*1*) through (*7*)'' in its place wherever it appears.

■ d. Removing ''[§ ____.10(c)(4)(ii)(E)(*1*) through (*3*) of the AGENCY SUPPLEMENTARY LEVERAGE RATIO RULE]'' and adding ''12 CFR 217.10(c)(4)(ii)(E)(*1*) through (*3*)'' in its place wherever it appears

■ e. Removing ''[BANK]'' and adding ''Board-regulated institution'' in its place wherever it appears.

■ f. Removing ''[BANK]'s'' and adding ''Board-regulated institution's'' in its place wherever it appears.

■ 21. Revise subpart M of part 249 to read as follows:

Subpart M—Net stable funding ratio for certain depository institution holding companies

Sec.
249.120 Applicability.
249.121 Net stable funding ratio requirement.

Subpart M—Net stable funding ratio for certain depository institution holding companies

§ 249.120 Applicability.

(a) *Scope.* This subpart applies to a covered depository institution holding company domiciled in the United States that has total consolidated assets equal to $50 billion or more, based on the average of the covered depository institution holding company's total consolidated assets in the four most recent quarters as reported on the FR Y–9C (or, if a savings and loan holding company is not required to report on the FR Y–9C, based on the average of its estimated total consolidated assets for the most recent four quarters, calculated in accordance with the instructions to the FR Y–9C) and does not meet the applicability criteria set forth in § 249.1(b).

(b) *Applicable provisions.* Except as otherwise provided in this subpart, the provisions of subparts A, K, L, and N of this part apply to covered depository institution holding companies that are subject to this subpart.

(c) *Applicability.* A covered depository institution holding company that meets the threshold for applicability of this subpart under paragraph (a) of this section after the effective date must comply with the requirements of this subpart beginning one year after the date it meets the threshold set forth in paragraph (a) of this section.

§ 249.121 Net stable funding ratio requirement.

(a) *Calculation of the net stable funding ratio.* A covered depository institution holding company subject to this subpart must calculate and maintain a net stable funding ratio in accordance with § 249.100 and this subpart.

(b) *Available stable funding amount.* A covered depository institution holding company subject to this subpart must calculate its ASF amount in accordance with subpart K of this part.

(c) *Required stable funding amount.* A covered depository institution holding company subject to this subpart must calculate its RSF amount in accordance with subpart K of this part, provided, however, that the RSF amount of a covered depository institution holding company subject to this subpart equals 70 percent of the RSF amount calculated in accordance with subpart K of this part.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the common preamble, the Federal Deposit Insurance Corporation proposes to amend chapter III of title 12 of the Code of Federal Regulations to add the text of the common rule as set forth at the end of the **SUPPLEMENTARY INFORMATION** section and is further amended as follows:

PART 329—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 22. The authority citation for part 329 continues to read as follows:

Authority: 12 U.S.C. 1815, 1816, 1818, 1819, 1828, 1831p–1, 5412.

■ 23. Amend § 329.1 by:

■ a. Revising paragraphs (a) and (b)(1);

■ b. Redesignating paragraphs (b)(3) through (5) as paragraphs (b)(4) through (6), respectively, and adding new paragraph (b)(3);

The additions and revisions read as follows:

§ 329.1 Purpose and applicability.

(a) *Purpose.* This part establishes a minimum liquidity standard and a minimum stable funding standard for certain FDIC-supervised institutions on a consolidated basis, as set forth herein.

(b) *Applicability.* (1) An FDIC-supervised institution is subject to the minimum liquidity standard and the minimum stable funding standard, and other requirements of this part if:

(i) The FDIC-supervised institution has total consolidated assets equal to $250 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income;

(ii) The FDIC-supervised institution has total consolidated on-balance sheet foreign exposure at the most recent year end equal to $10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of the head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report);

(iii) The FDIC-supervised institution is a depository institution that has total consolidated assets equal to $10 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income and is a consolidated subsidiary of one of the following:

(A) A covered depository institution holding company that has total assets equal to $250 billion or more, as reported on the most recent year-end Consolidated Financial Statements for Holding Companies reporting form (FR Y–9C), or, if the covered depository institution holding company is not required to report on the FR Y–9C, its estimated total consolidated assets as of the most recent year-end, calculated in accordance with the instructions to the FR Y–9C;

(B) A depository institution that has total consolidated assets equal to $250 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income;

(C) A covered depository institution holding company or depository institution that has total consolidated on-balance sheet foreign exposure at the most recent year-end equal to $10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of the head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative transaction products, calculated in accordance with Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report); or

(D) A covered nonbank company; or

(iv) The FDIC has determined that application of this part is appropriate in light of the FDIC-supervised institution's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or

domestic covered entities, or risk to the financial system.

* * * * *

(3)(i) An FDIC-supervised institution that becomes subject to the minimum stable funding standard and other requirements of subparts K through N of this part under paragraphs (b)(1)(i) through (iii) of this section after the effective date must comply with the requirements of subparts K through N of this part beginning on April 1 of the year in which the FDIC-supervised institution becomes subject to the minimum stable funding standard and the requirements of subparts K through N of this part; and

(ii) An FDIC-supervised institution that becomes subject to the minimum stable funding standard and other requirements of subparts K through N of this part under paragraph (b)(1)(iv) of this section after the effective date must comply with the requirements of subparts K through N of this part on the date specified by the FDIC.

* * * * *

■ 24. Amend § 329.2, by redesignating paragraph (b) as paragraph (c), adding new paragraph (b), and revising newly-redesignated paragraph (c) to read as follows:

§ 329.2 Reservation of authority.

* * * * *

(b) The FDIC may require an FDIC-supervised institution to hold an amount of available stable funding (ASF) greater than otherwise required under this part, or to take any other measure to improve the FDIC-supervised institution's stable funding, if the FDIC determines that the FDIC-supervised institution's stable funding requirements as calculated under this part are not commensurate with the FDIC-supervised institution's funding risks. In making determinations under this section, the FDIC will apply notice and response procedures as set forth in 12 CFR 324.5.

(c) Nothing in this part limits the authority of the FDIC under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, deficient liquidity levels, deficient stable funding levels, or violations of law.

■ 25. Amend § 329.3 by:

■ a. Revising the definition for ''Calculation date'';

■ b. Adding the definition for ''Carrying value'';

■ c. Revising the definitions for ''Collateralized deposit'', ''Committed'', and ''Covered nonbank company'';

■ d. Adding the definitions for ''Encumbered'', ''NSFR liability'', and ''NSFR regulatory capital'';

■ e. Revising the definition for ''Operational Deposit'';

■ f. Adding the definition for ''QMNA netting set'';

■ g. Revising the definitions for ''Secured funding transaction'', and ''Secured lending transaction'';

■ h. Adding the definition for ''Unconditionally cancelable'';

■ i. Revising the definitions for ''Unsecured wholesale funding''; and

■ j. Adding the definition for ''Unsecured wholesale lending''.

The additions and revisions read as follows:

§ 329.3 Definitions.

* * * * *

Calculation date means, for subparts B through J of this part, any date on which an FDIC-supervised institution calculates its liquidity coverage ratio under § 329.10, and for subparts K through N of this part, any date on which an FDIC-supervised institution calculates its net stable funding ratio under § 329.100.

Carrying value means, with respect to an asset, NSFR regulatory capital element, or NSFR liability, the value on the balance sheet of the FDIC-supervised institution, each as determined in accordance with GAAP.

* * * * *

Collateralized deposit means:

(1) A deposit of a public sector entity held at the FDIC-supervised institution that is required to be secured under applicable law by a lien on assets owned by the FDIC-supervised institution and that gives the depositor, as holder of the lien, priority over the assets in the event the FDIC-supervised institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding;

(2) A deposit of a fiduciary account awaiting investment or distribution held at the FDIC-supervised institution for which the FDIC-supervised institution is a fiduciary and is required under 12 CFR 9.10(b) (national banks), 12 CFR 150.300 through 150.320 (Federal savings associations), or applicable state law (state member and nonmember banks, and state savings associations) to set aside assets owned by the FDIC-supervised institution as security, which gives the depositor priority over the assets in the event the FDIC-supervised institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding; or

(3) A deposit of a fiduciary account awaiting investment or distribution held at the FDIC-supervised institution for which the FDIC-supervised institution's affiliated insured depository institution is a fiduciary and where the FDIC-supervised institution under 12 CFR 9.10(c) (national banks) or 12 CFR 150.310 (Federal savings associations) has set aside assets owned by the FDIC-supervised institution as security, which gives the depositor priority over the assets in the event the FDIC-supervised institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding.

Committed means, with respect to a credit or liquidity facility, that under the terms of the facility, it is not unconditionally cancelable.

* * * * *

Covered nonbank company means a designated company that the Board of Governors of the Federal Reserve System has required by separate rule or order to comply with the requirements of 12 CFR part 249.

* * * * *

Encumbered means, with respect to an asset, that the asset:

(1) Is subject to legal, regulatory, contractual, or other restriction on the ability of the FDIC-supervised institution to monetize the asset; or

(2) Is pledged, explicitly or implicitly, to secure or to provide credit enhancement to any transaction, not including when the asset is pledged to a central bank or a U.S. government-sponsored enterprise where:

(i) Potential credit secured by the asset is not currently extended to the FDIC-supervised institution or its consolidated subsidiaries; and

(ii) The pledged asset is not required to support access to the payment services of a central bank.

* * * * *

NSFR liability means any liability or equity reported on an FDIC-supervised institution's balance sheet that is not an NSFR regulatory capital element.

NSFR regulatory capital element means any capital element included in an FDIC-supervised institution's common equity tier 1 capital, additional tier 1 capital, and tier 2 capital, in each case as defined in 12 CFR 324.20, prior to application of capital adjustments or deductions as set forth in 12 CFR 324.22, excluding any debt or equity instrument that does not meet the criteria for additional tier 1 or tier 2 capital instruments in 12 CFR 324.22 and is being phased out of tier 1 capital or tier 2 capital pursuant to subpart G of 12 CFR 324.

Operational deposit means short-term unsecured wholesale funding that is a

deposit, unsecured wholesale lending that is a deposit, or a collateralized deposit, in each case that meets the requirements of § 329.4(b) with respect to that deposit and is necessary for the provision of operational services as an independent third-party intermediary, agent, or administrator to the wholesale customer or counterparty providing the deposit.

* * * * *

QMNA netting set means a group of derivative transactions with a single counterparty that is subject to a qualifying master netting agreement and is netted under the qualifying master netting agreement.

* * * * *

Secured funding transaction means any funding transaction that is subject to a legally binding agreement that gives rise to a cash obligation of the FDIC-supervised institution to a wholesale customer or counterparty that is secured under applicable law by a lien on securities or loans provided by the FDIC-supervised institution, which gives the wholesale customer or counterparty, as holder of the lien, priority over the securities or loans in the event the FDIC-supervised institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding. Secured funding transactions include repurchase transactions, securities lending transactions, other secured loans, and borrowings from a Federal Reserve Bank. Secured funding transactions do not include securities.

Secured lending transaction means any lending transaction that is subject to a legally binding agreement that gives rise to a cash obligation of a wholesale customer or counterparty to the FDIC-supervised institution that is secured under applicable law by a lien on securities or loans provided by the wholesale customer or counterparty, which gives the FDIC-supervised institution, as holder of the lien, priority over the securities or loans in the event the counterparty enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding. Secured lending transactions include reverse repurchase transactions and securities borrowing transactions. Secured lending transactions do not include securities.

* * * * *

Unconditionally cancelable means, with respect to a credit or liquidity facility, that an FDIC-supervised institution may, at any time, with or without cause, refuse to extend credit under the facility (to the extent permitted under applicable law).

Unsecured wholesale funding means a liability or general obligation of the FDIC-supervised institution to a wholesale customer or counterparty that is not a secured funding transaction. Unsecured wholesale funding includes wholesale deposits.

Unsecured wholesale lending means a liability or general obligation of a wholesale customer or counterparty to the FDIC-supervised institution that is not a secured lending transaction or a security.

* * * * *

■ 26. Amend § 329.22, by revising paragraph (b)(1) to read as follows:

§ 329.22 Requirements for eligible high-quality liquid assets.

* * * * *

(b) * * *

(1) The assets are not encumbered.

* * * * *

■ 27. Amend § 329.30, by revising paragraph (b)(3) to read as follows:

§ 329.30 Total net cash outflow amount.

* * * * *

(b) * * *

(3) Other than the transactions identified in § 329.32(h)(2), (h)(5), or (j) or § 329.33(d) or (f), the maturity of which is determined under § 329.31(a), transactions that have an open maturity are not included in the calculation of the maturity mismatch add-on.

■ 28. Amend § 329.31, by revising paragraphs (a)(1), (a)(2), and (a)(4) to read as follows:

§ 329.31 Determining maturity.

(a) * * *

(1) With respect to an instrument or transaction subject to § 329.32, on the earliest possible contractual maturity date or the earliest possible date the transaction could occur, taking into account any option that could accelerate the maturity date or the date of the transaction, except that when considering the earliest possible contractual maturity date or the earliest possible date the transaction could occur, the FDIC-supervised institution should exclude any contingent options that are triggered only by regulatory actions or changes in law or regulation, as follows:

* * * * *

(2) With respect to an instrument or transaction subject to § 329.33, on the latest possible contractual maturity date or the latest possible date the transaction could occur, taking into account any option that could extend the maturity date or the date of the transaction, except that when considering the latest possible contractual maturity date or the latest possible date the transaction could occur, the FDIC-supervised institution may exclude any contingent options that are triggered only by regulatory actions or changes in law or regulation, as follows:

* * * * *

(4) With respect to a transaction that has an open maturity, is not an operational deposit, and is subject to the provisions of § 329.32(h)(2), (h)(5), (j), or (k) or § 329.33(d) or (f), the maturity date is the first calendar day after the calculation date. Any other transaction that has an open maturity and is subject to the provisions of § 329.32 shall be considered to mature within 30 calendar days of the calculation date.

* * * * *

Subpart G [Added and Reserved]

■ 29. Add reserve subpart G.

Subparts H, I, J, K, L, M, and N [Added]

■ 30. Part 329 is amended by adding subparts H, I, J, K, L, M, and N as set forth at the end of the common preamble.

Subparts K and L [Amended]

■ 31. Subparts K and L to part 329 are amended by:

■ a. Removing ''[AGENCY]'' and adding ''FDIC'' in its place wherever it appears.

■ b. Removing ''[AGENCY CAPITAL REGULATION]'' and adding ''12 CFR part 324'' in its place wherever it appears.

■ c. Removing ''A [BANK]'' and adding ''An FDIC-supervised institution'' in its place wherever it appears.

■ d. Removing ''a [BANK]'' and add ''an FDIC-supervised institution'' in its place wherever it appears.

■ e. Removing ''[BANK]'' and adding ''FDIC-supervised institution'' in its place wherever it appears.

■ f. Removing ''[§ ____.10(c)(4)(ii)(C)(*1*) through (*7*) of the AGENCY SUPPLEMENTARY LEVERAGE RATIO RULE]'' and adding ''12 CFR 324.10(c)(4)(ii)(C)(*1*) through (*7*)'' in its place wherever it appears.

■ g. Removing ''[§ ____.10(c)(4)(ii)(E)(*1*) through (*3*) of the AGENCY SUPPLEMENTARY LEVERAGE RATIO RULE]'' and adding ''12 CFR 324.10(c)(4)(ii)(E)(*1*) through (*3*)'' in its place wherever it appears.

■ h. Removing ''[INSERT PART]'' and adding ''329'' in its place wherever it appears.

Subpart N [Removed and Reserved]

■ 32. Remove and reserve subpart N.

Dated: May 13, 2016.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, May 3, 2016.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 26th day of April, 2016.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–11505 Filed 5–31–16; 8:45 am]

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Part III

Department of Defense

Department of the Army, Corps of Engineers

33 CFR Chapter II

Proposal To Reissue and Modify Nationwide Permits; Proposed Rule

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Chapter II

RIN 0710–AA73

Proposal To Reissue and Modify Nationwide Permits

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is soliciting comments for the reissuance of the existing nationwide permits (NWPs), general conditions, and definitions, with some modifications. The Corps is also proposing to issue two new NWPs and one new general condition. The Corps is requesting comment on all aspects of these proposed nationwide permits. The reissuance process starts with this publication of the proposed NWPs in the **Federal Register** for a 60-day comment period. The purpose of this **Federal Register** document is to solicit comments on the proposed new and modified NWPs, as well as the NWP general conditions and definitions. Shortly after the publication of this **Federal Register** document, each Corps district will publish a public notice to solicit comments on its proposed regional conditions for these NWPs.

DATES: Submit comments on or before August 1, 2016.

ADDRESSES: You may submit comments, identified by docket number COE–2015–0017 and/or RIN 0710–AA73, by any of the following methods:

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

Email: NWP2017@usace.army.mil. Include the docket number, COE–2015–0017, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW–CO–R, 441 G Street NW., Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

As explained later, the proposed rule would establish new and revise existing information collection requirements. If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB on the proposed information collection requirements is best assured of having its full effect if OMB receives it by July 1, 2016.

Instructions: If submitting comments through the Federal eRulemaking Portal, direct your comments to docket number COE–2015–0017. All comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *regulations.gov* or email. The *regulations.gov* Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to the Corps without going through *regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment we recommend that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson at 202–761–4922 or access the U.S. Army Corps of Engineers Regulatory Home Page at *http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx.*

SUPPLEMENTARY INFORMATION:

Background

The U.S. Army Corps of Engineers (Corps) issues nationwide permits (NWPs) to authorize activities under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 that will result in no more than minimal individual and cumulative adverse environmental effects. There are currently 50 NWPs. These NWPs were published in the February 21, 2012, issue of the **Federal Register** (77 FR 10184) and expire on March 18, 2017. With this **Federal Register** notice, we are beginning the process for reissuing the NWPs so that the reissued NWPs will be in effect immediately after the current NWPs expire.

Section 404(e) of the Clean Water Act provides the statutory authority for the Secretary of the Army, after notice and opportunity for public hearing, to issue general permits on a nationwide basis for any category of activities involving discharges of dredged or fill material into waters of the United States. The Secretary's authority to issue permits has been delegated to the Chief of Engineers and his or her designated representatives. Nationwide permits are a type of general permit issued by the Chief of Engineers and are designed to regulate with little, if any, delay or paperwork certain activities in jurisdictional waters and wetlands that have no more than minimal adverse environmental impacts (see 33 CFR part 330.1(b)). Activities authorized by NWPs and other general permits must be similar in nature, cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment (see 33 U.S.C. 1344(e)(1)). Nationwide permits can also be issued to authorize activities pursuant to Section 10 of the Rivers and Harbors Act of 1899 (see 33 CFR part 322.2(f)). The NWP program is designed to provide timely authorizations for the regulated public while protecting the Nation's aquatic resources.

The phrase ''minimal adverse environmental effects when performed separately'' refers to the direct and indirect adverse environmental effects caused by a specific activity authorized by an NWP. The phrase ''minimal cumulative adverse effect on the environment'' refers to the collective direct and indirect adverse environmental effects caused by the all the activities authorized by a particular NWP during the time period that NWP is in effect (a period of no more than 5 years) in a specific geographic region. The appropriate geographic area for assessing cumulative effects is

determined by the decision-making authority for the general permit.

When Corps Headquarters issues or reissues an NWP, it conducts a national-scale cumulative impact assessment in accordance with the National Environmental Policy Act definition of ''cumulative impact'' at 40 CFR 1508.7. The NEPA cumulative effects analysis prepared by Corps Headquarters for an NWP examines the impact on the environment which results from the incremental impact of its action (*i.e.,* the activities that will be authorized by that NWP) and adds that incremental impact to ''other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions'' (40 CFR 1508.7). In addition to environmental impacts caused by activities authorized by the NWP, other NWPs, and other types of DA permits, the Corps' NEPA cumulative effects analysis in each of its national decision documents discusses, in general terms, the environmental impacts caused by other past, present, and reasonably foreseeable future Federal, non-Federal, and private actions. For example, wetlands and other aquatic ecosystems are affected by a wide variety of Federal, non-Federal, and private actions that involve land use/land cover changes, pollution, resource extraction, species introductions and removals, and climate change (Millennium Ecosystem Assessment 2005).

Corps Headquarters fulfills the requirements of NEPA when it finalizes the environmental assessment in its national decision document for the issuance or reissuance of an NWP. An NWP verification issued by a district engineer does not require separate NEPA documentation (see 53 FR 3126, the Corps' final rule for implementing the National Environmental Policy Act, which was published in the February 3, 1986, issue of the **Federal Register**). When a district engineer issues an NWP verification, he or she is merely verifying that the activity is authorized by an NWP issued by Corps Headquarters. That verification is subject to any activity-specific conditions added to the NWP authorization by the district engineer. When reviewing a request for an NWP verification, the district engineer considers, among other factors, the ''cumulative adverse environmental effects resulting from activities occurring under the NWP'' (33 CFR 330.5(d)(1)).

If that NWP authorizes discharges of dredged or fill material into waters of the United States, the Corps also conducts a national-scale cumulative effects analysis in accordance with the 404(b)(1) Guidelines. The 404(b)(1) Guidelines approach to cumulative effects analysis for the issuance or reissuance of general permits is described at 40 CFR 230.7(b).

Corps Headquarters issues a decision document for each NWP, which includes a NEPA environmental assessment, a public interest review, and if applicable, a 404(b)(1) Guidelines analysis. Each NWP is a stand-alone general permit.

When the Corps issues or reissues NWPs, Corps divisions are required to prepare supplemental decision documents to provide regional analyses of the environmental effects of those NWPs. The supplemental decision documents also support the division engineer's decision on modifying, suspending, or revoking one or more NWPs in a particular region. Nationwide permits are modified on a regional basis through the addition of regional conditions, which restricts the use of the NWPs in those regions that are subject to those regional conditions. Supplemental decision documents include regional cumulative effects analyses conducted under the NEPA definition, and for those NWPs that authorize discharges of dredged or fill material into waters of the United States, regional cumulative effects analyses conducted in accordance with the 404(b)(1) guidelines approach at 40 CFR 230.7(b). The geographic regions considered in a supplemental decision document may be of cumulative adverse environmental effects are made at different geographic scales. In their supplemental decision documents, division engineers will evaluate cumulative effects of each NWP at the scale of a Corps district, state, or other geographic area, such as a watershed or ecoregion. If the division engineer is not suspending or revoking an NWP in a particular region, a supplemental decision document for an NWP includes a statement finding that the use of that NWP in the region will cause only minimal individual and cumulative adverse environmental effects.

For some NWPs, the project proponent may proceed with the NWP activity as long as he or she complies with all terms and conditions of the applicable NWP(s), including regional conditions. When required, water quality certification and/or Coastal Zone Management Act consistency concurrence must be obtained or waived (see general conditions 25 and 26, respectively). Other NWPs require project proponents to notify district engineers of their proposed activities prior to conducting regulated activities, so that district engineers can make case-specific determinations of NWP eligibility. The notification takes the form of a pre-construction notification (PCN). The purpose of a PCN is to give the district engineer an opportunity to review a proposed NWP activity (generally 45 days after receipt of a complete PCN) to ensure that the proposed activity (*i.e.,* discharges of dredged or fill material into waters of the United States and/or structures or work in navigable waters of the United States) is authorized by NWP. The PCN requirements for the NWPs are stated in the terms of those NWPs, as well as a number of general conditions, especially general condition 32. Paragraph (b) of general condition 32 lists the information required for a complete PCN. We are also proposing to develop a standard PCN form for use with the 2017 NWPs.

For the 2017 NWPs, the Corps has developed a standard form for PCNs. There will be a separate **Federal Register** notice seeking comment on the NWP PCN form. For more information on the PCN, see the ''Administrative Requirements'' section of this notice.

Twenty-one of the proposed NWPs require PCNs for all activities, including the two proposed new NWPs. Twelve of the proposed NWPs require PCNs for some activities authorized by those NWPs. Nineteen of the NWPs do not require PCNs, unless notification is required to comply with certain general conditions. All NWPs require PCNs for any proposed activity undertaken by a non-federal entity that might affect listed species or designated critical habitat under the Endangered Species Act (see general condition 18 and 33 CFR part 330.4(f)(2)) or any proposed activity undertaken by a non-federal entity that may have the potential to cause effects to historic properties listed, or eligible for listing in, the National Register of Historic Places (see general condition 20 and 33 CFR 330.4(g)(2)).

Except for NWPs 21, 49, and 50, and activities conducted by non-Federal permittees that require PCNs under paragraph (c) of general conditions 18 and 20, if the Corps district does not respond to the PCN within 45 days of a receipt of a complete PCN the activity is authorized by NWP (see 33 CFR 330.1(e)(1)). Regional conditions imposed by division engineers may also add PCN requirements to one or more NWPs.

When a Corps district receives a PCN, the district engineer reviews the PCN and determines whether the proposed activity will result in no more than minimal individual and cumulative

adverse environmental effects. The district engineer applies the criteria in paragraph 2 of section D, ''District Engineer's Decision.'' The district engineer may add conditions to the NWP authorization, including mitigation requirements, to ensure that the verified NWP activity results in no more than minimal individual and cumulative adverse environmental effects. The district engineer prepares a decision document to explain his or her conclusions. The district engineer will consider cumulative adverse environmental effects within a watershed, county, state, or a Corps district. If the applicant requests a waiver of a linear foot or other NWP limit that is allowed to be waived, and the district engineer determines, after coordinating with the agencies, that the proposed NWP activity will result in no more than minimal adverse environmental effects, the decision document explains the basis for the district engineer's decision. The decision document is part of the administrative record for the NWP verification, and may be made available through a Freedom of Information Act request submitted to the appropriate Corps district office.

Pre-construction notification requirements give the Corps the opportunity to evaluate certain proposed NWP activities on a case-by-case basis to ensure that they will cause no more than minimal adverse environmental effects, individually and cumulatively. Some NWP activities that require PCNs also require agency coordination (see paragraph (d) of general condition 32). This case-by-case review of PCNs often results in district engineers adding activity-specific conditions, including mitigation requirements, to NWP authorizations to ensure that the adverse environmental effects are no more than minimal. Mitigation requirements for NWP activities can include permit conditions (*e.g.,* time-of-year restrictions or use of best management practices) to avoid or minimize adverse effects on certain species or other resources, or compensatory mitigation requirements to offset authorized losses of jurisdictional waters and wetlands so that the net adverse environmental effects are no more than minimal. Any compensatory mitigation required for NWP activities must comply with the Corps' compensatory mitigation regulations at 33 CFR part 332. Review of a PCN may also result in the Corps district asserting discretionary authority to require an individual permit for the proposed activity, if the district engineer determines, based on the information provided in the PCN and other available information, that adverse environmental effects will be more than minimal, or there are sufficient concerns for any of the Corps public interest review factors (see 33 CFR 330.4(e)(2)). As discussed above, for NWP verifications, district engineers will assess cumulative adverse environmental effects at an appropriate regional scale. If an NWP verification includes multiple authorizations using a single NWP (*e.g.,* linear projects with crossings of separate and distant waters of the United States authorized by NWPs 12 or 14) or non-linear projects authorized with two or more different NWPs (*e.g.,* an NWP 28 for reconfiguring an existing marina plus an NWP 19 for minor dredging within that marina), the district engineer will evaluate the cumulative effects of the applicable NWPs within the appropriate geographic area.

Because the required NEPA cumulative effects and 404(b)(1) Guidelines cumulative effects analyses are conducted by Corps Headquarters in its decision documents for the issuance of the NWPs, district engineers do not need to do comprehensive cumulative effects analyses for NWP verifications. For an NWP verification, the district engineer only needs to assess the cumulative adverse environmental effects of the NWP or NWPs at the appropriate geographic scale (*e.g.,* Corps district, watershed, ecoregion) and include a statement in administrative record stating whether the proposed NWP activity, plus any required mitigation, will result in no more than minimal individual and cumulative adverse environmental effects. If the district engineer determines, after considering mitigation, that there will be more than minimal cumulative adverse environmental effects, he or she will exercise discretionary authority and require an individual permit.

Today's proposal to reissue the 50 existing NWPs with some modifications and to issue two new NWPs reflects the Corps commitment to environmental protection. We are proposing to revise the text of some of the NWPs, general conditions, and definitions so that they are clearer and can be more easily understood by the regulated public, government personnel, and interested parties while retaining terms and conditions that protect the aquatic environment. Making the text of the NWPs clearer and easier to understand will also facilitate compliance with these permits, which will also benefit the aquatic environment. The NWP program allows the Corps to authorize activities with only minimal adverse environmental impacts in a timely manner. Thus, the Corps is able to better protect the aquatic environment by focusing its limited resources on more extensive evaluations through the individual permit process focused on more rigorous evaluation of activities that have the potential for causing more severe adverse environmental effects.

Through the NWPs, the aquatic environment will also receive additional protection through regional conditions imposed by division engineers and activity-specific conditions added to NWPs by district engineers. These regional conditions and activity-specific conditions further minimize adverse environmental effects, because these conditions can only further restrict use of the NWPs. Nationwide permits also allow Corps district engineers to exercise, on a case-by-case basis, discretionary authority to require individual permits for proposed activities that may result in more than minimal individual and cumulative adverse environmental effects. Nationwide permits help protect the aquatic environment because they provide incentives to permit applicants to reduce impacts to jurisdictional waters and wetlands to meet the restrictive requirements of the NWPs and receive authorization more quickly than they would through the individual permit process. Regional general permits issued by district engineers provide similar environmental protections and incentives to project proponents.

Regional conditions may be imposed on the NWPs by division engineers to take into account regional differences in aquatic resource functions and services across the country and to restrict or prohibit the use of NWPs to protect those resources. Through regional conditions, a division engineer can modify an NWP to require submission of PCNs for certain activities. Regional conditions may also restrict or prohibit the use of an NWP in certain waters or geographic areas, if the use of that NWP in those waters or areas might result in more than minimal individual or cumulative adverse environmental effects. Regional conditions may not be less stringent than the NWPs.

A district engineer may impose activity-specific conditions on an NWP authorization to ensure that the NWP activity will result in no more than minimal individual and cumulative adverse effects on the environment and other public interest review factors. In addition, activity-specific conditions will often include mitigation requirements, including avoidance and

minimization, and possibly compensatory mitigation, to reduce the adverse environmental effects of the proposed activity so that they are no more than minimal. Compensatory mitigation requirements for NWP activities must comply with the applicable provisions of 33 CFR part 332. Compensatory mitigation may include the restoration, establishment, enhancement, and/or preservation of wetlands. Compensatory mitigation may also include the rehabilitation, enhancement, or preservation of streams, as well as the restoration, enhancement, and protection/maintenance of riparian areas next to streams and other open waters. District engineers may also require compensatory mitigation for impacts to other types of aquatic resources, such as seagrass beds, shallow sandy bottom marine areas, and coral reefs.

Compensatory mitigation can be provided through permittee-responsible mitigation, mitigation banks, or in-lieu fee programs. If the required compensatory mitigation will be provided through mitigation bank or in-lieu fee program credits, the permit conditions must comply with the requirements at 33 CFR 332.3(k)(4), and specify the number and resource type of credits that need to be secured by the permittee. If the required compensatory mitigation will be provided through permittee-responsible mitigation, the permit conditions must comply with 33 CFR 332.3(k)(3).

Process for Reissuing the NWPs

The NWPs reissued on February 13, 2012, went into effect on March 19, 2012. Those NWPs expire on March 18, 2017. The process for reissuing the NWPs for the next five-year period starts with today's publication of the proposed NWPs in the **Federal Register** for a 60-day comment period. Requests for a public hearing must be submitted in writing to the address in the **ADDRESSES** section of this notice. These requests must explain the reason or reasons why a public hearing should be held. If we determine that a public hearing or hearings would assist in making a decision on the proposed NWPs, general conditions, and definitions, a 30-day advance notice will be published in the **Federal Register** to advise interested parties of the date(s) and location(s) for the public hearing(s). Any announcement of public hearings would also be posted as a supporting document in docket number COE–2015–0017 at *www.regulations.gov* as well as the Corps Regulatory Program home page at *http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx.*

Shortly after the publication of this **Federal Register** notice, Corps district offices will issue public notices to solicit comments on proposed regional conditions. In their district public notices, district engineers may also propose to suspend or revoke some or all of these NWPs if they have issued, or are proposing to issue, regional general permits, programmatic general permits, or section 404 letters of permission for use instead of some or all of these NWPs. The comment period for these district public notices will be 45 days.

After the comment period has ended, we will review the comments received in response to this **Federal Register** notice. Then we will draft the final NWPs, and those draft final NWPs will be subjected to another review under Executive Order 12866, Regulatory Planning and Review. The Corps will try to publish the final NWPs in the **Federal Register** approximately 90 days before the planned effective date of March 19, 2017, the day after the 2012 NWPs expire. This 90-day period provides coastal state governments the opportunity to make their Coastal Zone Management Act (CZMA) consistency determinations for these NWPs, consistent with 15 CFR 930.36(b). During this 90-day period, state governments, tribal governments, and EPA will make their Clean Water Act Section 401 water quality certifications (WQCs) for these NWPs. The CZMA/WQC and regional conditioning processes are discussed in more detail below.

Within this 90-day period, Corps districts will prepare supplemental decision documents and proposed regional conditions for approval by division engineers before the final NWPs go into effect. Supplemental decision documents address the environmental considerations related to the use of NWPs in a Corps district, state, or other geographic region. The supplemental decision documents will certify that the NWPs, with any regional conditions or geographic suspensions or revocations, will authorize only those activities that result in no more than minimal individual and cumulative adverse effects on the environment or any relevant public interest review factor.

Existing and New Permits

Activities authorized by the 2012 NWPs remain authorized by those NWPs until March 18, 2017. An activity completed under the authorization provided by a 2012 NWP continues to be authorized by that NWP (see 33 CFR 330.6(b)). Activities authorized by the 2012 NWPs that have commenced or are under contract to commence by March 18, 2017, will have one year (*i.e.,* until March 18, 2018) to complete those activities under the terms and conditions of the 2012 NWPs (see 33 CFR 330.6(b)). Activities previously authorized by the 2012 NWPs that have not commenced or are not under contract to commence by March 18, 2017, will require reauthorization under the 2017 NWPs, provided those activities qualify for authorization under the 2017 NWPs. If those activities no longer qualify for NWP authorization because they do not meet the terms and conditions of the 2017 NWPs (including any regional conditions imposed by division engineers), the project proponent will need to obtain an individual permit, or seek authorization under a regional general permit, if such a general permit is available in the applicable Corps district and can be used to authorize the proposed activity.

National Environmental Policy Act Compliance

We have prepared a draft decision document for each proposed NWP. Each draft decision document contains an environmental assessment (EA). The EA includes the public interest review described in 33 CFR 320.4(b). The EA generally discusses the anticipated impacts the NWP will have on the human environment and the Corps' public interest review factors. If a proposed NWP authorizes discharges of dredged or fill material into waters of the United States, the draft decision document will also include analysis conducted pursuant to guidelines set out in section 404(b)(1) of the Clean Water Act (404(b)(1) Guidelines) in accordance with 40 CFR 230.7. These decision documents evaluate the environmental effects of each NWP from a national perspective.

The draft decision documents for the proposed NWPs are available on the internet at: *www.regulations.gov* (docket ID number COE–2015–0017) as Supporting Documents. We are soliciting comments on these draft national decision documents, and any comments received will be considered when preparing the final decision documents for the NWPs.

After the NWPs are issued or reissued, division engineers will issue supplemental decision documents to evaluate environmental effects on a regional basis (*e.g.,* state or Corps district). The supplemental decision documents are prepared by Corps districts, but must be approved and

formally issued by the appropriate division engineer, since the NWP regulations at 33 CFR 330.5(c) state that the division engineer has the authority to modify, suspend, or revoke NWP authorizations for any specific geographic area within his or her division. For some Corps districts, their geographic area of responsibility covers an entire state. For other states, there is more than one Corps district responsible for implementing the Corps Regulatory Program, including the NWP program. In those states, there is a lead Corps district responsible for preparing the supplemental decision documents for all of the NWPs. The supplemental decision documents will discuss regional conditions imposed by division engineers to protect the aquatic environment and ensure that any adverse environmental effects resulting from NWP activities in that region will be no more than minimal, individually and cumulatively.

For the NWPs, the assessment of cumulative effects occurs at three levels: National, regional, and the verification stage. Each national NWP decision document includes a national-scale NEPA cumulative effects analysis. Each supplemental decision document has a NEPA cumulative effects analysis conducted for a region, which is usually a state or Corps district. When a district engineer issues a verification letter in response to a PCN or a voluntary request for a NWP verification, the district engineer prepares a brief decision document. That decision document explains whether the proposed NWP activity, after considering permit conditions such as mitigation requirements, will result in no more than minimal individual and cumulative adverse environmental effects.

If the NWP is not suspended or revoked in a state or a Corps district, the supplemental decision document includes a certification that the use of the NWP in that district, with any applicable regional conditions, will result in no more than minimal cumulative adverse environmental effects.

After the NWPs are issued or reissued, evaluations by a district engineer may result in a recommendation to the division engineer to modify, suspend, or revoke one or more NWPs in a particular geographic region or watershed at a later time. Such a recommendation will occur if the district engineer finds information indicating that the use of an NWP in a particular area may result in more than minimal individual or cumulative adverse environmental effects. In such cases, the division engineer will amend the applicable supplemental decision documents to account for the modification, suspension, or revocation of those NWPs.

Compliance With Section 404(e) of the Clean Water Act

The proposed NWPs are issued in accordance with section 404(e) of the Clean Water Act and 33 CFR part 330. These NWPs authorize categories of activities that are similar in nature. The ''similar in nature'' requirement does not mean that activities authorized by an NWP must be identical to each other. We believe that the ''categories of activities that are similar in nature'' requirement in Clean Water Act section 404(e) is to be interpreted broadly, for practical implementation of this general permit program.

Nationwide permits, as well as other general permits, are intended to reduce administrative burdens on the Corps and the regulated public while maintaining environmental protection, by efficiently authorizing activities that have no more than minimal adverse environmental effects, consistent with Congressional intent in the 1977 amendments to the Federal Water Pollution Control Act. Keeping the number of NWPs manageable is a key component for making the NWPs protective of the environment and streamlining the authorization process for those general categories of activities that have no more than minimal individual and cumulative adverse environmental effects.

The various terms and conditions of these NWPs, including the NWP regulations at 33 CFR 330.1(d) and 330.4(e), allow district engineers to exercise discretionary authority to modify, suspend, or revoke NWP authorizations or to require individual permits, and ensure compliance with section 404(e) of the Clean Water Act. For each NWP that may authorize discharges of dredged or fill material into waters of the United States, the national and supplemental decision documents include 404(b)(1) Guidelines analyses. These 404(b)(1) Guidelines analyses are conducted in accordance with 40 CFR part 230.7.

The 404(b)(1) Guidelines analyses in the national and supplemental decision documents also include a cumulative effects analysis, in accordance with 40 CFR 230.7(b) and 230.11(g). A 404(b)(1) Guidelines cumulative effects analysis is provided in addition to the NEPA cumulative effects analysis because the implementing regulations for NEPA and the 404(b)(1) Guidelines define ''cumulative impacts'' or ''cumulative effects'' differently.

2015 Revisions to the Definition of ''Waters of the United States''

In the June 29, 2015, edition of the **Federal Register** (80 FR 37054) the U.S. Environmental Protection Agency (EPA) and the Army published a final rule amending the definition of ''waters of the United States'' in the Corps' regulations at 33 CFR part 328 and in a number of EPA's regulations. Numerous parties filed multiple challenges to the 2015 final rule, which currently are pending. On October 9, 2015, the United States Court of Appeals for the Sixth Circuit issued a stay of the rule pending further order of that court.

We are seeking the views of NWP users on how the 2015 revisions to the definition of ''waters of the United States'' might affect the applicability and efficiency of the proposed NWPs. We are also seeking comments on changes to the NWPs, general conditions, and definitions that would help ensure that activities that result in no more than minimal individual and cumulative adverse environmental effects can continue to be authorized by the NWPs. The objective of such changes is to continue to be consistent with Congressional intent for section 404(e) of the Clean Water Act, which calls for a streamlined authorization process for regulated activities with only minimal adverse environmental effects.

After the final rule defining waters of the United States was published on June 29, 2015, the Corps received letters from several entities requesting that the Corps consider increasing the acreages limits and PCN thresholds for several NWPs. One group suggested increasing the acreage limits and PCN thresholds for NWPs 12, 14, 18, 43, 51, and 52 and another group asked for increases in the acreage limits and PCN thresholds for NWPs 12, 14, 39, 43, 51, and 52. The former group recommended increasing the acreage limits of NWPs 12, 14, 43, 51, and 52 to one acre and the acreage limit of NWP 18 to ½-acre. The latter group said the acreage limits of NWPs 12, 14, 39, 43, 51, and 52 should be raised to two acres. Both of these groups cited the President's Climate Action Plan and EPA's proposed Clean Power Plan as reasons to increase the acreage limits and PCN thresholds of these NWPs. They said these NWPs are important tools for meeting goals for natural gas and renewable energy production and transmission, to reduce greenhouse gas emissions. Further, they assert that new and modified infrastructure, some of which would

likely be authorized by NWPs 12, 39, 51 and 52, would need to be constructed and operational in the next several years to meet the goals in the Climate Action Plan.[1]

Therefore, we are seeking comment on changes in the terms and conditions of the NWPs. These could include changes in acreage and linear foot limits (see below), PCN thresholds, and the use of other tools for complying with the no more than minimal adverse environmental effects requirement for NWPs and other types of general permits. Such tools include using PCNs and the activity- and site-specific review they require and retaining the 1/10-acre threshold for requiring wetland compensatory mitigation (see paragraph (c) of general condition 23).

Acreage Limits and Pre-Construction Notification Thresholds

We are seeking comment on whether to retain the ½-acre limit that has been imposed on certain NWPs (*i.e.,* NWPs 12, 14, 21, 29, 39, 42, 43, 44, 50, 51, and 52), or to impose different acreage limits on these NWPs. We are seeking comment on the acreage limits in part because of the suggestions from various entities mentioned in the previous section of this notice. Another reason we are soliciting comments on the acreage limits is to help determine whether there are alternative acreage limits that would be more effective at ensuring that the NWPs continue to meet their intended purpose of providing a streamlined authorization process for activities resulting in no more than minimal individual and cumulative adverse environmental effects. Many of the NWPs listed in the previous sentence have had this ½-acre limit since 2000. Nationwide permit 50 was first issued in 2007 and NWPs 51 and 52 were originally issued in 2012. We welcome comments and suggestions for higher or lower acreage limits and those comments and suggestions should include relevant data and other information that explain why the acreage limits should be changed. Different acreage limits can be suggested for NWPs that authorize different categories of activities.

Comments should explain how your recommended changes to acreage limits would help the NWP program continue to comply with Congressional intent for a streamlined process for authorizing regulated activities that result in no more than minimal individual and cumulative adverse environmental effects. The intent of Congress was articulated through the 1977 amendments to the Federal Water Pollution Control Act (33 U.S.C. 1344(e)). Commenters should consider that general permits are an important tool for protecting the environment by providing incentives to minimize impacts to jurisdictional waters and wetlands to qualify for a streamlined authorization process. If those incentives are removed by reducing the acreage limits so that designing projects to qualify for NWP authorization is no longer practical, project proponents may submit permit applications for activities with substantial adverse environmental impacts. General permits are also an important tool for managing the Corps' Regulatory Program, and allow the Corps to focus its resources on evaluating individual permit applications for proposed activities that have the potential for resulting in substantial adverse environmental impacts.

We are also soliciting comments on changing the PCN thresholds for those NWPs that require pre-construction notification. Pre-construction notifications are an important tool for ensuring that NWP activities result in only minimal and individual and cumulative adverse environmental effects. Pre-construction notifications allow district engineers to evaluate the activity- and site-specific circumstances of proposed NWP activities to decide whether those activities are eligible for NWP authorization or require individual permits. In addition, PCNs provide district engineers with the opportunity to impose activity-specific conditions on NWPs, including mitigation requirements, to comply with the statutory requirements of Section 404(e) of the Clean Water Act. Pre-construction notifications also facilitate compliance with the Endangered Species Act and the National Historic Preservation Act.

There are circumstances where requiring PCNs for all activities authorized by an NWP is not necessary to satisfy the ''no more than minimal'' adverse environmental effects requirement. We are soliciting comment on whether the PCN thresholds for specific NWPs should be changed to improve the efficiency of the NWP Program while maintaining strong protection of the aquatic environment and other public interest review factors relevant to the Corps' Regulatory Program.

Waivers of Certain Nationwide Permit Limits

Since 2002, certain NWPs have had a 300-linear foot limit for losses of stream bed that could be waived after a district engineer evaluates the PCN and determines that the proposed NWP activity would result in no more than minimal individual and cumulative adverse environmental effects. In the 2012 NWPs, we added a requirement that waivers of certain NWP limits could only be granted through a written determination by a district engineer concluding that the proposed NWP activity would result only in minimal adverse environmental effects. The ability to waive those limits provides flexibility in the NWPs to authorize, after an activity-specific review, activities that are specifically determined by district engineers to result in no more than minimal adverse environmental effects.

In today's proposal, the following NWPs have certain limits that can be waived with a written determination of a district engineer after review of a PCN: NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51, and 52. For all these NWPs, the district engineer can only grant the waiver upon making a written determination that the NWP activity will result in only minimal adverse environmental effects. For NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52, the total loss of waters of the United States, including any waivers of the 300 linear foot limit for the loss of intermittent and ephemeral stream bed, cannot exceed ½-acre.

The Corps uses an internal, automated information system to track all individual permit applications and NWP verification requests, as well as verifications for regional general permits and programmatic general permits. That automated information system, known as ORM, is used to record requested amounts of impacts to jurisdictional waters and wetlands, as well as proposed compensatory mitigation. When the Corps issues an individual permit or a general permit verification, Corps district project managers record the amounts of authorized impacts and, if required, compensatory mitigation. The proposed and authorized impacts and compensatory mitigation are recorded as acres or linear feet, or both, depending on the judgment of the Corps project manager. The Corps' automated information system does not specifically track waivers for NWP verifications, but for the 2017 NWPs we will be modifying that system by adding data fields to record the use of waivers for these NWPs.

[1] Nationwide permits 3, 12, and 14 are frequently used to authorize discharges of dredged or fill material into waters of the United States and structures and work in navigable waters of the United States associated with the construction and maintenance of infrastructure, including energy and transportation infrastructure. Nationwide permits 51 and 52 authorize renewable energy projects.

In the 2012 NWPs, agency coordination was required for any proposed activity authorized by NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 where the applicant requested a waiver of the 300 linear foot limit for the loss of intermittent or ephemeral stream bed. The agency coordination process is described in paragraph (d)(2) of the ''pre-construction notification'' general condition, and we are not proposing any changes to that agency coordination process. These waivers can only be issued after an activity-specific evaluation, consideration of agency comments received in response to agency coordination, and the district engineer's consideration of the nine factors for making minimal effect determinations described in paragraph D.1 in the section entitled ''District Engineer's Decision'' (77 FR 10184 at 10287–10288).

To gather more information on the use of waivers, we are soliciting comment on five aspects of waivers:

(1) Making changes to the numeric limits that can be waived;

(2) whether to retain the authority of district engineers to issue activity-specific waivers of certain NWP limits;

(3) whether to impose a linear foot cap on waivers to the 500 linear foot limit for NWPs 13 and proposed NWP B (*e.g.,* a total waiver amount of 1,000 linear feet), and the 20 foot limit (*e.g.,* a total waiver amount of 40 linear feet) in NWP 36;

(4) whether to impose a linear foot cap (*e.g.,* a total waiver amount of 1,000 linear feet) on losses of intermittent and ephemeral stream bed potentially eligible for waivers of the 300 linear foot limit for losses of stream bed in NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52; and

(5) whether to require compensatory mitigation to offset all losses of stream bed (consistent with General Condition 23(d)) authorized by waivers of the 300 linear foot limit for NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52.

Comments on suggested changes to the numeric limits above which a waiver could be issued, and comments on whether to retain or remove the waiver provisions, should be accompanied by data and other information supporting the commenter's views on these questions. If the ability for district engineers to issue waivers of certain NWP limits is removed, then individual permits would be required for proposed activities with losses of waters of the United States that exceed those limits.

NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 currently have a ½-acre cap on losses of waters of the United States. Any loss of stream bed, including any losses of intermittent and ephemeral stream bed in excess of 300 linear feet that are waived upon a written determination by the district engineer after agency coordination, counts towards that ½-acre limit. We are seeking comment on whether there should also be a linear foot cap on those waivers, in addition to the ½-acre limit. Commenters supporting a linear foot cap on waivers for the loss of intermittent and ephemeral stream bed should provide a suggested numeric linear foot cap. Commenters should also explain how their suggested linear foot limit will help ensure that these NWPs only authorize activities with no more than minimal adverse environmental effects, and include supporting data and other information.

We are also seeking comment on whether to require compensatory mitigation for all losses of intermittent or ephemeral stream bed authorized by NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 through a district engineer's written waiver of the 300 linear foot limit. Commenters are encouraged to provide data to support their position including providing data that demonstrate that compensatory mitigation is necessary to reach a finding of minimal impact based on the criteria listed in paragraph 2, section D for specific resource types.

It is important to note that district engineers can only issue those waivers after conducting agency coordination. District engineers fully consider agency comments received during that coordination, including any agency comments recommending requiring compensatory mitigation to ensure that the net adverse environmental effects are no more than minimal. In the NWP program, district engineers require compensatory mitigation on a case-by-case basis when necessary to ensure that proposed NWP activities will result in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR part 330.1(e)(3) and general condition 23).

When making waiver decisions for NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52, as well as compensatory mitigation decisions, district engineers consider the nine factors in paragraph 2 of Section D, District Engineer's Decision. The factors most relevant to compensatory mitigation decision making are: The environmental setting in the vicinity of the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (*e.g.,* partial or complete loss), the duration of the adverse effects (temporary or permanent), and the importance of the aquatic resource functions to the region (*e.g.,* watershed or ecoregion). We are soliciting comment on the appropriateness and practicability of requiring compensatory mitigation for all waivers of the 300 linear foot limit for losses of stream bed, to offset the losses of intermittent and ephemeral stream that are authorized by written waivers issued by district engineers for these NWPs. We are also seeking comments and suggestions on technical approaches for providing compensatory mitigation to offset losses of stream bed authorized by those written waivers.

Compliance With the Endangered Species Act

The Corps has determined that the NWP regulations at 33 CFR 330.4(f) and NWP general condition 18, endangered species, ensure that all activities authorized by NWPs comply with section 7 of the Endangered Species Act (ESA). Those regulations and general condition 18 require non-federal permittees to submit PCNs for any activity that might affect listed species or designated critical habitat. The Corps then evaluates the PCN and makes an effect determination for the proposed NWP activity for the purposes of ESA section 7. The Corps established the ''might affect'' threshold in 33 CFR 330.4(f)(2) and paragraph (c) of general condition 18 because it is more stringent than the ''may affect'' threshold for section 7 consultation in the U.S. Fish and Wildlife Service's (FWS) and National Marine Fisheries Service's (NMFS) ESA section 7 consultation regulations at 50 CFR part 402. The word ''might'' is defined as having ''less probability or possibility'' than the word ''may'' (Merriam-Webster's Collegiate Dictionary, 10th edition).

If the project proponent is required to submit a PCN and the proposed activity might affect listed species or critical habitat, the activity is not authorized by NWP until either the Corps district makes a ''no effect'' determination or makes a ''may affect'' determination and completes formal or informal ESA section 7 consultation.

When evaluating a PCN, the Corps will either make a ''no effect'' determination or a ''may affect'' determination. If the Corps makes a ''may affect'' determination, it will notify the non-federal applicant and the activity is not authorized by NWP until ESA Section 7 consultation has been completed. If the non-federal project

proponent does not comply with 33 CFR 330.4(f)(2) and general condition 18, and does not submit the required PCN, then the activity is not authorized by NWP. In such situations, it is an unauthorized activity and the Corps district will determine an appropriate course of action to respond to the unauthorized activity.

Federal agencies, including state agencies (*e.g.,* certain state Departments of Transportation) to which the Federal Highway Administration has assigned its responsibilities pursuant to 23 U.S.C. 327, are required to follow their own procedures for complying with Section 7 of the ESA (see 33 CFR 330.4(f)(1) and paragraph (b) of general condition 18). This includes circumstances when an NWP activity is part of a larger overall federal project or action. The federal agency's ESA section 7 compliance covers the NWP activity because it is undertaking the NWP activity and possibly other related activities that are part of a larger overall federal project or action.

On October 15, 2012, the Chief Counsel for the Corps issued a letter to the FWS and NMFS (the Services) clarifying the Corps' legal position regarding compliance with the ESA for the February 13, 2012, reissuance of 48 NWPs and the issuance of two new NWPs. That letter explained that the issuance or reissuance of the NWPs, as governed by NWP general condition 18 (which applies to every NWP and which relates to endangered and threatened species), and 33 CFR 330.4(f), results in ''no effect'' to listed species or critical habitat, and therefore the reissuance/issuance action itself does not require ESA section 7 consultation. Although the reissuance/issuance of the NWPs has no effect on listed species or their critical habitat and thus requires no ESA section 7 consultation, the terms and conditions of the NWPs, including general condition 18, and 33 CFR 330.4(f) ensure that ESA consultation will take place on an activity-specific basis wherever appropriate at the field level of the Corps, FWS, and NMFS. The principles discussed in the Corps' October 15, 2012, letter apply to this proposed issuance/reissuance of NWPs. Those principles are discussed in more detail below.

The only activities that are immediately authorized by NWPs are ''no effect'' activities under Section 7 of the ESA and its implementing regulations at 50 CFR part 402. Therefore, the issuance or reissuance of NWPs does not require ESA section 7 consultation because no activities authorized by any NWPs ''may affect'' listed species or critical habitat without first completing activity-specific ESA Section 7 consultations with the Services, as required by general condition 18 and 33 CFR 330.4(f). Regional programmatic ESA section 7 consultations may also be used to satisfy the requirements of the NWPs in general condition 18 and 33 CFR 330.4(f)(2) if a proposed NWP activity is covered by that regional programmatic consultation.

ESA section 7 requires each federal agency to ensure, through consultation with the Services, that ''any action authorized, funded, or carried out'' by that agency ''is not likely to jeopardize the continued existence of listed species or adversely modify designated critical habitat.'' (See 16 U.S.C. 1536(a)(2).) Accordingly, the Services' section 7 regulations specify that an action agency must ensure that the action ''it authorizes,'' including authorization by permit, does not cause jeopardy or adverse modification. (See 50 CFR 402.01(a) and 402.02.) Thus, in assessing application of ESA section 7 to NWPs issued or reissued by the Corps, the proper focus is on the nature and extent of the specific activities ''authorized'' by the NWPs and the timing of that authorization.

The issuance or reissuance of the NWPs by the Chief of Engineers imposes express limitations on activities authorized by those NWPs. These limitations are imposed by the NWP terms and conditions, including the general conditions that apply to all NWPs regardless of whether pre-construction notification is required. With respect to listed species and critical habitat, general condition 18 expressly prohibits any activity ''which 'may affect' a listed species or critical habitat, unless section 7 consultation addressing the effects of the proposed activity has been completed.'' General condition 18 also states that if an activity ''may affect'' a listed species or critical habitat, a non-federal applicant must submit a PCN and ''shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized.'' Permit applicants that are Federal agencies should follow their own requirements for complying with the ESA (see 33 CFR 330.4(f)(1)), and if a PCN is required the district engineer will review the federal agency's ESA compliance documentation and determine whether it is sufficient to address ESA compliance for the NWP activity.

Thus, because no NWP can or does authorize an activity that may affect a listed species or critical habitat absent an activity-specific ESA section 7 consultation, and because any activity that may affect a listed species or critical habitat must undergo an activity-specific consultation before the district engineer can verify that the activity is authorized by NWP, the issuance or reissuance of NWPs has ''no effect'' on listed species or critical habitat. Accordingly, the action being ''authorized'' by the Corps (*i.e.,* the issuance or re-issuance of the NWPs themselves) has no effect on listed species or critical habitat.

To help ensure protection of listed species and critical habitat, general condition 18 establishes a higher threshold than the threshold set forth in the Services' ESA section 7 regulations for initiation of section 7 consultation. Specifically, while section 7 consultation must be initiated for any activity that ''may affect'' listed species or critical habitat, for non-federal permittees general condition 18 requires submission of a PCN to the Corps if ''any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat'' and prohibits work until ''notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized.'' (See paragraph (c) of general condition 18.) The PCN must ''include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work.'' (See paragraph (b)(7) of general condition 32.) Paragraph (f) of general condition 18 notes that information on the location of listed species and their critical habitat can be obtained from the Services directly, or from their Web sites.

General condition 18 makes it clear to project proponents that an NWP does not authorize the ''take'' of an endangered or threatened species. Paragraph (e) of general condition 18 also states that a separate authorization (*e.g.,* an ESA section 10 permit or a biological opinion with an ''incidental take statement'') is required to take a listed species. In addition, paragraph (a) of general condition 18 states that no activity is authorized by NWP which is likely to ''directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation'' or ''which will directly or indirectly destroy or adversely modify the critical habitat of such species.'' Such activities would require district engineers to exercise their discretionary authority

and subject the proposed activity to the individual permit review process, because an activity that would jeopardize the continued existence of a listed species, or a species proposed for listing, or that would destroy or adversely modify the critical habitat of such species would not result in minimal adverse environmental effects and thus cannot be authorized by NWP.

During the process for developing regional conditions, Corps districts coordinate or consult with FWS and/or NMFS regional or field offices to identify regional conditions that can provide additional assurance of compliance with general condition 18 and 33 CFR 330.4(f)(2). Such regional conditions can add PCN requirements to one or more NWPs in areas inhabited by listed species or where designated critical habitat occurs. Regional conditions can also be used to establish time-of-year restrictions when no NWP activity can take place to ensure that individuals of listed species are not adversely affected by such activities. Corps districts will continue to consider through regional consultations, local initiatives, or other cooperative efforts additional information and measures to ensure protection of listed species and critical habitat, the requirements established by general condition 18 (which apply to all uses of all NWPs), and other provisions of the Corps regulations ensure full compliance with ESA section 7.

Corps district offices meet with local representatives of the FWS and NMFS to establish or modify existing procedures, where necessary, to ensure that the Corps has the latest information regarding the existence and location of any threatened or endangered species or their critical habitat. Corps districts can also establish, through local procedures or other means, additional safeguards that ensure compliance with the ESA. Through formal ESA section 7 consultation, or through other coordination with the FWS and/or the NMFS, as appropriate, the Corps establishes procedures to ensure that NWP activities will not jeopardize any threatened and endangered species or result in the destruction or adverse modification of designated critical habitat. Such procedures may result in the development of regional conditions added to the NWP by the division engineer, or in activity-specific conditions to be added to an NWP authorization by the district engineer.

Based on the fact that NWP issuance or reissuance has no effect on listed species or critical habitat and any activity that ''may affect'' listed species or critical habitat will undergo activity-specific ESA section 7 consultation, there is no requirement that the Corps undertake programmatic consultation for the NWP program. The national programmatic consultations conducted in the past for the NWP program were voluntary consultations. Regional programmatic consultation can be conducted by Corps districts and regional or local offices of the FWS and/or NMFS to provide further assurance against potential adverse effects on listed species or critical habitat, and assure other benefits to listed species or critical habitat, such as through the establishment of additional procedures, regional NWP conditions, activity-specific NWP conditions, or other safeguards that may be employed by Corps district offices based on further discussions between the Corps and the FWS and NMFS.

The programmatic ESA section 7 consultations the Corps conducted for the 2007 and 2012 NWPs were voluntary consultations. The voluntary programmatic consultation conducted with the NMFS for the 2012 NWPs resulted in a biological opinion issued on February 15, 2012, which was replaced by a new biological opinion issued on November 24, 2014, after the proposed action was modified and triggered re-initiation of that programmatic consultation. The programmatic consultation on the 2012 NWPs with the FWS did not result in a biological opinion.

In the Corps Regulatory Program's automated information system (ORM), the Corps collects data on all individual permit applications, all NWP PCNs, all voluntary requests for NWP verifications where the NWP or general conditions do not require PCNs, and all verifications of activities authorized by regional general permits. For all written authorizations issued by the Corps, the collected data include authorized impacts and required compensatory mitigation, as well as information on all consultations conducted under section 7 of the ESA. Every year, the Corps evaluates over 30,000 NWP PCNs and requests for NWP verifications when PCNs are not required, and provides written verifications for those activities when district engineers determine those activities result in no more than minimal adverse environmental effects. During the evaluation process, district engineers assess potential impacts to listed species and critical habitat and conduct section 7 consultations whenever they determine NWP activities may affect listed species or critical habitat. District engineers will exercise discretionary authority and require individual permits when proposed NWP activities will result in more than minimal adverse environmental effects.

Each year, the Corps conducts thousands of ESA section 7 consultations with the FWS and NMFS for activities authorized by NWPs. These section 7 consultations are tracked in ORM. During the period of March 19, 2012, to December 14, 2015, Corps districts conducted 1,188 formal consultations and 7,327 informal consultations for NWP activities under ESA section 7. During that time period, the Corps also used regional programmatic consultations for 7,679 NWP verifications to comply with ESA section 7. Therefore, each year NWP activities are covered by an average of more than 4,300 formal, informal, and programmatic ESA section 7 consultations with the FWS and/or NMFS.

For one of the protective measures in NMFS's 2014 biological opinion, Corps districts posted information to assist prospective NWP users in complying with general condition 18. That implementation guidance was issued on August 5, 2014, and provides general guidance to prospective permittees on whether a PCN should be submitted for a proposed NWP activity to comply with general condition 18. It also directs prospective permittees to NMFS's Web site for additional information on listed species and critical habitat under their jurisdiction. Districts coordinated that document with NMFS regional and field offices and had the option of adding region-specific information. For the 2017 NWPs, we plan to continue using that information document, and expanding it to include information on listed species and critical habitat under the jurisdiction of the FWS.

During the process for reissuing the NWPs, Corps districts will coordinate with regional and field offices of the FWS and NMFS to discuss whether new or modified regional conditions should be imposed on the NWPs to improve protection of listed species and designated critical habitat. Regional conditions must comply with the Corps' regulations for adding permit conditions (33 CFR 325.4), and the Corps decides whether suggested regional conditions identified during this coordination are appropriate for the NWPs. During this coordination, other tools, such as additional regional programmatic consultations or standard local operating procedures, might be identified to facilitate compliance with the ESA while streamlining the process for authorizing activities under the NWPs. Section 7 consultation on regional conditions only occurs when a

Corps districts makes a ''may affect'' determination and initiates formal or informal section 7 consultation with the FWS and/or NMFS, depending on the species that may be affected. Otherwise, the Corps district coordinates with the FWS and/or NMFS. Regional conditions, standard local operating procedures, and regional programmatic consultations are important tools for protecting listed species and critical habitat and helping to tailor the NWP program to address specific species, their habitats, and the stressors that affect those species.

Compliance With the Essential Fish Habitat Provisions of the Magnuson-Stevens Fishery Conservation and Management Act

The NWP Program's compliance with the essential fish habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act will be achieved through EFH consultations between Corps districts and NMFS regional offices. This approach continues the EFH Conservation Recommendations provided by NMFS Headquarters to Corps Headquarters in 1999 for the NWP program. Corps districts that have EFH designated within their geographic areas of responsibility will coordinate with NMFS regional offices, to the extent necessary, to develop NWP regional conditions that conserve EFH and are consistent the NMFS regional EFH Conservation Recommendations. Corps districts will conduct consultations in accordance with the EFH consultation regulations at 50 CFR 600.920.

Regional Conditioning of Nationwide Permits

Under section 404(e) of the Clean Water Act, NWPs can only be issued for those activities that result in no more than minimal individual and cumulative adverse environmental effects. For activities that require authorization under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), the Corps' regulations at 33 CFR 322.2(f) have a similar requirement. An important mechanism for ensuring compliance with these requirements is regional conditions imposed by division engineers to address local environmental concerns. Coordination with federal and state agencies and Tribes, and the solicitation of public comments, assist division and district engineers in identifying and developing appropriate regional conditions for the NWPs. Effective regional conditions protect local aquatic ecosystems and other resources and helps ensure that the NWPs authorize only those activities that result in no more than minimal individual and cumulative adverse effects on the aquatic environment, and are in the public interest.

There are two types of regional conditions: (1) Corps regional conditions and (2) water quality certification/Coastal Zone Management Act consistency determination regional conditions.

Corps regional conditions may be added to NWPs by division engineers after a public notice and comment process and coordination with appropriate federal, state, and local agencies, as well as Tribes. The process for adding Corps regional conditions to the NWPs is described at 33 CFR 330.5(c).

Examples of Corps regional conditions include:

- Restricting the types of waters of the United States where the NWPs may be used (*e.g.,* fens, bogs, bottomland hardwoods, etc.) or prohibiting the use of some or all of the NWPs in those types of waters or in specific watersheds.
- Restricting or prohibiting the use of NWPs in an area covered by a Special Area Management Plan, where regional general permits are issued to authorize activities consistent with that plan that have only minimal adverse environmental effects.
- Revoking certain NWPs in a watershed or other type of geographic area (*e.g.,* a state or county).
- Adding PCN requirements to NWPs to require notification for all activities or lowering PCN thresholds, in certain watersheds or other types of geographic areas, or in certain types of waters of the United States.
- Reducing NWP acreage limits in certain types of waters of the United States or specific waterbodies, or in specific watersheds or other types of geographic regions.
- Restricting activities authorized by NWPs to certain times of the year in a particular waterbody, to minimize the adverse effects of those activities on fish or shellfish spawning, wildlife nesting, or other ecologically cyclical events.
- Conditions necessary to facilitate compliance with general condition 18, to enhance protection of listed species or critical habitat under the Endangered Species Act.
- Conditions necessary to facilitate compliance with general condition 17, to enhance protection of tribal trust resources, including natural and cultural resources and Indian lands.
- Conditions necessary for ensuring compliance with general condition 20, to protect historic properties.
- Conditions necessary to ensure that NWP activities have no more than minimal adverse effects to Essential Fish Habitat.

Corps regional conditions approved by division engineers cannot remove or reduce any of the terms and conditions of the NWPs, including general conditions. Corps regional conditions cannot lessen PCN requirements. In other words, Corps regional conditions can only be more restrictive than the NWP terms and conditions established by Corps Headquarters when it issues or reissues an NWP.

Water quality certification (WQC) regional conditions are added to the NWPs as a result of water quality certifications issued by states, Tribes, or the U.S. EPA. Regional conditions are added to the NWPs through the state Coastal Zone Management Act consistency review process. These WQC/CZMA regional conditions are reviewed by Corps division engineers to determine whether they are consistent with the Corps regulations for permit conditions at 33 CFR 325.4. Regulatory Guidance Letter 92–4, issued on September 14, 1992, provides additional guidance and information on WQC and CZMA conditions for the NWPs.

At approximately the same time as the publication of this **Federal Register** notice, each Corps district will issue an initial public notice. The public comment period for these district public notices will be 45 days. Those initial public notices will include proposed Corps regional conditions developed by our district offices, and will also request comments or suggestions for additional Corps regional conditions or modifications to the proposed Corps regional conditions.

The public notices issued by the Districts may also include, for informational purposes only, proposed conditions intended to meet the specific requirements of Tribes, states, and EPA for the purposes of obtaining WQC, and the specific requirements of states for obtaining CZMA concurrence. The WQC and CZMA reviews are separate and independent administrative review processes for the NWPs. Public comments on the Tribal, state, or EPA WQC regional conditions or state CZMA regional conditions as proposed by the districts should be sent directly to the Tribe, state, or EPA, as appropriate. The public should not send comments on proposed WQC/CZMA regional conditions to the Corps.

In response to the district's public notice, interested parties may suggest additional Corps regional conditions or changes to Corps regional conditions. They may also suggest suspension or

revocation of NWPs in certain geographic areas, such as specific watersheds or waterbodies. Such comments should include data to support the need for the suggested modifications, suspensions, or revocations of NWPs.

After the NWPs are issued or reissued, the division engineer will issue supplemental decision documents for each NWP in a specific region (*e.g.,* a state or Corps district). Each supplemental decision document will evaluate the NWP on a regional basis (*e.g.,* by Corps district geographic area of responsibility or by state) and discuss the need for NWP regional conditions for that NWP. Each supplemental decision document will also include a statement by the division engineer, which will certify that the NWP, with approved regional conditions, will authorize only those activities that will have no more than minimal individual and cumulative adverse environmental effects.

After the division engineer approves the Corps regional conditions, each Corps district will issue a final public notice for the NWPs. The final public notice will announce both the final Corps regional conditions and any final WQC/CZMA regional conditions. The final public notices will also announce the final status of water quality certifications and CZMA consistency determinations for the NWPs. Corps districts may adopt additional regional conditions after following public notice and comment procedures, if they identify a need to add or modify regional conditions. Information on regional conditions and the suspension or revocation of one or more NWPs in a particular area can be obtained from the appropriate district engineer.

In cases where a Corps district has issued a regional general permit that authorizes similar activities as one or more NWPs, during the regional conditioning process the district will clarify the use of the regional general permit versus the NWP(s). For example, the division engineer may revoke the applicable NWP(s) so that only the regional general permit is available for use to authorize those activities.

Water Quality Certification/Coastal Zone Management Act Consistency Determination for Nationwide Permits

A Tribal, State, or EPA water quality certification, or waiver thereof, is required by Section 401 of the Clean Water Act, for an activity authorized by NWP which results in a discharge into waters of the United States. In addition, any state with a federally-approved CZMA program must concur with the Corps' determination that activities authorized by NWPs which are within, or will have reasonably foreseeable effects on any land or water uses or natural resources of the state's coastal zone, are consistent with the CZMA program to the maximum extent practicable. Water quality certifications and/or CZMA consistency concurrences may be issued without conditions, issued with conditions, or denied for specific NWPs.

We believe that, in general, the activities authorized by the NWPs will not violate Tribal, state, or EPA water quality standards, other provisions of Tribal/State law, and will be consistent with state CZMA programs/enforceable policies. The NWPs are conditioned to ensure that adverse environmental effects will be no more than minimal and address the types of activities that would be routinely authorized if evaluated under the individual permit process. We recognize that in some states or Tribal lands there will be a need to add regional conditions, or individual Tribal or State review for some activities, to ensure compliance with water quality standards, other appropriate provisions of Tribal/State law, and/or consistency with the state's CZMA programs. As a practical matter, we intend to work with states and Tribes to ensure that NWPs include the necessary conditions so that they can issue water quality certifications or CZMA consistency concurrences. Therefore, each Corps district will initiate discussions with their respective Tribe(s), state(s), and regional offices of EPA, as appropriate, to discuss issues of concern and identify regional modifications and other approaches to address the scope of waters, activities, discharges, and PCNs, as appropriate, to resolve these issues.

Please note that in some states the Corps has issued state programmatic general permits (SPGPs) or regional general permits (RGPs), and within those states some or all of the NWPs may be suspended or revoked by division engineers. Concurrent with today's proposal, district engineers may be proposing suspension or revocation of the NWPs in states where SPGPs or RGPs will be used in place of some or all of the NWPs.

Section 401 of the Clean Water Act

This **Federal Register** notice serves as the Corps' application to the Tribes, States, or EPA, where appropriate, for water quality certification (WQC) of the activities authorized by these NWPs. The Tribes, States, and EPA, where appropriate, are requested to issue, deny, or waive water quality certification pursuant to 33 CFR 330.4(c) for these NWPs.

If a state denies a WQC for an NWP within that state, then the affected activities are not authorized by NWP within that state, until a project proponent obtains an individual WQC for that activity, or a waiver of WQC occurs. However, when applicants request verification of NWP activities that require individual WQC, and the Corps determines that those activities meet the terms and conditions of the NWP, the Corps will issue provisional NWP verification letters. The provisional verification letter will contain general and regional conditions as well as any activity-specific conditions the Corps determines are necessary for NWP authorization. The Corps will notify the applicant that he or she must obtain an activity-specific WQC, or waiver thereof, before he or she is authorized to start discharging dredged or fill material into waters of the United States. That is, NWP authorization will be contingent upon obtaining the necessary WQC or waiver thereof from the Tribe, State, or EPA where appropriate. Anyone wanting to perform such activities where pre-construction notification to the Corps is not required has an affirmative responsibility to first obtain an activity-specific WQC or waiver thereof from the Tribe, State, or EPA before proceeding under the NWP. This requirement is provided at 33 CFR 330.4(c).

Section 307 of the Coastal Zone Management Act (CZMA)

This **Federal Register** notice serves as the Corps' determination that the activities authorized by these NWPs are, to the maximum extent practicable, consistent with state CZMA programs. This determination is contingent upon the addition of state CZMA conditions and/or regional conditions, or the issuance by the state of an individual consistency concurrence, where necessary. States are requested to concur or object to the consistency determination for these NWPs following 33 CFR 330.4(d).

The Corps' CZMA consistency determination only applies to NWP authorizations for activities that are within, or affect, any land, water uses or natural resources of a State's coastal zone. NWP authorizations for activities that are not within or would not affect a State's coastal zone do not require the Corps' CZMA consistency determinations and thus are not contingent on a State's concurrence with the Corps' consistency determinations.

If a state objects to the Corps' CZMA consistency determination for an NWP, then the affected activities are not authorized by NWP within that state, until a project proponent obtains an individual CZMA consistency concurrence, or sufficient time (*i.e.,* six months) passes after requesting a CZMA consistency concurrence for the applicant to make a presumption of consistency, as provided in 33 CFR 330.4(d)(6). However, when applicants request NWP verifications for such activities, and the Corps determines that those activities meet the terms and conditions of the NWP, the Corps will issue provisional NWP verification letters. The provisional verification letter will contain general and regional conditions as well as any activity-specific conditions the Corps determines are necessary for the NWP authorization. The Corps will notify the applicant that he or she must obtain an activity-specific CZMA consistency concurrence before he or she is authorized to start work in waters of the United States. That is, NWP authorization will be contingent upon obtaining the necessary CZMA consistency concurrence from the State. Anyone wanting to perform such activities where pre-construction notification to the Corps is not required has an affirmative responsibility to present a CZMA consistency certification to the appropriate State agency for concurrence. Upon concurrence with such CZMA consistency certifications by the state, the activity would be authorized by the NWP. This requirement is provided at 33 CFR 330.4(d).

Nationwide Permit Verifications

Certain NWPs require the permittee to submit a PCN, and thus request confirmation from the district engineer prior to commencing the proposed work that an NWP activity complies with the terms and conditions of an NWP. The requirement to submit a PCN is identified in the NWP text, as well as certain general conditions. General condition 18 requires non-federal permittees to submit PCNs for any proposed activity that might affect listed species or critical habitat, if listed species or critical habitat are in the vicinity of the proposed activity, or if the proposed activity is located in critical habitat. General condition 20 requires non-federal permittees to submit PCNs for any proposed activity that may have the potential to cause effects to any historic properties listed in, determined to be eligible for listing in, or potentially eligible for listing in, the National Register of Historic Places.

In the PCN, the project proponent must specify which NWP or NWPs he or she wants to use to provide the required Department of Army (DA) authorization under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899. For voluntary NWP verification requests (where a PCN is not required), the request should also identify the NWP(s) the project proponent wants to use. The district engineer should verify the activity under those NWP(s), as long as the proposed activity complies with all applicable terms and conditions, including any applicable regional conditions imposed by the division engineer. If the proposed activity does not qualify for NWP authorization, the district engineer must exercise discretionary authority and explain why the NWP or NWPs specified by the applicant are not appropriate for authorizing the proposed activity.

Pre-construction notification requirements may be added to NWPs by division engineers through regional conditions to require PCNs for additional activities. For an activity where a PCN is not required, a project proponent may submit a PCN voluntarily, if he or she wants written confirmation that the activity is authorized by an NWP. Some project proponents submit permit applications without specifying the type of authorization they are seeking. In such cases, district engineer will review those applications and determine if the proposed activity qualifies for NWP authorization or another form of DA authorization, such as a regional general permit (see 33 CFR 330.1(f)).

In response to a PCN or a voluntary NWP verification request, the district engineer reviews the information submitted by the prospective permittee. If the district engineer determines that the activity complies with the terms and conditions of the NWP, he or she will notify the permittee. Activity-specific conditions, such as compensatory mitigation requirements, may be added to an NWP authorization to ensure that the NWP activity results in only minimal individual and cumulative adverse environmental effects. The activity-specific conditions are incorporated into the NWP verification, along with the NWP text and the NWP general conditions.

If the district engineer reviews the PCN or voluntary NWP verification request and determines that the proposed activity does not comply with the terms and conditions of an NWP, he or she will notify the project proponent and provide instructions for applying for authorization under a regional general permit or an individual permit. District engineers will respond to NWP verification requests, submitted voluntarily or as required through PCN, within 45 days of receiving a complete PCN. Except for NWPs 21, 49, and 50, and for proposed NWP activities that require Endangered Species Act Section 7 consultation and/or National Historic Preservation Act section 106 consultation, if the project proponent has not received a reply from the Corps within 45 days, he or she may assume that the project is authorized, consistent with the information provided in the PCN. For NWPs 21, 49, and 50, and for proposed NWP activities that require ESA Section 7 consultation and/or NHPA Section 106 consultation, the project proponent may not begin work before receiving a written NWP verification.

In the January 28, 2013, issue of the **Federal Register** (78 FR 5726), the Corps issued a final rule that amended the NWP regulations to allow district engineers to issue NWP verification letters that are in effect until the NWP expires, instead of two years. That rule took effect on February 27, 2013. That final rule streamlines the verification process for NWP activities.

Contact Information for Corps District Engineers

Contact information for Corps district engineers is available at the following Web page: *http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/RegulatoryContacts.aspx.*

Request for Comment

We are proposing to reissue 50 nationwide permits, as well as the general conditions and definitions. We are also proposing to issue two new NWPs and one new general condition. Substantive changes to the nationwide permits, general conditions, and definitions are discussed below, but we are soliciting comments on all the nationwide permits, general conditions, and definitions as well as all NWP application procedures including the PCNs. Minor grammatical changes, the removal of redundant language, and other small changes are not discussed in the preamble below. Therefore, commenters should carefully read each proposed NWP, general condition, and definition in this notice.

Discussion of Proposed Modifications to Existing Nationwide Permits

If an existing NWP is not listed in this section of the preamble, we are proposing to reissue the NWP without changing the terms of the NWP.

NWP 3. *Maintenance.* We are proposing to modify this NWP to state that it also authorizes regulated activities associated with the removal of previously authorized structures or fills. Individual permits include a permit condition requiring modification of the permit and the removal of the authorized structure or fill if the permittee will no longer use it, and will not transfer the authorization and the structures or fills to another party. (See general condition 2 of appendix A to 33 CFR part 325.) General permits might not have a similar condition, so we are proposing to modify this NWP to authorize such removals. The proposed modification to NWP 3 would authorize the removal of the previously authorized structure or fill in those cases where authorization is required (*e.g.,* work in section 10 waters).

We are also proposing to modify paragraph (c) of this NWP to clarify that the use of temporary mats in jurisdictional waters and wetlands is also authorized by this NWP, if those mats are used to minimize impacts during regulated maintenance activities. After the timber mats are used, they are removed and the affected areas are returned to pre-construction elevations. This provision of NWP 3 would only be necessary in circumstances where the Corps district has determined that the use of such mats in jurisdictional waters and wetlands requires DA authorization.

NWP 12. *Utility Line Activities.* We are proposing to modify the ''utility lines'' paragraph of this NWP to clarify that the NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters of the United States for crossings of those waters associated with the construction, maintenance, or repair of utility lines. This change is intended to clarify that NWP 12 does not authorize the construction, maintenance, or repair of utility lines per se. The Corps only authorizes those components of utility lines where the construction, maintenance, or repair involves activities regulated under its jurisdictional authorities (*i.e.,* section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act of 1899). Because of the proposed modification, we are proposing to remove the text in this sentence that referred to ''excavation, backfill, and bedding'' because those activities are covered by the more precise reference to ''discharges of dredged or fill material into waters of the United States.'' Some excavation activities do not require section 404 authorization.

We are also proposing to modify the definition of ''utility line'' to make it clear that utility lines can also include lines, such as optic cables, that communicate through the internet.

In response to a suggestion received during the period that the 2012 NWPs were in effect, we are proposing to add a paragraph to NWP 12 to authorize, to the extent that DA authorization is required, discharges of dredged or fill material into section 404 waters, and structures and work in section 10 waters, necessary to remediate inadvertent returns of drilling muds (also known as ''frac-outs'') that can occur during directional drilling operations to install utility lines below jurisdictional waters and wetlands. An inadvertent return takes place when drilling fluids are released through fractures in the bedrock and flow to the surface, and possibly into a river, stream, wetland, or other type of waterbody. The entity making the suggestion expressed concerns about inconsistencies in how inadvertent returns are managed when they occur. The entity also requested that NWP 12 authorize section 404 and section 10 activities that are necessary to remediate inadvertent returns, instead of addressing the needed remediation through enforcement actions. For NWP 12 activities where there is the possibility of such inadvertent returns, district engineers may add conditions to the NWP 12 verification requiring activity-specific remediation plans to address these situations, should they occur during the installation or maintenance of the utility line.

The fluids used for directional drilling operations consist of a water-bentonite slurry. This water-bentonite mixture is not considered a toxic or hazardous substance, but it can adversely affect aquatic organisms if released into bodies of water. Because a frac-out releases a drilling fluid and that fluid is not a material that can be considered ''fill material'' under 33 CFR 323.2(e), the inadvertent returns of these drilling muds is not regulated under section 404 of the Clean Water Act. However, activities necessary to contain and clean up these drilling fluids may require DA authorization (*e.g.,* temporary fills in waters of the United States, or fills to repair a fracture in a stream bed). For the same reasons as the proposed modification to NWP 3, we are proposing to modify this NWP to state that the use of temporary mats in jurisdictional waters and wetlands is also authorized.

We are proposing to modify Note 1 to remove the requirement to send a copy of the PCN to the National Ocean Service, because there is no need to chart a utility in navigable waters of the United States unless it is verified as being authorized by NWP 12. Corps districts will still send copies of NWP 12 verifications, when utility lines are installed in waters charted by the National Ocean Service.

In addition, we are proposing to add three new notes to this NWP. The new proposed Note 2 explains that separate and distant crossings of waters of the United States may qualify for separate NWP authorization, consistent with past practices as codified in the NWP regulations issued on November 22, 1991 (see 56 FR 59110) and the definition of ''single and complete linear project'' promulgated in the 2012 NWPs. In the 1991 final rule, the Corps defined the term ''single and complete project'' at 33 CFR 330.2(i). In the 2012 NWPs, we clarified the long-standing practices associated with the 1991 final rule by providing separate definitions for ''single and complete linear project'' and ''single and complete non-linear project'' (see 77 FR 10184 at 10290 and the associated preamble discussion in the February 21, 2012 issue of the **Federal Register**.)

Proposed Note 2 also points prospective permittees to 33 CFR 330.6(d), which addresses the use of NWPs with individual permits, where components of a larger overall project that have independent utility might be eligible for NWP authorization while other components might require an individual permit because not all crossings of waters of the United States comply with the terms and conditions of the NWPs or regional general permits. For utility lines, § 330.6(d) applies in cases where one or more crossings for a stand-alone utility line are not eligible for NWP authorization, but the remaining crossings for the utility line could satisfy the NWP terms and conditions. If one or more separate and distant crossings of waters of the United States for a stand-alone utility line do not qualify for authorization by NWP or a regional general permit, and an individual permit is required to authorize those crossings, then all the crossings necessary to construct that stand-alone utility line would require an individual permit. A stand-alone utility line is a utility line that has independent utility and can be operated on its own to transport materials or energy from a point of origin to a terminal point.

Section 330.6(d) requires an individual permit for all regulated activities under the Clean Water Act and, if applicable, the Rivers and Harbors Act of 1899, associated with a stand-alone utility line if one or more crossings of waters of the United States

do not qualify for general permit authorization and requires an individual permit. Other utility line segments that can operate independently (*i.e.,* other stand-alone utility lines) can be authorized by NWP if all of the crossings of waters of the United States that require DA authorization are eligible for NWPs, as long as the permit decision document includes an impact analysis for the larger, overall utility line project (see 33 CFR 330.6(d)(1)).

The second new note (proposed Note 3) references the regulation (*i.e.,* 33 CFR 322.5(i)) that specifies the minimum clearances required for aerial electric power transmission lines crossing navigable waters of the United States.

The third new note (proposed Note 5) states that NWP 12 authorizes utility line maintenance and repair activities that do not qualify for the Clean Water Act section 404(f)(1) exemption for maintenance of currently serviceable structures.

NWP 13. *Bank Stabilization.* We are proposing to modify the first paragraph of this NWP to clarify that it authorizes a wide variety of bank stabilization measures. This NWP has never been limited to hard structural measures, such as bulkheads and revetments, for bank stabilization. This NWP can be used to authorize vegetative bank stabilization techniques, including hybrid techniques that involve both hard materials and vegetation components (*e.g.,* bioengineering). For example, a bank may be graded and plant materials installed to stabilize portions of the bank, with rip rap placed at the bottom of the bank for toe protection. Nationwide permit 13 was first issued in 1977; it has never specified any preference for particular approaches to bank stabilization. This NWP has always had the flexibility to authorize a variety of types of bank stabilization measures.

In addition, NWP 13 is used to authorize bank stabilization activities in a variety of types of aquatic environments, such as open coasts, sheltered coasts, rivers and streams, lakes, and other types of waters. The appropriate approach for bank stabilization is dependent on site conditions, and landowners and contractors may have preferences for specific approaches. In addition, there can be a substantial amount of variation in the effectiveness of a particular bank stabilization technique across these different environments. Given that variability and the need to consider site-specific conditions and practicability when selecting an appropriate bank stabilization approach for a site, we believe it is not appropriate to modify this NWP to require the use of one technique to control bank erosion over other techniques.

We are proposing to modify paragraph (c) of this NWP to clarify that the quantity of the dredged or fill material discharged into waters of the United States must not exceed one cubic yard per running foot below the plane of the ordinary high water mark or the high tide line, as measured along the bank. Some bank stabilization techniques, such as stream barbs, may involve fills that extend from the bank to the streambed. Stream barbs are low rock sills that extend from a stream bank to cross the thalweg of the stream. In other words, not all discharges of dredged or fill material authorized by this NWP must be placed along the bank if the bank stabilization method relies on other fill configurations, and as long as discharges of dredged or fill material into waters of the United States are minimized to the maximum extent practicable.

As discussed below, we are proposing to issue a new NWP to authorize nature-based bank stabilization techniques known as living shorelines. We believe a separate NWP is appropriate to authorize structures and work in navigable waters and discharges of dredged or fill material into waters of the United States for the construction and maintenance of living shorelines. Living shorelines are effective primarily in sheltered, low- to mid- energy coasts (see the 2007 National Research Council Report entitled ''Mitigating Shore Erosion along Sheltered Coasts''). In open coasts subject to higher energy regimes such as stronger wave energies and greater erosive forces, hard bank stabilization structures such as revetments and bulkheads or a combination of hard structures and soft, nature-based structures (*e.g.,* hybrid approaches described by the Systems Approach to Geomorphic Engineering (SAGE) [2]) are more effective at protecting infrastructure and buildings along those coasts. The proposed NWP for living shorelines is intended to complement NWP 13 to provide general permit authorization for these approaches to bank stabilization.

Paragraph (a) of general condition 23 requires that NWP activities avoid and minimize adverse effects to waters of the United States to the maximum extent practicable on the project site (*i.e.,* on-site). Living shorelines involve filling fairly large areas of intertidal and subtidal lands or lake shorelines. The placement of sand fills for marsh plantings and the construction of stone sills and breakwaters alter shoreline habitats and require consideration of trade-offs of those habitat changes (NRC 2007). Bulkheads and other bank stabilization structures can be constructed near to or landward of the high tide line in estuarine waters, or near to or landward of the mean high water line in lakes; thus resulting in much smaller fill areas in waters of the United States or no fills in waters of the United States if they constructed outside of the Corps' jurisdiction. Additionally, we recognize that bulkheads have indirect effects on nearby jurisdictional waters and wetlands and that living shorelines can provide some important ecological functions and services. Another factor is that there are trade-offs associated with every approach to bank stabilization and those trade-offs are considered by landowners when deciding which bank stabilization approach they will be proposing if they need to obtain DA authorization. The Corps also evaluates these trade-offs when evaluating all bank stabilization proposals.

We are soliciting comments on proposed changes to NWP 13 and the proposed NWP B. We are trying to provide as much equitability as possible between NWP 13 and the new, proposed NWP for living shorelines, so that landowners can consider a variety of options. By providing an efficient authorization option, landowners have incentive to select an environmentally preferable bank stabilization option where appropriate. A few of the terms in NWPs 13 and proposed NWP B are similar. There are different PCN thresholds because living shorelines require substantial amounts of fill material, while bank stabilization methods authorized by NWP 13 involving small amounts of fill to be discharged into waters of the United States, or no discharges into special aquatic sites such as tidal wetlands and vegetated shallows, do not require PCNs.

Another factor is that the Corps' regulations have long recognized that landowners have a general right to protect their property from erosion (see 33 CFR 320.4(g)(2)). The Corps evaluates the potential for the proposed erosion protection measures to cause damage to other landowners' property, adversely affect public health and safety, adversely impact wetland values, and the Corps can inform the applicant about possible alternative methods of bank stabilization. However, that section of our regulations also states that the Corps' advice will be given only as general guidance, and must not compete with private consulting firms. In other

[2] *http://sagecoast.org/*

words, the Corps cannot mandate a specific approach to bank stabilization. Consideration must also be given to the availability of consultants and contractors qualified to design and build living shorelines. Many landowners prefer bulkheads and revetments because well-constructed bulkheads last approximately 20 years and revetments can last up to 50 years (NRC 2007).

As discussed elsewhere in this notice, we are proposing to develop a standard form for use in submitting PCNs. The proposed PCN form will include two questions for PCNs involving bank stabilization activities. The first question will ask whether the applicant has considered the use of living shorelines, if he or she is submitting a PCN for a bank stabilization activity. The second question will ask if there are consultants and contractors in the area that are qualified to design and construct living shorelines. We will also modify our automated information system to track the responses to those questions. We will use the responses to those questions during evaluations of the use of NWPs 13 and B. The Corps solicits comments on the suitability on those questions and whether other questions should be included on the form.

NWP 14. *Linear Transportation Projects.* We are proposing to add a note to this NWP similar to proposed Note 2 in NWP 12 to explain that separate and distant crossings of waters of the United States for linear projects may qualify for separate authorization by NWP. Similar to proposed Note 2 in NWP 12, the proposed Note 1 for NWP 14 references 33 CFR 330.6(d) because linear transportation projects also have to comply with the requirements of § 330.6(d). Linear transportation projects can have segments that can operate as stand-alone roads or other types of linear transportation projects. NWP 14 can authorize those segments with independent utility where each separate and distant crossing of waters of the United States qualifies for NWP authorization. If one or more separate and distant crossings of waters of the United States for a stand-alone linear transportation project does not qualify for authorization by NWP or a regional general permit, and an individual permit is required to authorize the crossings, then all the crossings necessary to construct that stand-alone linear transportation project would require an individual permit. Section 330.6(d) requires an individual permit for all regulated activities under the Clean Water Act and, if applicable, the Rivers and Harbors Act of 1899, associated with a stand-alone linear transportation projects if one or more crossings of waters of the United States do not qualify for general permit authorization and requires an individual permit. Other linear transportation project segments that can operate independently (*i.e.,* other stand-alone linear transportation projects) can be authorized by NWP if all of the crossings of waters of the United States that require DA authorization are eligible for NWPs, as long as the permit decision document includes an impact analysis for the larger, overall linear transportation project (see 33 CFR 330.6(d)(1)).

NWP 19. *Minor Dredging.* We are proposing to add a sentence requiring the dredged material to be deposited and retained at an area that has no waters of the United States, unless the district engineer specifically authorizes the placement of that dredged material into jurisdictional waters and wetlands through a separate authorization. The new sentence is intended to provide consistency with the NWPs that authorize dredging or similar activities, where the dredged or excavated material requires disposal. The NWPs that currently have that provision are: NWP 31, which authorizes the maintenance of existing flood control facilities, NWP 36 which authorizes boat ramps, and paragraph (b) of NWP 3, which authorizes the removal of accumulated sediments from the vicinity of existing structures. To protect jurisdictional waters and wetlands, dredged or excavated material should be deposited in uplands or other areas not subject to the Corps' jurisdiction, unless the district engineer issues a separate authorization to allow that dredged material to be placed in waters of the United States for a specific use, such as substrate for marsh reestablishment.

NWP 21. *Surface Coal Mining Activities.* We are proposing to remove paragraph (a) that was in the 2012 NWP 21. The proposed NWP consists of paragraph (b) of the 2012 NWP 21, with a ½-acre limit for losses of non-tidal waters of the United States, a 300 linear foot limit for losses of stream bed, and a prohibition against discharges of dredged or fill material into waters of the United States for the construction of valley fills.

As discussed in the February 21, 2012, **Federal Register** notice (77 FR 10184 at 10212), paragraph (a) of the 2012 NWP 21 was intended to ''provide an equitable transition to the new limits in NWP 21 and reduce burdens on the regulated public.'' In that final rule, we also stated that if surface coal mining activities previously authorized by NWP 21 could not be completed before the 2012 NWP 21 expires, or within one year of that expiration date if the activity qualifies for the grandfathering provision at 33 CFR 330.6(b), then the project proponent would have to obtain an individual permit or, if available, a regional general permit authorization to complete the surface coal mining activities in waters of the United States (see 77 FR 10184 at 10209–10210).

NWP 32. *Completed Enforcement Actions.* We are proposing to modify paragraph (i)(a) of this NWP to clarify that the 5 acre and 1 acre limits apply to the areas adversely affected by the activities that remain after resolution has been achieved. These would be the net adverse effects after any required restoration was conducted to reach resolution.

NWP 33. *Temporary Construction, Access, and Dewatering.* We are proposing to modify this NWP to change the PCN threshold to require notification only for temporary construction, access, and dewatering activities in navigable waters of the United States. In the 2007 NWPs, we modified NWPs 3, 12, and 14 to authorize temporary structures, fills, and work in jurisdictional waters and wetlands to complete the authorized NWP activity. In the 2012 NWPs we added similar language to NWP 13. While those four NWPs require PCNs for certain activities, when we modified those NWPs we did not add PCN requirements specifically for temporary structures, fills, and work associated with conducting the activities authorized by those NWPs. Based on our experience with those four NWPs and to provide more efficiency in the NWP Program, we believe that it is no longer necessary to require PCNs for NWP 33 activities in section 404-only waters. We are proposing to continue to require PCNs for all NWP 33 activities in section 10 waters, to ensure that each of those activities are reviewed by district engineers on a case-by-case basis to protect navigation and other relevant public interest review factors. Division engineers can add regional conditions to this NWP to require PCNs for temporary construction, access, and dewatering activities in section 404-only waters.

Pre-construction notification will still be required for proposed activities in section 404-only waters that will be conducted by non-federal permittees, when those activities trigger the notification requirements of general condition 18, endangered species, and general condition 20, historic properties. See paragraph (c) of general condition 18 and paragraph (c) of general condition 20.

NWP 35. *Maintenance Dredging of Existing Basins.* We are proposing to modify this NWP to state that all dredged material must be placed in an area that has no waters of the United States, unless placement of the dredged material into waters of the United States is authorized by a separate DA authorization. The proposed change is intended to provide consistency with the proposed changes to NWP 19 and the text of other NWPs that authorize dredging or excavation activities. There may be some situations where disposal of the dredged material into waters of the United States is acceptable, such as using the dredged material for marsh establishment or re-establishment. The district engineer will authorize that disposal into waters of the United States through a separate DA authorization, such as another NWP, a regional general permit, or an individual permit. Please see the rationale provided above in the preamble discussion of the proposed changes to NWP 19.

NWP 39. *Commercial and Institutional Developments.* We are proposing to modify this NWP to clarify that it authorizes discharges of dredged or fill material into waters of the United States to construct wastewater treatment facilities. Wastewater treatment facilities are attendant features for commercial, industrial, and institutional facilities to hold and treat wastewater. Wastewater treatment facilities are excluded from Clean Water Act jurisdiction (see 33 CFR 328.3(b)(1)) and do not require Clean Water Act Section 404 authorization to maintain those facilities. Applicants should be aware that, consistent with current policy, designation of a portion of waters of the United States as a waste treatment system does not alter CWA jurisdiction over any waters upstream and/or adjacent to such system.

NWP 40. *Agricultural Activities.* We are not proposing any changes to this NWP. As discussed below, we are seeking comment on whether any clarifications are need for this NWP. Discharges of dredged or fill material into waters of the United States for normal farming, silviculture and ranching activities such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices are exempt from the requirement to obtain Clean Water Act section 404 authorization, except when those activities trigger the recapture provision of Clean Water Act section 404(f)(2). Normal farming, silviculture and ranching activities that trigger the recapture provision of section 404(f)(2) can be authorized by individual or general permits. This NWP authorizes a variety of agricultural activities that involve discharges of dredged or fill material into waters of the United States, as long as those activities comply with the terms and conditions of this NWP, including the ½-acre limit for losses of waters of the United States, and result in no more than minimal individual and cumulative adverse environmental effects. Nationwide permit 40 can be used to authorize discharges of dredged or fill material into waters of the United States associated with blueberry production. We are soliciting comment on whether any further clarification of NWP 40 is necessary.

NWP 41. *Reshaping Existing Drainage Ditches.* We are soliciting comment on clarifications or changes to NWP 41 that might encourage more landowners to reshape their drainage ditches to help improve local water quality, including suggestions for text to clarify the NWP for circumstances where original configuration information is not available. To facilitate the reshaping of drainage ditches to improve water quality, we are also proposing to remove the requirement to submit a PCN if more than 500 linear feet of ditch is to be reshaped.

This NWP was first issued in 2000 (65 FR 12818 at 12854, March 9, 2000). The intent of this NWP is to authorize the maintenance of drainage ditches that were constructed in waters of the United States in a manner that benefits the aquatic environment. This NWP authorizes changes to the ditch cross section by creating gentler slopes so that there is greater interaction between water in the ditch and soil and vegetation to facilitate the removal of sediment, nutrients, and chemicals from that water. However, this NWP does not authorize reshaping ditches so that they drain larger areas than the original ditch was designed to drain. In other words, this NWP allows the configuration of the ditch to be changed to improve water quality, but not increase the original geographic area drained by the ditch. Determining the original drainage area of a ditch can be accomplished by reviewing records, obtaining technical advice from consultants, or other sources of information. When evaluating compliance with this NWP, Corps district staff will use their judgment, based on such information, to determine whether the activity is in compliance with the requirement not to increase the original drainage capacity of the ditch.

We are soliciting comment on clarifications or changes to NWP 41 that might encourage more landowners to reshape their drainage ditches to help improve local water quality, including suggestions for text to clarify the NWP for circumstances where original configuration information is not available. To facilitate the reshaping of drainage ditches to improve water quality, we are also proposing to remove the requirement to submit a PCN if more than 500 linear feet of ditch is to be reshaped and are soliciting comment on that change.

NWP 43. *Stormwater Management Facilities.* We are proposing to modify the sentence that states that the maintenance of stormwater management facilities that are determined to be waste treatment systems under 33 CFR 328.3(a)(8) generally does not require a section 404 permit. That provision in the Corps' regulations refers to the waste treatment exclusion in the 1986 definition of ''waters of the United States,'' which appears in the last paragraph of § 328.3(a) in the 1986 final rule (see 51 FR 41250). We are proposing to change the reference to 33 CFR 328.3(a)(8) that was in the text of the 2012 NWP 43 to ''33 CFR 328.3(b)(6)'' because under the 2015 final rule amending the definition of ''waters of the United States'' that exclusion applies to ''[s]tormwater control features constructed to convey, treat, or stormwater that are created in dry land'' We are proposing to remove the word ''generally'' from this sentence, because under the 2015 final rule defining ''waters of the United States,'' there are no exceptions to the exclusions in 33 CFR 328.3(b) (see the first sentence of § 328.3(b)).

NWP 44. *Mining Activities.* We are proposing changes to the terms of this NWP to clarify the application of the ½-acre limit for losses of waters of the United States. The mining activities authorized by this NWP often involve impacts to open waters, such as the mining of sand and gravel from large rivers. Paragraph (a) of the proposed modification states that the loss of non-tidal wetlands cannot exceed ½-acre. Paragraph (b) states that the mined area in open non-tidal waters cannot exceed ½-acre. Paragraph (c) limits the total impacts under paragraphs (a) and (b) to ½-acre. In other words, if the proposed mining activity involves discharges of dredged or fill material into both vegetated non-tidal wetlands and open waters, the acreage loss of non-tidal wetlands plus the acreage of open waters excavated (or dredged, if the mining activity occurs in non-tidal navigable waters of the United States) cannot exceed ½-acre. This modification will provide further assurance that this NWP will only

authorize activities with no more than minimal individual and cumulative adverse environmental effects. This NWP also limits the loss of stream bed to 300 linear feet, unless for intermittent and ephemeral streams the district engineer issues a waiver after coordinating with the agencies and making a written determination that the proposed activity will result in no more than minimal adverse environmental effects. The loss of non-tidal waters of the United States, plus the loss of stream bed, cannot exceed ½-acre.

NWP 45. *Repair of Uplands Damaged by Discrete Events.* To provide flexibility in the use of this NWP after major flood events or other natural disasters, we are proposing to modify the PCN requirement to allow district engineers to waive the 12-month deadline for submitting PCNs. The district engineer can waive the 12-month deadline if the prospective permittee can demonstrate funding, contract, or similar delays. Such delays can occur after major storm events if the entities responsible for making decisions regarding disbursement of funds or issuing contracts are short-staffed or receive more requests than can be handled in a timely manner.

NWP 48. *Commercial Shellfish Aquaculture Activities.* We are proposing to modify this NWP to clarify that it authorizes new and continuing commercial shellfish aquaculture operations in authorized project areas. We are proposing to define the project area as the area in which the operator is authorized to conduct commercial shellfish aquaculture activities during the period the NWP is in effect. Those areas can be identified through leases or permits issued by an appropriate state or local government agency, a treaty, or any other easement, lease, deed, contract, or other legally-binding agreement which establishes an enforceable property interest for an operator. Legally-binding agreements can include agreements between operators to conduct shellfish aquaculture on various parcels within project areas in which they have the requisite interests. The proposed changes recognize that in some areas of the country, state or local authorizations are not required for commercial shellfish aquaculture activities if the subtidal or intertidal lands are privately owned. In addition, we are proposing to define a ''new commercial shellfish aquaculture operation'' as an operation in a project area where commercial shellfish aquaculture activities have not been conducted during the past 100 years.

In addition, we are proposing changes to this NWP to do a better job of taking into account the dynamic nature of commercial shellfish aquaculture activities and to further streamline the authorization process. During the effective period of this NWP, an operator may change the species cultivated in the project area. An operator may also utilize only certain areas in the project area, and allow other areas within the project area to be fallow. If a PCN is required for the commercial shellfish aquaculture activity, either because of the PCN thresholds in the text of the NWP, the requirements of general condition 18, or other general conditions or regional conditions, a PCN only needs to be submitted once during the period this NWP is in effect. The one-time PCN would identify the species expected to be cultivated during the period the 2017 NWP 48 is in effect, and identify the entire project area, including active and fallow areas. If unanticipated changes to the commercial shellfish operation need to occur during this period, and those changes involve activities regulated by the Corps, the operator should contact the Corps district to request a modification of the NWP verification, instead of submitting another PCN.

For the purposes of NWP 48, the project area is not limited to those areas where active commercial shellfish activities are presently occurring. The project area includes all areas in which the operator is authorized to conduct commercial shellfish aquaculture activities, as identified through a lease or permit issued by an appropriate state or local government agency, a treaty, or any other easement, lease, deed, contract, or other legally-binding agreement which establishes an enforceable property interest for the operator. The project area also includes fallow areas, as long as the fallow areas are included in the areas identified in the lease, permit, or other applicable document or agreement.

The information in a PCN must describe, in general terms, the expected plan of operation for the commercial shellfish aquaculture activity during the period this NWP is in effect. The PCN must list the species expected to be cultivated during the time frame the 2017 NWP 48 authorization is in effect, as well as the area(s) expected to be used for cultivation during that period.

We are also proposing to modify the pre-construction notification requirements for this NWP. We are proposing to remove the PCN requirement for dredge harvesting, tilling, or harrowing conducted in areas inhabited by submerged aquatic vegetation. We are proposing this modification because of the recognition in numerous studies and reports that have shown that vigorous populations of shellfish and submerged aquatic vegetation can coexist in coastal waters (*e.g.,* Dumbauld and McCoy 2015; Tallis et al. 2009) In addition, both submerged aquatic vegetation beds and oyster beds provide habitat for a wide variety of fish and invertebrate species (Hosack et al. 2006). The presence of submerged aquatic vegetation should not prevent the use of NWP 48 to authorize commercial shellfish aquaculture activities because available evidence indicates that both shellfish and submerged aquatic vegetation sustain vibrant populations in the same waterbody. If the commercial shellfish aquaculture activity might affect listed species or critical habitat, then a PCN is required under general condition 18, and the Corps will evaluate effects to submerged aquatic vegetation caused by the commercial shellfish aquaculture activity. For those on-going commercial shellfish aquaculture activities that are covered by a currently valid programmatic biological opinion, programmatic informal consultation concurrence, or activity-specific biological opinion or informal consultation concurrence, the PCN should be expeditiously reviewed by the district engineer.

We are also proposing to remove the notification requirement for changing from bottom culture to floating or suspended culture, because general condition 1 provides sufficient assurance that these activities will have no more than minimal adverse effects on navigation. A third modification to the PCN thresholds is to require PCNs for commercial shellfish aquaculture activities that will include species that have never been cultivated in the waterbody, instead of species that have not ''previously'' been cultivated in that waterbody. We believe the word ''never'' provides more clarity than the word ''previously.'' A fourth modification to the PCN requirements is to require PCNs for commercial shellfish aquaculture activities proposed for areas that have not been used for those activities for the past 100 years, consistent with our proposed definition of ''new commercial shellfish aquaculture operations.''

For NWP 48 activities that require PCNs, either because of the terms of NWP 48 or the requirements of general condition 18 or other general or regional conditions, we are proposing to require the PCN to identify all the species that the operator plans to cultivate during the period this NWP is in effect. We are

also proposing to require PCNs to state whether suspended cultivation techniques will be used, as well as information on the general water depths in the project area. A detailed survey of water depths is not required for a PCN.

During the implementation of NWP 48, questions have been raised about the accumulation of sediment in tidal waterbodies where long lines slow water flows so that suspended sediments fall out of the water column, and whether that sediment accumulation is a regulated activity under section 404 of the Clean Water Act. Long lines are used in commercial shellfish aquaculture to grow oysters in the water column, as an alternative to bottom culture. Sediment accretion caused by long lines is not a discharge of dredged or fill material and is not regulated under section 404 of the Clean Water Act because the sediment accumulation is an indirect effect of the use of long lines. Section 404 of the Clean Water Act requires permits for point sources discharging dredged or fill material into waters of the United States, unless those activities are exempt from the requirement to obtain section 404 authorization. Sediment accretion caused by long lines is dispersed throughout the area those long lines are used, and there is no point source. With long lines, there is not a point source discharging dredged or fill material into waters of the United States.

NWP 51. *Land-Based Renewable Energy Generation Facilities.* We are proposing to split Note 1 of the 2012 NWP 51 into two notes. Note 1 explains that utility lines constructed to transfer energy from the land-based renewable energy generation facility to a distribution system, regional grid, or other facility are general considered to be linear projects. Proposed Note 2 states that if the only activities that require DA authorization are utility line crossings or road crossings, those activities should be authorized by NWPs 12 and 14, respectively, if they satisfy the terms and conditions of those NWPs.

Based on comments and questions from stakeholders, we are seeking comment on changing the PCN threshold in this NWP, which currently requires PCNs for all authorized activities. We are soliciting comment on whether changing the PCN threshold so that some NWP 51 activities can proceed without pre-construction notification would streamline the authorization process for regulated activities associated with land-based renewable energy generation facilities while still ensuring that these activities have no more than minimal adverse environmental impacts. Comments should provide a recommended PCN threshold, such as losses of waters of the United States in excess of 1/10-acre or 1/4-acre. Pre-construction notification would still be required for all activities that trigger the PCN requirements in general condition 18, endangered species, and general condition 20, historic properties.

NWP 52. *Water-Based Renewable Energy Generation Pilot Projects.* During the period the 2012 NWPs have been in effect, we received a suggestion that this NWP also authorize floating solar energy generation facilities.

In response to that suggestion, we are proposing to modify this NWP to include floating solar energy generation projects in navigable waters of the United States. A single water-based solar renewable energy unit can occupy a substantial area of navigable waters. We are proposing to limit the surface area of navigable waters covered by floating solar energy generation facilities to 1/2-acre, but are seeking comment on whether a different limit would be more appropriate for such projects. The current 10-unit limit for water-based wind turbines and hydrokinetic generation units does not seem practical for floating solar generation facilities and for ensuring that adverse effects to navigation and other public interest review factors due to floating solar energy facilities are no more than minimal, individually and cumulatively.

Please note that floating water-based solar energy generation facilities installed in open waters subject only to Clean Water Act section 404 jurisdiction do not require DA authorization unless there is an associated discharge of dredged or fill material into waters of the United States. Water-based solar energy generation facilities are structures floating on the water surface, and structures in section 404-only waters that do not involve discharges of dredged or fill material do not require DA authorization.

On December 22, 2014, the Corps issued guidance clarifying the circumstances when hydrokinetic projects that require authorization from the Federal Energy Regulatory Commission (FERC) or DA authorization under Sections 9 and 10 of the Rivers and Harbors Act of 1899. That guidance concluded that hydrokinetic projects authorized by FERC under the Federal Power Act of 1920 do not require DA authorization under sections 9 or 10 of the Rivers and Harbors Act of 1899. Therefore, NWP 52 would only be used to authorize hydrokinetic projects in navigable waters that do not require FERC authorization. Nationwide permit 52 can be used to authorize water-based renewable energy generation facilities on the outer continental shelf, if those generation facilities require authorization under section 10 of the Rivers and Harbors Act of 1899. Section 4(f) of the Outer Continental Shelf Lands Act of 1953, as amended (43 U.S.C. 1333(e)) extended the Corps' section 10 authority over installations, artificial islands, and structures on the outer continental shelf (see 33 CFR 320.2(b) and 322.3(b)).

We are requesting comments on modifying this NWP to remove the terms that limited the 2012 NWP 52 to pilot projects. We are also seeking comment on limits of the number of permanent water-based renewable energy generation units that could authorized by this NWP, if the pilot project limitation is removed in the final NWP. As discussed above, we are also soliciting comment on acreage limits for water-based solar renewable energy generation projects.

Discussion of Proposed New Nationwide Permits

During the period the 2012 NWPs were in effect, the Corps received a number of suggestions for changes to the NWPs, general conditions, and definitions. Suggested modifications of existing NWPs, general conditions, and definitions are discussed above. In response to those suggestions, we are proposing to issue two new NWPs to authorize two categories of activities: The removal of low-head dams and the construction and maintenance of living shorelines. Some low-head dam removals might have been authorized by NWP 27, if those dams were small dams located in headwater streams. However, most low-dam removal requires individual permit authorization because it is not covered by an NWP or regional general permit. The proposed NWP will facilitate the removal of low-head dams that are no longer being used for their intended purposes or are too costly to repair. The removal of low-head dams restores ecological processes in rivers and streams and enhances public safety.

We are also proposing to issue a new NWP that authorizes the construction and maintenance of living shorelines. Many living shorelines require individual permit authorization, and some Corps districts have issued regional general permits to authorize different types of living shorelines. The proposed NWP will provide general permit authorization for the construction and maintenance of living shorelines, which will give landowners

a choice in how they can protect their property under erosion mitigation measures authorized by NWP. Bank stabilization activities are authorized by NWP 13 and if the proposed new NWP is issued, it will provide a similar streamlined authorization process as NWP 13. Both of these NWPs will result in decreased processing times and permit application costs associated with obtaining authorization under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

Proposed NWP A. Removal of Low-Head Dams

We are proposing to issue a new NWP to authorize structures and work in navigable waters of the United States, as well as associated discharges of dredged or fill material into waters of the United States, for the removal of low-head dams. One objective for removing such dams would be to restore rivers and streams by removing barriers that adversely affect ecological processes. Another objective would be to facilitate removal of these dams to enhance public safety because many low-head dams are old and poorly maintained, and are potential safety hazards. The proposed NWP will authorize activities that restore rivers and streams, and improve public safety. As discussed below, low-head and other types of dams cause substantial disruption and degradation of the ecological functions performed by rivers and streams. Low-head dams also pose hazards to swimmers and paddlers. The proposed NWP would only authorize the removal of low-head dams. If the landowner or other entity wants to construct a replacement or new dam, he or she would have to obtain a separate Department of the Army authorization to construct a replacement or new dam into waters of the United States.

A large number of low-head or run-of-the river dams were constructed in the United States during the past few centuries to increase water levels to provide water for towns and cities, and industries, as well as power (Tschantz and Wright 2011). Many of those dams were built in the 19th century, and are deteriorating or have been abandoned (Tschantz and Wright 2011). Many of these dams, especially the older dams, no longer serve an economic purpose (Born et al. 1998, Shuman 1995) and are in need of repair or replacement to comply with modern dam safety standards. Low-head dams present a safety hazard, and have been linked to hundreds of deaths since the 1960s (Tschantz 2014).

Graf (1993) estimates there are more than 2,000,000 small dams in the United States, and many of these small dams are low-head dams. Many of these dams need to be replaced or repaired, and the replacement or repair costs are likely to be prohibitive for 90 percent of the dam owners (Shuman 1995). Dam removal may be the only practical economic alternative for protecting public safety and preventing economic losses if they cannot be repaired or replaced. There is also increasing interest in removing these dams to restore rivers and streams, and the ecological functions and services they provide (Born et al. 1998). There is also interest in removing these dams to protect public safety.

Dams cause a number of adverse effects on rivers and streams, such altering river and stream hydrology, altering sediment transport through the riverine network, changing flooding regimes, fragmenting river and stream habitats, and blocking corridors for movement of fish and other aquatic organisms (Stanley and Doyle 2003, Poff and Hart 2002). Dams also modify nutrient cycling processes in rivers and streams, change water temperatures, and alter the functioning of aquatic and riparian habitats (Poff and Hart 2002). Dams change the communities of aquatic organisms from riverine species that inhabit free-flowing waters to lacustrine species that prefer to live in lakes (Born et al. 1998). Dam removal helps reverse many of these adverse effects, and restore ecological functions performed by rivers and streams and their riparian habitats (O'Connor et al. 2015, Stanley and Doyle 2003, Gregory et al. 2002, Bednarek 2001)

Dams can be classified in a number of ways. One approach to classifying dams is an operational or functional definition: Run-of-the river dams versus storage dams (Poff and Hart 2002). Run-of-the river dams have small hydraulic heads and storage volumes, short residence times, and there is little or no control of the rates at which water is released from the dams (Poff and Hart 2002) because the water is allowed to flow over the dam structure (Csiki and Rhoads 2014). Storage dams have large hydraulic heads and storage volumes, long hydraulic residence times, and there is control over water releases from the dams (Poff and Hart 2002).

Another approach is to classify dams as large or small, based on designated thresholds of dam height and storage capacity. For example, the National Inventory of Dams considers large dams as having high hazard potential or dams with low hazard potential that are either (1) more than 7.6 meters (25 feet) tall with a storage capacity more than 18,500 cubic meters (653,000 cubic feet), or (2) more than 1.8 meters (6 feet) tall with a storage capacity greater than 61,700 cubic meters (2,367,000 cubic feet) (Poff and Hart 2002). Dams classified these three ways listed above can vary considerably in size (Poff and Hart 2002). Dams may be considered ''small'' if they do not meet or exceed the criteria for large dams under the National Inventory of Dams (*e.g.,* Fencl et al. 2015, Stanley et al. 2002). Dam height is not a good indicator of the storage capacity of a dam because the storage capacity also depends on the shapes of the stream channel and the valley in which the stream is located, and the lateral extent of the dam structure.

The National Inventory of Dams is a congressionally authorized automated information system that catalogues dams in the United States and its territories. The current National Inventory of Dams was published in 2013, and it includes information on 87,000 dams that are more than 25 feet high, can store more than 50 acre-feet of water, or are considered a significant hazard if they were to fail. The National Inventory of Dams is maintained and published by the Corps along with the Association of State Dam Safety Officials, the states and territories, and Federal agencies that regulate dams. Additional information on the National Inventory of Dams is available at: *http://www.agc.army.mil/Media/FactSheets/FactSheetArticleView/tabid/11913/Article/480923/national-inventory-of-dams.aspx* (accessed April 6, 2016).

Run-of-the river dams usually are not higher than the channel banks of the rivers and streams in which they are located (Csiki and Rhoads 2014). Low-head dams are considered run-of-the-river dams (Tschantz and Wright 2011). Tschantz and Wright (2011) define low-head dams as dams that pass water over the entire dam structure, and were constructed to raise the water level and provide a source of water for industry, municipal water supply, irrigation, recreation, and to protect utility lines. Low-head dams pass peak flows and are unlikely to hold fine sediment or alter downstream water flows (Poff and Hart 2002, Csiki and Rhoads 2014). They have little effect on downstream hydrologic regimes (Doyle et al. 2005).

For the purposes of this NWP, we are proposing to define a ''low-head dam'' as ''a dam built across a stream to pass flows from upstream over the entire width of the dam crest on an uncontrolled basis.'' For this NWP, we are proposing to adapt the definition of ''low-head'' dam from Tschantz and Wright (2011) because dams that meet

that definition store low volumes of sediment, and therefore sediment releases during low-head dam removal will be more likely to be small and result in no more than minimal adverse environmental effects. Sediment releases from dam removal are less of a problem for low-head dams and dams in wide valleys, because there is not much sediment stored behind those dams (Gregory et al. 2002). During high flows, sediment from the impounded area upstream of the low-head dam is transported over the dam structure, thus preventing the impoundment from filling with sediment (Fencl et al. 2015, Csiki and Rhoads 2014). Because low-head dams do not store large amounts of sediment and low-head dams continue to allow sediment transport through the impoundment, they are not likely to be storing contaminants at levels greater than the levels of contaminants transported along the stream network through normal runoff and sediment transport processes (Poff and Hart 2002). Contaminants usually adhere to fine sediments (*i.e.,* silts, clays) that are more readily transported through the stream network in the suspended sediment load. Low-head dams continue to allow that sediment transport to continue because the water that passes over the crest of the low-head dam carries those fine sediments in suspension. Csiki and Rhoads (2014) found that sediments stored in run-of-the-river dams turn over rapidly because they are regularly flushed out of the impoundment during high flow events. Therefore, low-head dams are likely to be storing little sediment laden with contaminants.

We are soliciting comment on alternative approaches to defining ''low-head dams'' for the purposes of this NWP. Alternative approaches may define low-head dams in terms of maximum dam heights or reservoir volumes. Commenters suggesting other definitions of low-head dams for use with this NWP should explain how their recommended definitions will be more effective than the proposed definition in helping ensure that NWP A only authorizes those low-head dam removals that result in no more than minimal individual and cumulative adverse environmental effects. Those recommendations should cite scientific studies or reviews in support of those suggested definitions.

Recent reviews and studies have shown that rivers and streams recover quickly after dam removal (*e.g.,* O'Connor et al. 2015, Lovett 2014, Doyle et al. 2005, Stanley et al. 2002). The rate of recovery is dependent on dam size, river size, river channel shape, sediment volume, and sediment grain size (O'Connor et al. 2015). Sediment released as a result of dam removal are redistributed throughout the downstream segments within months (O'Connor et al. 2015). Different groups of aquatic organisms recover at different rates following dam removal (Doyle et al. 2005, Stanley and Doyle 2003). Dam removal should be viewed in the trade-offs that occur (Stanley and Doyle 2003). There are substantial long-term beneficial ecological outcomes from dam removal (*e.g.,* restored river flows, habitat connectivity, temperature regimes, sediment transport, and migration corridors) and some short-term adverse effects (*e.g.,* sediment releases, increased turbidity, and the potential release of contaminated sediments) (Bednarek 2001).

The proposed NWP will also facilitate the removal of old, deteriorating low-head dams that present threats to public safety. Low-head dams are hazardous to kayakers, canoeists, and others that engage in water-borne recreational activities and try to cross the crests of these dams. These dams can create a reverse roller wave at the base of the downstream side of the dam, and cause fatalities through drowning.

The release of sediments from dams, either through their operation or the removal of dam structures, may or may not result in a discharge of dredged or fill material, as those terms are defined at 33 CFR 323.2. Csiki and Rhoads (2014) concluded that there should be less concern about sediment management when removing run-of-the-river dams because of the minor sediment volumes stored by such dams. The determination of whether a regulated discharge occurs from such sediment releases is made on a case-by-case basis. Regulatory Guidance Letter 05–04, issued by the Corps on August 19, 2005, provides guidance on when sediment releases from dam breaches require DA authorization under section 404 of the Clean Water Act. District engineers will use the information provided in that Regulatory Guidance Letter when evaluating PCNs. When evaluating PCNs, district engineers will also consider whether there is a need to test sediment that might be stored in the impoundment for contaminants, based on a ''reason to believe'' approach similar to the EPA's inland testing manual for dredged material. If the district engineer determines that the release of sediments associated with the removal of a low-head dam results in a discharge of dredged or fill material, this NWP would authorize that discharge. The effects of those sediment releases will diminish over time, as the sediment is transported downstream by the flowing water.

Nationwide permit 27 authorizes the installation, removal, and maintenance of small water control structures, dikes, and berms to restore or enhance streams and other types of aquatic resources. Small water control structures include small dams, and small in-stream dams are typically limited to headwater streams. While DA authorization to remove some low-head dams could be provided by NWP 27, the proposed new NWP would authorize the removal of larger low-head dams, including low-head dams located below the headwaters, that are not authorized by NWP 27. The proposed NWP would authorize the removal of low-head dams regardless of stream size or the location in the stream network in a watershed, as long as the district engineer determines, after reviewing a PCN, that the proposed low-head dam removal activity will result in no more than minimal individual and cumulative adverse environmental effects.

We are seeking comments on this proposed new NWP, including its terms and conditions, such as the definition of ''low-head dam.'' In response to a PCN, the district engineer may impose activity-specific conditions on an NWP verification to ensure that the adverse environmental effects of the authorized activity are no more than minimal or exercise discretionary authority to require exercise discretionary authority to require an individual permit for the proposed activity.

Proposed NWP B. Living Shorelines

We are proposing to issue a new NWP to authorize structures and work in navigable waters of the United States, and discharges of dredged or fill material into waters of the United States, for the construction and maintenance of living shorelines. While some activities associated with living shorelines can be authorized by NWPs 13 and 27, the construction of living shorelines often requires individual permits because the structures, work, and fills may not fall within the terms and conditions of those NWPs. These activities often require substantial amount of fill discharged into jurisdictional waters and wetlands to achieve appropriate grades to dissipate wave energy, as well as sills or breakwaters to protect the marsh fringe that helps maintain the grade of the substrate. Living shorelines may also alter intertidal and subtidal habitats utilized by endangered or threatened species, and PCNs for this NWP will be evaluated by district engineers to determine if ESA Section 7 consultation

is required to comply with general condition 18.

Living shorelines maintain the continuity of natural land-water interface and provide ecological benefits which hard bank stabilization structures do not, such as improved water quality, resilience to storms, and habitat for fish and wildlife.

We are proposing a separate NWP to authorize the construction and maintenance of living shorelines to provide an efficient mechanism for authorizing these types of projects when they have no more than minimal adverse environmental effects. The current and proposed NWP 13 is an important tool for authorizing a variety of bank stabilization techniques to help protect private and public property and infrastructure. Both NWP 13 and proposed NWP B provide options for implementing the Corps' regulations relating to considerations of property ownership, especially 33 CFR 320.4(g). Section 320.4(g)(2) states that a landowner has the ''general right to protect property from erosion'' and that ''applications to erect protective structures will usually receive favorable consideration.''

Living shorelines are designed for erosion control and also sustain habitat functions along a shoreline, resulting in minimal environmental effects on a coastline. Living shorelines provide ecosystem services to society, shoreline stabilization, storm attenuation, food production, nutrient and sediment removal, water quality improvement and carbon sequestration (Barbier et al. 2011). The vegetation and fish utilization in constructed marsh sill can mirror that of nearby natural marshes in just a few growing seasons (Currin et al. 2008; Gittman et al. 2016). Even narrow marshes, like a frequent component of living shoreline designs, have been shown to slow waves and reduce shoreline erosion. It must be noted, shorelines are dynamic environments and the core function of stabilization is not static, but changes over time.

In 2007, the National Research Council (NRC) issued a report entitled: ''Mitigating Shore Erosion Along Sheltered Coasts.'' [3] One of the findings in that report was that the lack of a general permit to authorize living shorelines is one of a few factors that discourages the use of that erosion control technique in sheltered coasts. Other studies have made similar findings. The 2007 NRC study and other reports acknowledge that living shorelines are not practical or feasible in all coastal environments. Living shorelines work best in sheltered coasts, which are defined in the 2007 NRC report as shorelines that front smaller bodies of water, and are not subject to the high energy erosive forces that occur along open coasts. Additional information on living shorelines is available from the Systems Approach to Geomorphic Engineering Group (SAGE), in a publication entitled ''Natural and Structural Measures for Shoreline Stabilization.'' [4] In 2015, the National Oceanic and Atmospheric Administration issued guidance on living shorelines.[5]

Coastal environments fall along a continuum, and there is no quantifiable measure to identify a sheltered coast. Therefore, judgment must be used to determine whether a particular segment of the shoreline is a sheltered coast where the use of living shorelines to manage erosion will likely be practical and effective. According to the 2007 NRC report, sheltered coasts are typically found in estuaries, bays, lagoons, and coastal deltas.

Depending on site conditions, these areas exhibit a variety of geomorphic features, such as upland bluffs, dunes, beaches, tidal flats, and sand bars. In sheltered coasts, the distance to the opposite shore (*i.e.,* fetch) is generally small, and water depths are usually shallow. These coastal areas are usually subject to low velocity tidal currents and low- or medium-energy waves. In general, the larger the fetch the higher the level of protection needed to reduce erosion and to protect the property.

Living shorelines are generally limited to lower energy, sheltered estuarine waters rather than open estuarine waters and marine waters with higher energy waves and currents. Living shorelines are also used in the Great Lakes, and this proposed NWP would also authorize the construction and maintenance of living shorelines in these waters and other lakes. In lower energy shorelines, sills or breakwaters can provide protection to fringe marshes landward of those structures, but in higher energy coastal environments, wave energy can bypass those structures and erode the substrate, resulting in the loss of the marsh fringe. The combination of a constructed or enhanced marsh fringe with protective sills or breakwaters can help maintain a more natural shoreline and provide more ecological functions and services than hardening shorelines to reduce erosion. Another living shoreline approach is to construct short, low-profile, sand containment structures perpendicular to the shoreline, place sand between the low-profile sand containment structures, grade the sand to the proper slope to dissipate wave energy, and plant marsh vegetation in the sand to establish or improve a fringe marsh to reduce erosion. This design approach allows organisms more access to and from the intertidal zone than living shorelines constructed with stone sills.

Sills are structures placed in the water outside the seaward edge of a tidal marsh fringe. Sills can be constructed with stone or other materials (*e.g.* oyster, oyster shell bags, coir fiber logs, coir with mussels, etc.) and protect the existing or planted marsh fringe by reducing wave action and erosion. The sill should be the minimum size necessary to protect the marsh fringe. Sills should have breaks to allow aquatic animals to move between the open water and the marsh fringe. Breakwaters are structures consisting of stone or other materials that are constructed offshore to reduce the energy of waves reaching the shoreline, and protect the marsh vegetation planted or recruited along the shore. Breakwaters may be detached from, or attached to, the shoreline.

''Living shoreline'' is a broad term that encompasses a range of shoreline stabilization techniques along estuarine coasts, bays, sheltered coastlines, and tributaries. A living shoreline has a footprint that is made up mostly of native material. It incorporates vegetation or other living, natural ''soft'' elements alone or in combination with some type of harder shoreline structure (*e.g.* oyster reefs or rock sills) for added stability. Living shorelines are designed for erosion control and also sustain habitat function along a shoreline, resulting in minimal environmental effects on a coastline. Living shorelines provide ecosystem services to society, shoreline stabilization, storm attenuation, food production, nutrient and sediment removal, water quality improvement and carbon sequestration. The vegetation and fish utilization in constructed marsh sill can mirror that of nearby natural marshes in just a few growing seasons. Even narrow marshes—like a frequent component of living shoreline designs—have been shown to slow waves and reduce shoreline erosion. It should be noted that shorelines are dynamic environments and the core function of stabilization is not static, but changes over time.

[3] Available at *http://www.nap.edu/read/11764/.*

[4] Available at: *http://sagecoast.org/* (accessed February 4, 2016).

[5] Available at: *http://www.habitat.noaa.gov/pdf/noaa_guidance_for_considering_the_use_of_living_shorelines_2015.pdf* (accessed February 5, 2016).

We are seeking comment on the proposal to limit the placement of structures and fills to within 30 feet of the mean high water line or ordinary high water mark. Please note that the proposed 30 foot limit is not a design standard. It is merely intended to establish a limit above which a written waiver from the district engineer is required to obtain NWP authorization. The proposed 30-foot limit was derived by examining some of the literature on the design living shorelines, especially those living shorelines that involve the planting of a marsh fringe with and without sills or other types of protective structures. Sand fills are often needed to establish a grade along the shore that will dissipate wave energy and provide appropriate elevations for the planting of marsh grasses that will further reduce wave energy. A typical grade for sand fills for planted tidal marsh fringe ranges from 8:1 to 10:1 (Hardaway et al. 2010). According to the Maryland Department of the Environment (MDE), marsh establishment projects for shore protection are typically 20 to 25 feet wide and additional encroachment into the water would be needed if sills or other structures are necessary to protect the marsh (MDE 2008). In mid-energy wave environments, wetland marshes need to be around 40 to 70 feet wide with armor stone to protect the marsh (Hardaway et al. 2010).

Based on our review of available information on design specifications for living shorelines, we determined that 30 feet is a moderate encroachment that could authorize a large proportion of living shorelines with no more than minimal adverse environmental effects. We are seeking comments on the proposed 30-foot limit, and welcome suggestions for different limits as long as the commenter provides supporting data or other information for his or her proposed limit. We are also proposing to allow district engineers to waive this 30 foot limit, if they make a written determination concluding that the proposed activity will result in only minimal adverse environmental effects after coordinating the PCNs with the agencies. The project proponent must submit a PCN before a waiver can be issued by the district engineer, and if the district engineer does not provide a written verification authorizing the waiver, then the proposed activity does not qualify for NWP authorization.

The design and construction of living shorelines are dependent on site-specific conditions. This NWP is intended to provide flexibility to authorize living shorelines in a variety of environmental settings, as long as discharges of dredged or fill material into waters of the United States and structures and work in navigable waters are minimized to the maximum extent practicable. If the district engineer does not provide a written response within 45-days of receipt of a complete PCN, and general conditions 18 and 20 do not apply, a default authorization does not occur for an NWP activity that requires a written waiver from the district engineer. Commenters are encouraged to suggest other limits, and provide a rationale for a recommended alternative limit. We are also soliciting comments on whether district engineers should have the authority to waive this 30-foot limit, if in response to a PCN the district engineer can issue a written waiver based on a site-specific evaluation and a written finding that the proposed living shoreline will result in no more than minimal adverse environmental effects. There are nine criteria used by the Corps to determine whether a proposed NWP activity will result in no more than minimal adverse environmental effects are listed in paragraph 2 of Section D, ''District Engineer's Decision.''

We are also seeking comment on the other proposed terms of this NWP, as well as the proposed pre-construction notification thresholds. We are proposing to require PCNs for any proposed construction of living shorelines. However, for maintenance and repair activities, pre-construction notification would not be required, unless a PCN is necessary under an applicable NWP general condition or regional conditions imposed by division engineers. For example, maintenance and repair activities conducted by non-federal permittees that might affect a species listed under the Endangered Species Act would require pre-construction notification (see general condition 18).

For activities that require PCNs, district engineers will review those proposed activities, and make site-specific determinations whether the proposed activities will result in no more than minimal individual and cumulative adverse environmental effects. Division engineers can add regional conditions to this NWP to address environmental concerns and other public interest review factors at a regional level.

Discussion of Proposed Modifications to Nationwide Permit General Conditions

GC 12. *Soil Erosion and Sediment Controls.* To clarify the application of this general condition in tidal waters, we are proposing to modify the last sentence to encourage permittees to conduct work during low tides to reduce soil erosion and sediment transport during construction activities in waters subject to the ebb and flow of the tide.

GC 16. *Wild and Scenic Rivers.* We are proposing to modify this general condition to require pre-construction notification for any NWP activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a ''study river'' for possible inclusion in the system while the river is in an official study status. Section 7(a) of the Wild and Scenic Rivers Act requires Federal agencies that issue permits or licenses for water resources projects to coordinate with the Federal agency with direct management responsibility for that river. Water resources projects, for the purposes of the Wild and Scenic Rivers Act, include activities that require Department of the Army permits under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. District engineers will coordinate PCNs for those NWP activities that have the potential to adversely affect Wild and Scenic Rivers or study rivers. The managing Federal agency with direct management responsibility for that river will issue a determination with its findings on the proposed NWP activity's effects on the applicable characteristics of the Wild and Scenic River or study river. There are different standards for activities that are within the corridors of these Wild and Scenic Rivers and activities that are outside of those river corridors.

For the purposes of section 7(a) of the Wild and Scenic River Act, there are processes for evaluating water resources projects within a Wild and Scenic River corridor and for evaluating water resources projects outside a Wild and Scenic River corridor. For activities within a Wild and Scenic River's ordinary high water marks (*i.e.,* the activity is below the ordinary high water mark), the Federal agency with direct management responsibility for that river applies a ''direct and adverse effect'' standard. For an activity located in a river's ordinary high water marks upstream, downstream, or on a tributary to a Wild and Scenic River (*i.e.,* ''outside'' the Wild and Scenic River corridor), the Federal agency with direct management responsibility for that river evaluates whether the proposed activity will ''invade the area or unreasonably diminish'' the Wild and Scenic River. After the Federal agency with direct management responsibility for that river makes its determination, it will transmit that determination to the Corps district.

If the Federal agency makes a written determination that the proposed NWP activity will not have a direct and adverse effect on the values that resulted in the designation of that Wild and Scenic River or study river, the district engineer will issue the NWP verification as long as the proposed NWP activity complies with all other applicable terms and conditions. If the Federal agency with direct management responsibility for that river finds that the proposed NWP activity will have a direct and adverse effect on the Wild and Scenic River or study river, it may recommend measures to eliminate those adverse effects. If the prospective permittee modifies the proposed NWP activity to adopt those recommended measures, the district engineer will coordinate the revised PCN with the Federal agency, and then decide whether to issue the NWP verification.

District engineers are encouraged to work out local procedures with Federal agencies with direct management responsibility over Wild and Scenic Rivers and study rivers in their geographic areas of responsibility. Regional conditions may also be added to the NWPs by division engineers to help potential users of the NWPs understand when PCNs need to be submitted to district engineers to comply with this general condition.

GC 18. *Endangered Species.* We are proposing to modify the first paragraph of this general condition to define the terms ''direct effects'' and ''indirect effects.'' We are proposing to use definitions from FWS and NMFS regulations and guidance to define these terms for general condition 18, to assist with compliance with this general condition. We are proposing to define ''direct effects'' as ''the immediate effects on listed species and critical habitat caused by the proposed NWP activity.'' We are proposing to define ''indirect effects'' as ''those effects on listed species and critical habitat that are caused by the proposed NWP activity and are later in time, but still are reasonably certain to occur.'' The definition of ''direct effects'' is adapted from the FWS and NMFS's 1998 Endangered Species Consultation Handbook (page 4–25) because that term is not defined in their section 7 regulations. The definition of ''indirect effects'' is adapted from the FWS and NMFS's section 7 regulations at 50 CFR 402.02.

The implementing regulations for ESA section 7 require Federal agencies to consult with the FWS and/or NMFS on any Federal action that ''may affect'' listed species or critical habitat. The Federal action is the activity that is authorized, funded, or carried out, in whole or in part, by that agency. To determine if ESA section 7 consultation is required, the Federal agency evaluates whether its action will directly or indirectly affect listed species or critical habitat.

The term ''minimal adverse environmental effect'' used for the purposes of the NWPs has a different meaning and regulatory application than the term ''may affect,'' when that term is used for implementing section 7 of the ESA. The former term is the threshold for determining whether a regulated activity qualifies for NWP authorization. The latter term is used to determine when section 7 consultation is required for a Federal action, such as an activity that may be authorized by an NWP. For the purposes of the NWPs, ESA section 7 consultation is required for NWP activities that may affect listed species or critical habitat. Either formal or informal consultation may be conducted to comply with the requirements of ESA section 7.

General condition 18 requires a non-federal permittee to submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project. The term ''in the vicinity'' cannot be explicitly defined for the purposes of general condition 18 because the ''vicinity'' is dependent on a variety of factors, such as species distribution, ecology, life history, mobility, and migratory patterns (if applicable), as well as habitat characteristics and species sensitivity to various environmental components and potential stressors. The vicinity is also dependent on the NWP activity and the types of direct and indirect effects that might be caused by that NWP activity.

During formal consultation, ESA section 7 and its implementing regulations require the FWS and NMFS to consider in their biological opinions the direct and indirect effects of the Federal action, as well as the effects of any interrelated or interdependent actions. The FWS and NMFS also consider cumulative effects, as that term is defined in 50 CFR 402.02. Interrelated and interdependent activities are not Federal actions, because they are not authorized, funded, or carried out by the Federal agency. In many instances, the action that triggers the ESA section 7 consultation requirement (*e.g.,* a discharge of dredged or fill material into waters of the United States that requires Corps authorization and may affect a listed species or critical habitat) is a component of a larger overall project, and the biological opinion also considers the effects of the interrelated and interdependent activities on listed species and critical habitat. Those interrelated and interdependent activities are outside of the jurisdiction of the Corps. Including interrelated and interdependent activities in a formal ESA Section 7 consultation and biological opinion does not grant the Corps any authority to regulate those activities and their effects on listed species and critical habitat. The FWS and NMFS would be responsible for enforcing those provisions of the incidental take statement that apply to the upland activities outside of the Corps' jurisdiction.

We are proposing to modify paragraph (b) of this general condition to clarify that Federal agencies only need to submit documentation of compliance with section 7 of the Endangered Species Act (ESA) when the terms and conditions of the NWP, or regional conditions imposed by the division engineer, require the submission of a PCN. The NWP regulations at 33 CFR 330.4(f)(1) do not require Federal permittees to submit PCNs if the proposed NWP activity does not otherwise require a PCN. Under section 7(a)(2) of the Endangered Species Act, all Federal agencies are obligated to ensure that their actions do not jeopardize the continued existence of listed species or destroy or adversely modify critical habitat. Therefore, Federal agencies have their own obligations to conduct section 7 consultations to ensure that their actions are not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of designated critical habitat. Activities authorized by NWP are usually a component of a larger overall Federal agency action. The federal agency is responsible for ensuring that its overall action, plus any NWP activities that authorize components of their larger overall action, comply with ESA section 7. When a Federal permittee conducts formal section 7 consultation, the FWS and NMFS will consider the direct and indirect effects of that Federal agency's action, plus the effects caused by interrelated and interdependent activities. The overall action subject to formal section 7 consultation should include those activities for which the Federal permittee is seeking NWP authorization.

It is not the Corps' responsibility to make sure that other Federal agencies are fulfilling their obligations under section 7 of the ESA. The FWS and NMFS can work with the federal agency if they have concerns about that Federal

agency's compliance with ESA section 7 for a particular Federal action. The proposed change to this paragraph is also consistent with 33 CFR 330.4(f)(1), which states that for the purposes of the NWP Program, Federal agencies should follow their own procedures for complying with ESA section 7. There should not need to be two section 7 consultations for the same Federal action, when another Federal agency's larger action includes an activity for which they are seeking NWP authorization.

We are also proposing to modify paragraph (d) of this general condition to clarify that the district engineer may add activity-specific conditions to an NWP authorization after conducting formal or informal ESA section 7 consultation. The 2012 version of this general condition referred to regional conditions, which are approved by division engineers to modify one or more NWPs in a region. Regional conditions are imposed within a Corps district, state, watershed, or other type of geographic area. Most ESA section 7 consultations done for the purposes of general condition 18 are activity-specific consultations, and therefore it would be more appropriate for this paragraph to refer to conditions added to specific NWP authorizations. Division engineers can impose regional conditions on the NWPs to help protect listed species and designated critical habitat. Regional conditions are usually identified through coordination with the FWS or NMFS instead of formal or informal consultations.

We are also proposing to update the URLs for the Web sites maintained by the FWS and NMFS where information on endangered and threatened species and designated critical habitats can be obtained.

GC 19. *Migratory Birds and Bald and Golden Eagles.* We are proposing to modify this general condition to state that the permittee is responsible for ensuring that his or her action complies with the Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act, instead of stating that the permittee is responsible for obtaining any ''take'' permits from the U.S. Fish and Wildlife Service. There may be situations where such ''take'' permits are not required and compliance with these acts may be achieved through other means.

GC 20. *Historic Properties.* Parallel with the proposed modifications of paragraph (b) of general condition 18, we are also proposing to modify paragraph (b) of general condition 20 to state that federal permittees only need to submit documentation of their compliance with section 106 of the National Historic Preservation Act (NHPA) if the proposed NWP activity requires pre-construction notification because of other terms and conditions, including regional conditions imposed by division engineers. Federal agencies are responsible for complying with the requirements of NHPA section 106. Activities undertaken by other federal agencies that might qualify for NWP authorization are usually parts of a larger overall action and include other activities that not regulated by the Corps. If a State Historic Preservation Officer, Tribal Historic Preservation Officer, or the Advisory Council on Historic Preservation have concerns about the federal agency's compliance with section 106, they can work with the federal agency conducting the larger overall undertaking.

GC 23. *Mitigation.* We are proposing to modify the opening paragraph of this general condition and paragraph (b) to clarify that mitigation can be required by district engineers to ensure that activities authorized by NWPs will result in no more than minimal individual and cumulative adverse environmental effects. The NWP regulations at 33 CFR 330.1(e)(3) state that district engineer first reviews the PCN to determine whether the proposed NWP activity will result in more than minimal individual and cumulative adverse environmental effects. If the district engineer determines the adverse environmental effects of the proposed NWP activity will be more than minimal, he or she will notify the applicant of two options: (1) The applicant can apply for an individual permit, or (2) the applicant can prepare a mitigation proposal to reduce the adverse environmental effects so that they are no more than minimal. If the applicant chooses the latter option, the district engineer will review the mitigation proposal and if it is sufficient to ensure the proposed NWP activity will result in no more than minimal individual and cumulative adverse environmental effects, he or she will issue an NWP verification with conditions stating the mitigation requirements.

We are proposing to modify paragraph (d) to state that compensatory mitigation for stream losses should be provided through rehabilitation, enhancement, or preservation. This will make paragraph (d) consistent with 33 CFR 332.3(e)(3), which states that streams are difficult-to-replace resources. Compensatory mitigation projects for streams should focus on actions that improve or protect the ecological functions provided by existing streams. The proposed modification uses the word ''should'' and if a particular stream restoration project involves re-establishment of the stream, and would have a high likelihood of resulting in the restoration of stream functions and services, then that stream re-establishment project could be determined by the district engineer to be an acceptable compensatory mitigation project for an NWP activity.

In paragraph (e), we are proposing to modify the first sentence to state that compensatory mitigation provided through riparian areas can be accomplished by restoration, enhancement, or preservation of those areas. An existing stream would have had a riparian area at some time in the past, so we are deleting establishment as a compensatory mitigation mechanism. If the riparian area was removed, re-establishing that riparian area is a restoration action. We are proposing to modify the second sentence of this paragraph to state that restored riparian areas should consist of native species. If the compensatory mitigation project involves replanting the riparian area, then native plant species should be used. If an intact riparian area already exists, and that riparian area is already providing important ecological functions and services, then that riparian area should be preserved through site protection mechanisms. Clearing trees from a well-established, functioning riparian area to remove individual trees because they are non-native, in most cases, can do more harm than good. Clearing trees disturbs the soil and makes it more susceptible to erosion, and it will take years for the newly planted vegetation to develop into trees. During the time it takes the riparian area to develop and recover, important ecological functions are likely to be reduced or absent.

In the 2012 version of general condition 23, the requirement to comply with the applicable provisions of the Corps' compensatory mitigation regulations at 33 CFR part 332 is in the paragraph addressing wetland mitigation. Because the Corps' compensatory mitigation regulations at 33 CFR part 332 apply to all types of aquatic resources, including streams, we are proposing to move those requirements to a new separate paragraph (paragraph (f)).

We are proposing to modify paragraph (f)(1) to state that if the district engineer determines compensatory mitigation is required for the proposed NWP activity, the preferred mechanism for providing compensatory mitigation is either mitigation bank credits or in-lieu credits. This proposed modification is consistent with the 2008 mitigation rule,

specifically 33 CFR 332.3(b). That section of the 2008 mitigation rule establishes a hierarchical framework for considering compensatory mitigation options for DA permits. Mitigation banks are a preferred mechanism for providing compensatory mitigation because they ''typically involve larger, more ecologically valuable parcels, and more rigorous scientific and technical analysis, planning and implementation than permittee-responsible mitigation.'' (33 CFR 332.3(b)(2)). In-lieu fee programs are preferable to permittee-responsible mitigation because in-lieu fee projects typically involve ''larger, more ecologically valuable parcels, and more rigorous scientific and technical analysis, planning and implementation than permittee-responsible mitigation.'' (33 CFR 332.3(b)(3)). In addition, in-lieu fee programs are required to implement compensation planning frameworks to identify and address high-priority resource needs on a watershed scale. If the district engineer determines that compensatory mitigation is necessary to ensure an NWP activity results in no more than minimal individual and cumulative adverse environmental effects, and the appropriate number and type of mitigation bank credits or in-lieu fee program credits are not available, then the district engineer will require the applicant to submit a permittee-responsible mitigation plan for the district engineer's review.

In October 2015, the Corps' Institute for Water Resources released a report entitled: ''The Mitigation Rule Retrospective: A Review of the 2008 Regulations Governing Compensatory Mitigation for Losses of Aquatic Resources'' (Report number 2015–R–03). A copy of this report is available at: *http://www.iwr.usace.army.mil/Media/NewsStories/tabid/11418/Article/626925/iwr-releases-the-mitigation-rule-retrospective-a-review-of-the-2008-regulations.aspx*. The report examines Corps permit data and compensatory mitigation requirements for the period of 2010 to 2014. The report also looks at the number of approved mitigation banks and in-lieu fee programs under the 2008 mitigation rule. The report uses data from the Corps Regulatory Program's automated information system, ORM, and the Regulatory In-Lieu Fee and Bank Information System (RIBITS).

During the five-year period examined in the mitigation rule retrospective, 31% of the individual permits issued by Corps districts required compensatory mitigation and 8% of the activities verified as qualifying for general permit authorization required compensatory mitigation. Ten percent of the NWP verifications issued from 2010 to 2014 required compensatory mitigation. The Corps' regulations have different thresholds for requiring compensatory mitigation for individual permits and general permits. The threshold for requiring compensatory mitigation for individual permits is found at 33 CFR 320.4(r), which was not changed by the 2008 mitigation rule (see 33 CFR 332.1(b)). The threshold for requiring compensatory mitigation for NWP activities is described in 33 CFR 330.1(e)(3), which was promulgated in 1991 and was not affected by the issuance of the 2008 mitigation rule. Regional general permits issued by Corps districts use a threshold similar to the compensatory mitigation threshold for the NWP program. Compensatory mitigation is required for NWPs and other general permits when necessary to ensure that the authorized activities result in no more than minimal adverse environmental effects.

The report also examined the effectiveness of the Corps Regulatory Program in minimizing impacts to jurisdictional waters and wetlands (see figure 5 of the report). For individual permits and general permits, 89% of the authorized impacts to jurisdictional waters and wetlands were less than ½-acre, and 70% of the permitted impacts to jurisdictional waters and wetlands were less than ⅒-acre. The authorized impacts shown in that chart include both permanent and temporary impacts to jurisdictional waters and wetlands. Those data show that project proponents design their projects to reduce those impacts to qualify for NWP authorization. They also minimize wetland losses so that they are less than ⅒-acre, below the threshold in paragraph (c) of general condition 23 for requiring compensatory mitigation for wetland losses.

The mitigation rule retrospective also demonstrates the increased use of mitigation bank credits and in-lieu fee program credits to fulfill compensatory mitigation requirements in individual permits and general permit verifications. This increased use occurs as a result of more mitigation banks and in-lieu fee programs getting approved under the 2008 mitigation rule and more credits becoming available. Concurrent with this increased use of mitigation bank credits and in-lieu fee program credits, there has been a decrease in the use of permittee-responsible mitigation to fulfill compensatory mitigation requirements.

The report also includes charts showing the service areas of approved mitigation banks and in-lieu fee program credits, where those credits might be available for providing compensatory mitigation for NWP activities and activities authorized by other types of Corps permits. Most of the approved mitigation banks provide wetland credits, some mitigation banks provide stream credits, and a number of mitigation banks provide both wetland and stream credits. There are some approved mitigation banks that provide credits for losses of other types of aquatic resources, and those mitigation banks are relatively rare. However, given the increased availability of mitigation banks and in-lieu fee program credits in much of the country, we are proposing to modify paragraph (f)(1) of general condition 23 to establish a preference for the use of those credits to comply with compensatory mitigation requirements imposed by district engineers to ensure that NWP activities result in no more than minimal individual and cumulative adverse environmental effects. The use of mitigation bank credits and in-lieu fee program credits is also beneficial to permittees because it reduces the amount of time needed to evaluate a PCN. If an applicant proposes permittee-responsible mitigation to fulfill the compensatory mitigation requirements in an NWP verification, more time is needed for Corps district staff to evaluate the proposed mitigation plan and ensure that it complies with all applicable requirements in 33 CFR 332.1 through 332.7. Permittee-responsible mitigation could be used to fulfill the compensatory mitigation requirements for NWP activities, if the appropriate amount and type of mitigation bank or in-lieu fee program credits are not available at the time the NWP verification decision is being made, or if the district engineer determines, after applying the criteria at 33 CFR 332.3(a) and (b), that permittee-responsible mitigation would be acceptable for offsetting the losses caused by a particular NWP activity.

In addition, we are proposing to modify paragraph (i) to make it clear that compensatory mitigation to offset losses of specific functions of jurisdictional waters and wetlands should only be required by district engineers when those losses are caused by regulated activities. For example, removing vegetation in a utility line right-of-way in jurisdictional wetlands by using techniques that do not result in a discharge of dredged or fill material into waters of the United States does not require DA authorization. Consistent with the Corps' mitigation policy at 33 CFR 320.4(r), compensatory mitigation should only be required for impacts

directly related to the activity that requires DA authorization.

The Corps is seeking public comment on ways to improve how compensatory mitigation conducted under the NWP program is implemented to offset direct, indirect, and cumulative effects. The Corps is particularly interested in factors which District Engineers would consider for deciding when and how much mitigation may be necessary and what additional information could be considered to help inform their mitigation decisions.

GC 30. *Compliance Certification.* We are proposing to modify this general condition to add a timeframe for submitting the completed certification document. The completed certification should be sent to the district engineer within 30 days of completing the authorized activity or the completion of the implementation of any required compensatory mitigation. We are referring to the implementation of the required compensatory mitigation, instead of the successful completion of compensatory mitigation. For permittee-responsible mitigation, it may be years before the required compensatory mitigation is determined to be ecologically successful, because the monitoring period is a minimum of five years (see 33 CFR 332.6(b)). When credits from mitigation banks or in-lieu fee programs are used to fulfill the compensatory mitigation requirements of NWP activities, implementation refers to securing those credits from the sponsor of the mitigation bank or in-lieu fee program. The Corps district should be notified, through the compliance certification, when the required aquatic resources restoration, enhancement, establishment, or preservation activity has taken place. After the compensatory mitigation project has been implemented, the district engineer will review monitoring reports to ensure that the required compensatory mitigation is fulfilling its objectives and offsetting the authorized impacts.

GC 31. *Activities Affecting Structures or Works Built by the United States.* Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. 408) authorizes the Secretary of the Army to grant permission for the alteration or occupation or use of structures or works built by the United States (*i.e.,* U.S. Army Corps of Engineers federally authorized Civil Works projects) if the Secretary determines that the activity will not be injurious to the public interest and will not impair the usefulness of that project. The authority to issue these section 408 permissions has been delegated to Corps Headquarters, Corps divisions, or Corps districts depending on the case-specific circumstances for a 408 permission request. Some of these activities also require authorization under section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899, and may be eligible for one or more NWPs.

On July 31, 2014, the Corps issued Engineer Circular 1165–2–216, which provides policy and procedural guidance for evaluating requests for section 408 permissions. The Engineer Circular also states that district engineers cannot make decisions on requests for Clean Water Act section 404 or Rivers and Harbors Act of 1899 section 10 authorizations prior to the Corps making decisions on section 408 requests. In addition, 33 CFR 330.4(b)(5) states that ''NWPs do not authorize interference with any existing or proposed Federal project.'' That provision of the NWP regulations means that no activity that would alter or temporarily or permanently occupy or use a Corps federal project is authorized by NWP until a required section 408 permission is granted.

The text of 33 CFR part 330.4(b)(5) has been incorporated in the text of the NWPs since 2000 (see 65 FR 12818 at 12897, March 9, 2000). To provide additional clarity and ensure that no activity potentially authorized by NWP can go forward until the project proponent receives a required section 408 permission to alter or occupy structures or works built by the United States, we are proposing to add a new general condition. The new general condition states that a proposed NWP activity that also needs section 408 permission requires submission of a PCN and is not authorized by NWP until the district engineer issues a written NWP verification. The district engineer will not issue a written NWP verification until after the 408 permission has been granted, or the Corps determines that section 408 permission is not required for a particular activity.

Additional information on the section 408 permission process and the timing of the issuance of authorizations by Regulatory Program offices is provided in Engineer Circular 1165–2–216, which is available at: *http://www.usace.army.mil/Missions/CivilWorks/Section408.aspx.*

GC 32. *Pre-Construction Notification.* We are proposing to modify paragraph (b) by adding a new paragraph (b)(2) to state that the PCN should identify the specific NWP(s) the project proponent wants to use to authorize the proposed activity. Some activities that require DA authorization may be authorized by more than one NWP, and project proponents can choose to seek authorization under the NWP or NWPs that most readily authorizes that activity. For example, one NWP might have been issued WQC by the state while another NWP that could authorize the same activity might have WQC denied by the state and thus require an individual WQC. Consistent with the Corps Regulatory Program Standard Operating Procedure (SOP) issued in 2009, districts should evaluate permit applications using the least extensive and time consuming review process (see page 9 of the SOP). When an applicant requests authorization under a specific NWP, then the district should evaluate the PCN for that particular NWP.

In addition, we are proposing to modify paragraph (b)(4) to require a description of mitigation measures the applicant intends to use to reduce adverse environmental effects caused by the proposed activity. Such mitigation measures can include on-site avoidance and minimization measures. This change is intended to add efficiency to the PCN review process. Identifying these mitigation measures up-front in the PCN can help reduce the amount of time district engineers take to reach decisions on whether to issue NWP verifications.

For linear projects, we are proposing to change paragraph (b)(4) to make it clear that the PCN should identify all crossings of waters of the United States that require DA authorization. Since the 1991 NWPs were issued, the notification general condition has required the prospective permittee to identify in the PCN ''any other NWPs, regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity'' (see 56 FR 59145). This provision has been present in the ''notification'' general condition for all the subsequent reissuances of the NWPs. This requirement includes crossings of waters of the United States authorized by non-reporting NWPs, but does not include crossings of waters of the United States that do not require DA authorization, such as utility line crossings accomplished by directional drilling below section 404-only waters, where there is no discharge of dredged or fill material into waters of the United States. We are also proposing to modify paragraph (b)(4) to require, for linear projects, that the PCN include the quantity of proposed losses of waters of the United States for each single and complete crossing of those waters. Each separate and distance crossing of waters of the United States may be eligible for separate NWP authorization, subject to

the discretion of the district engineer and compliance with 33 CFR 330.6(d).

In paragraphs (b)(7) and (8) of this general condition, we are proposing to make changes consistent with the proposed changes to paragraph (c) of general conditions 18 and 20. These changes will also be consistent with 33 CFR 330.4(f)(2) and (g)(2). The requirement to submit PCNs for proposed NWP activities that might affect listed species or critical habitat under the ESA or have the potential to cause effects to historic properties is limited to non-federal permittees. Federal permittees are responsible for following their own procedures for complying with ESA section 7 and NHPA section 106 (see 33 CFR 330.4(f)(1) and (g)(1), respectively).

We are proposing to add paragraph (b)(9) to require the PCN to include a statement from the project proponent confirming that he or she has submitted a written request for a section 408 permission, if the proposed NWP activity will alter or occupy structures or works built by the United States. This proposed new paragraph will help implement the proposed new general condition 31.

To provide flexibility in the submittal of PCNs and supporting information, we are proposing to modify paragraph (c) of this general condition to state that applicants may submit PCNs and supporting information as electronic files. Corps districts should make it clear on their Regulatory home pages how prospective users of the NWPs can submit electronic files of PCNs and supporting information.

In paragraph (d), agency coordination, we are proposing to restructure the text so that there are separate subparagraphs explaining when agency coordination is required and the procedures for agency coordination. We are proposing to require agency coordination for PCNs for proposed NWP 13 activities where the applicants request waivers for one or more of limits of NWP 13 that can be waived with a written activity-specific determination of no more than minimal adverse environmental effects. In paragraph (d)(2), we are also proposing to remove the requirement for agency coordination for all NWP 48 activities that require pre-construction notification. The majority of commercial shellfish aquaculture activities authorized by NWP 48 are on-going operations. We do not believe it is necessary to do agency coordination each time these on-going activities are re-authorized by NWP 48. Since NWP 48 has been used for almost 10 years, we do not believe it is necessary to require agency coordination for other commercial shellfish aquaculture activities authorized by NWP 48. Corps districts can work out agreements with regional or local offices of the resource agencies if they determine that agency coordination would help provide them with information to help make the no more than minimal adverse environmental effects determination for NWP 48 activities. In addition, Corps districts conduct activity-specific ESA section 7 or Essential Fish Habitat consultations when proposed NWP 48 activities may affect listed species or critical habitat, or may adversely affect Essential Fish Habitat, unless there are regional programmatic consultations that apply to these activities. These section 7 and EFH consultations can also result in exchanges of information from the FWS and/or NMFS that district engineers can use to make their decisions on NWP 48 PCNs.

Discussion of Proposed Modifications to Section D, ''District Engineer's Decision''

We are proposing to modify paragraph 1 to state that if an applicant requests authorization under one or more specific NWPs, the district engineer should issue the verification letter for those NWPs, unless he or she exercises discretionary authority to require an individual permit. The district engineer would exercise discretionary authority in cases where the adverse environmental effects would be more than minimal after considering options for appropriate and practicable avoidance, minimization, and compensatory mitigation. The revised text in paragraph 1 refers to the terms of the NWPs. That is, the text of the specific NWP. The word ''terms'' is defined at 33 CFR 330.2(h) as: ''the limitations and provisions included in the description of the NWP itself.'' The general conditions are the same for all NWPs, so it is the text of the NWP that usually determines eligibility for NWP authorization. An exception is when the division engineer has imposed regional conditions that further restrict a particular NWP so that a proposed activity does not qualify for authorization by that NWP.

We are proposing to modify paragraph 2 to clarify that a condition assessment can also be used to help determine whether a proposed activity will result in no more than minimal adverse environmental effects. In the second sentence of paragraph 3, we are proposing to change the text to state that applicants may also propose compensatory mitigation to offset impacts to other types of waters, such as streams. In the following sentence, we are proposing to clarify that mitigation measures other than compensatory mitigation may also be used to ensure that a proposed NWP activity results in no more than minimal adverse environmental effects.

In paragraph 4, we are proposing to clarify that the 45-day PCN review period may be extended if general conditions 18, 20, and/or 31 apply and additional time is needed to complete ESA section 7 consultation, NHPA section 106 consultation, or for the Corps to make a decision on a request for section 408 permission. The proposed change to this sentence also includes NWPs 21, 49, and 50, because regulated activities are not authorized by these NWPs until written verifications are issued by district engineers.

Further Information

In item 5, we are proposing to add a cross-reference to proposed new general condition 31. If the Corps issues a section 408 permission, then the NWP activity would not be considered as interfering with the federal project.

Discussion of Proposed Modifications to Existing Nationwide Permit Definitions

We are proposing changes to some of the NWP definitions. If a definition is not discussed below, we are not proposing any substantive changes to that definition.

We received one suggestion to define ''temporary.'' We believe that district engineers should have the discretion to determine on a case-by-case basis what constitutes a temporary impact versus a permanent impact. The length of time to consider an impact to be ''temporary'' depends on a variety of factors, including how soon the temporary structures and fills need to be removed after construction has been completed. In some cases they might need to be removed shortly after construction is completed. In other cases more time might be necessary to allow the completed structures and fills to stabilize prior to removing any temporary structures or fills. The appropriate length of time would depend on various factors, such as resource type, hydrodynamics, soils, geology, plant communities, and season. Providing a national definition of ''temporary'' would be less protective of the environment because it would constrain local decision making. For example, if the authorized structure or fill is not allowed sufficient time to stabilize, it may collapse or be washed away after the temporary structures or fills are removed.

Discharge. We are proposing to modify this definition to make it clear that the use of the term ''discharge'' in the NWPs refers to ''discharges of dredged or fill material'' and not to discharges of other types of pollutants. Point source discharges of other types of pollutants are regulated under section 402 of the Clean Water Act.

Loss of waters of the United States. We are proposing to modify this definition to clarify that loss of stream bed can be measured by area (*e.g.,* acres, square feet) or by linear feet. For the NWPs that authorize discharges of dredged or fill material into waters of the United States that result in the loss of stream bed through filling or excavation, specified limits may be expressed in acres, linear feet, or both. For example, NWP 12 has a ½-acre limit. NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 have both ½-acre limits and 300 linear foot limits for losses of stream bed. For those 10 NWPs, the loss of intermittent or ephemeral stream bed can be waived upon a written determination by the district engineer after he or she coordinates the PCN with the resource agencies, as long as the total loss of waters of the United States, including losses of stream bed, does not exceed ½-acre.

The Corps Regulatory Program tracks authorized impacts and required compensatory mitigation for all permit actions, including NWP verifications, in its national database (ORM). For each individual permit decision and general permit verification, Corps district project managers are required to record in ORM the initial proposed impacts, the proposed impacts, and the authorized impacts to jurisdictional waters and wetlands. Most of the impacts are entered as acres, and Corps district project managers also have the option of entering impacts in linear feet. The amount of proposed and required compensatory mitigation may be entered as acres or linear feet, or as the number of mitigation bank or in-lieu fee program credits. The units of measure used for recording amounts of impacts and compensatory mitigation at the discretion of the Corps district project manager. In many cases, Corps district project managers enter both acres and linear feet for impacts and compensatory mitigation. Using different units of measure for recording impacts and compensatory mitigation makes it difficult to produce summary data at national and regional levels, and results in double counting if both acres and linear feet are recorded for a particular authorized impact or compensatory mitigation requirement. A uniform metric such as acres is a critical tool for clear and consistent reporting of the Corps Regulatory Program's contribution to protecting the Nation's waters and wetlands.

When a discharge of dredged or fill material into waters of the United States authorized by a Clean Water Act Section 404 permit occurs, or when structures or work in navigable waters of the United States authorized by a Rivers and Harbors Act of 1899 Section 10 permit occur, an area of jurisdictional waters and wetlands is affected. Compensatory mitigation projects restore, enhance, establish, or preserve areas of wetlands and waters. The use of linear feet as a metric for quantifying impacts to wetlands and waters or gains of wetlands and waters through compensatory mitigation projects is misleading. Consider, for example, potential impacts to a 300 linear foot segment of a stream that has a mean width of 20 feet. If the project proponent requests an NWP verification to do bank stabilization along one of the banks of that stream segment, and the fill discharged into the stream has a mean width of 3 feet, then the acreage of the proposed impact to the stream bed is 0.02 acre. As another example, if the project proponent requests NWP authorization to fill the entire 300 linear foot segment of stream, then the proposed impacts to that 20-foot wide stream bed would be 0.14 acre, or seven times the acreage impact for that same 300 linear feet of stream if only a 3-foot wide area of that stream were to be filled along those 300 linear feet. Quantifying stream bed impacts as acres results in more accurate reporting on the impacts of activities authorized by Corps permits on streams and other types of waters.

For some purposes, measuring losses of stream bed in linear feet provides a useful approach for ensuring no more than minimal adverse environmental effects by limiting the length of stream bed that can be filled or excavated, below the acreage limit for that NWP. Some of the NWPs have linear foot limits (*e.g.,* 300 linear feet) that can be waived for losses of intermittent and ephemeral streams if a district engineer makes a written determination that the proposed activity will result in no more than minimal individual and cumulative adverse environmental effects. Those NWPs that have a linear foot limit for losses of stream bed that can be waived are still subject to the ½-acre limit for losses of waters of the United States. The ½-acre limit cannot be waived.

The ½-acre limit imposes a cap on waivers of the 300 linear foot limit for losses of intermittent and ephemeral stream bed, to ensure those losses result in no more than minimal adverse environmental effects. For example, for an ephemeral stream bed that has a mean width of 20 feet, no more than 1,089 linear feet of that ephemeral stream could be filled or excavated because of the 1/2-acre limit. For a waiver of the 300 linear foot limit to occur, the district engineer must first coordinate the PCN with the agencies, in accordance with the procedures in paragraph (d) of general condition 32. After conducting this agency coordination, the district engineer must make a written determination whether the proposed activity will result in no more than minimal individual and cumulative adverse environmental effects, after considering the factors in paragraph 2 of Section D, District Engineer's Decision. The district engineer may require compensatory mitigation or other forms of mitigation to ensure no more than minimal adverse environmental effects. After conducting agency coordination, the district engineer might also determine that the proposed activity will result in more than minimal adverse environmental effects and exercise discretionary authority to require an individual permit, which would involve a public notice and comment process and the preparation of site-specific environmental documentation.

We are also proposing to clarify that losses of waters of the United States calculated for purposes of determining NWP eligibility are limited to losses caused by activities that require Department of the Army (DA) authorization. Activities that do not require DA authorization, such as activities eligible for Clean Water Act section 404(f) exemptions or the cutting of vegetation from jurisdictional wetlands that do not involve discharges of dredged or fill material, are not considered when calculating losses of waters of the United States.

Ordinary high water mark. We are proposing to change the regulation citation in this definition to 33 CFR 328.3(c)(6) to be consistent with the 2015 revisions to the definition of ''waters of the United States'' in 33 CFR part 328, as published in the June 29, 2015 issue of the **Federal Register**.

Riparian areas. We are proposing to change the word ''adjacent'' to ''next'' in the first sentence of this definition because riparian areas border rivers, streams, and other bodies of water.

Tidal wetland. We are proposing to change the regulation citations in this definition to 33 CFR 328.3(c)(4) (defining wetlands) and 33 CFR 328.3(d) (defining tidal waters) to be consistent

with the 2015 revisions to the definition of ''waters of the United States'' in 33 CFR part 328, as published in the June 29, 2015 issue of the **Federal Register**.

Administrative Requirements

Plain Language

In compliance with the principles in the President's Memorandum of June 1, 1998, (63 FR 31885, June 10, 1998) regarding plain language, this preamble is written using plain language. The use of ''we'' in this notice refers to the Corps. We have also used the active voice, short sentences, and common everyday terms except for necessary technical terms.

Paperwork Reduction Act

The paperwork burden associated with the NWP relates exclusively to the preparation of the PCN. While different NWPs require that different information be included in a PCN, the Corps estimates that a PCN takes, on average, 11 hours to complete. The proposed NWPs would increase the total paperwork burden associated with this program but decrease the net burden on the public. This is due to the fact that there is new paperwork burden associated with the inclusion of two new NWP (both of which have PCN requirements). Since, however, this time would otherwise be spent on completing an individual permit application, which we estimate also takes, on average, 11 hours to complete, the net effect on the public is zero.

The only real change to the public's paperwork burden from this proposal is a decrease due primarily to a modification to the PCN requirements for NWPs 33 and 48 and, to a lesser extent, a minor increase associated with the minor changes we are proposing to the content required for a complete PCN (see paragraph (b) of general condition 32).

Specifically, we anticipate a reduction in paperwork burden from the proposal to require PCNs only for NWP 33 activities in section 10 waters. There will also be a paperwork reduction because of the proposed change to the PCN thresholds for NWP 48, by eliminating the requirement to submit a PCN for dredged harvesting, tilling, or harrowing in areas inhabited by submerged aquatic vegetation. We estimate that the proposed changes to NWP 33 would result in 210 fewer PCNs, with an estimated reduction of paperwork burden of 2,310 hours. The proposed changes to the PCN thresholds for NWP 48 are expected to result in a reduction of 50 PCNs per year in waters where there are no listed species or critical habitat that would otherwise trigger the requirement to submit PCNs because of general condition 18. We estimate that 50 fewer PCNs will be required for NWP 48 activities, with a reduction of paperwork burden of 550 hours. Therefore, the estimated net change in paperwork burden for this proposed rule is an increase of 385 hours per year. Prospective permittees who are required to submit a PCN for a particular NWP, or who are requesting verification that a particular activity qualifies for NWP authorization, may use the current standard Department of the Army permit application form.

The following table summarizes the projected changes in paperwork burden for two alternatives relative to the paperwork burden under the 2012 NWPs. The first alternative is this proposal to reissue 50 NWPs and issue two new NWPs. The second alternative would result if NWPs are not issued and reissued and regulated entities would have to obtain standard individual permits to comply with the permit requirements of section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. The 286 standard individual permits included in the row for the 2012 NWPs represent the standard individual permits that would be required for activities that would be authorized by the proposed changes to NWPs 3, 13, 45, and 51 and the two proposed NWPs (NWPs A and B). The estimated five activities that would require authorization by standard individual permit under the proposed 2017 NWPs represent surface coal mining activities that were authorized by paragraph (a) of the 2012 NWP 21 that will not be completed before the 2012 NWP expires and would thus require standard individual permits to complete the surface coal mining activity.

	Number of NWP PCNs per year	Number of NWP activities not requiring PCNs per year	Number of SIPs per year	Estimated changes in NWP PCNs per year	Estimated changes in number of NWP activities not requiring PCNs per year	Estimated changes in number of SIPs per year
2012 NWPs	31,555	31,415	281	.....	.....	.....
Proposed 2017 NWPs	31,490	31,636	5	−60	+246	−281
SIPs required if NWPs not reissued	0	0	49,556	.....	.....	.....

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. For the Corps Regulatory Program under section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, the current OMB approval number for information collection requirements is maintained by the Corps of Engineers (OMB approval number 0710–0003, which is currently under review by OMB).

We request comments on the following subjects:

- Whether the collection of information is necessary for the proper functioning of the Corps, including whether the information will have practical utility;
- The accuracy of the Corps' estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information to be collected; and
- How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

We are also seeking comment on the standard form PCN, including its quality, utility, clarity, and ways to minimize its burden. There will be a separate **Federal Register** notice soliciting comment on that NWP PCN form.

If you want to comment on the information collection requirements of this proposed rule, please send your comments directly to OMB, with a copy to the Corps, as directed in the **ADDRESSES** section of this preamble. Please identify your comments with ''OMB Control Number 0710–XXXX.''

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by July 1, 2016.

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is ''significant'' and therefore subject to review by OMB and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined under item (4) that the proposed rule is a ''significant regulatory action'' and the draft proposed rule was submitted to OMB for review.

Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the Corps to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' The proposed issuance and modification of NWPs does not have federalism implications. We do not believe that the proposed NWPs will have substantial direct effects on the States, on the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed NWPs will not impose any additional substantive obligations on State or local governments. Therefore, Executive Order 13132 does not apply to this proposal.

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

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 proposed rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed issuance and modification of NWPs on small entities, a small entity is defined as: (1) A small business based on Small Business Administration size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The statues under which the Corps issues, reissues, or modifies nationwide permits are Section 404(e) of the Clean Water Act (33 U.S.C. 1344(e)) and section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403). Under section 404, Department of the Army (DA) permits are required for discharges of dredged or fill material into waters of the United States. Under section 10, DA permits are required for any structures or other work that affect the course, location, or condition of navigable waters of the United States. Small entities proposing to discharge dredged or fill material into waters of the United States and/or conduct work in navigable waters of the United States must obtain DA permits to conduct those activities, unless a particular activity is exempt from those permit requirements. Individual permits and general permits can be issued by the Corps to satisfy the permit requirements of these two statutes. Nationwide permits are a form of general permit issued by the Chief of Engineers.

Nationwide permits automatically expire and become null and void if they are not modified or reissued within five years of their effective date (see 33 CFR 330.6(b)). Furthermore, section 404(e) of the Clean Water Act states that general permits, including NWPs, can be issued for no more than five years. If the current NWPs are not reissued, they will expire on March 18, 2017, and small entities and other project proponents would be required to obtain alternative forms of DA permits (*i.e.,* standard permits, letters of permission, or regional general permits) for activities involving discharges of dredged or fill material into waters of the United States or structures or work in navigable waters of the United States. Regional general permits that authorize similar activities as the NWPs may be available in some geographic areas, but small entities conducting regulated activities outside those geographic areas would have to obtain individual permits for activities that require DA permits.

When compared to the compliance costs for individual permits, most of the terms and conditions of the proposed NWPs are expected to result in decreases in the costs of complying with the permit requirements of sections 10 and 404. The anticipated decrease in compliance cost results from the lower cost of obtaining NWP authorization instead of standard permits. Unlike standard permits, NWPs authorize activities without the requirement for public notice and comment on each proposed activity.

Another requirement of section 404(e) of the Clean Water Act is that general permits, including nationwide permits, authorize only those activities that result in no more than minimal adverse environmental effects, individually and cumulatively. The terms and conditions of the NWPs, such as acreage or linear foot limits, are imposed to ensure that the NWPs authorize only those activities that result in no more than minimal adverse effects on the aquatic environment and other public interest review factors.

After considering the economic impacts of the proposed nationwide permits on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. Small entities may obtain required DA authorizations through the NWPs, in cases where there are applicable NWPs authorizing those activities and the proposed work will result in only minimal adverse effects on the aquatic environment and other public interest review factors. The terms and conditions of the revised NWPs will not impose substantially higher costs on small entities than those of the existing NWPs. If an NWP is not available to authorize a particular activity, then another form of DA authorization, such as an individual permit or regional general permit, must be secured. However, as noted above, we expect a slight to moderate increase in the number of activities than can be authorized through NWPs, because we

are proposing to issue two new NWPs. Because those activities required authorization through other forms of DA authorization (*e.g.,* individual permits or regional general permits) we expect a concurrent decrease in the numbers of individual permit and regional general permit authorizations required for these activities.

We are interested in the potential impacts of the proposed NWPs on small entities and welcome comments on issues related to such impacts.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, the agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires the agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows an agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted. Before an agency establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the proposed NWPs do not contain a federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. The proposed NWPs are generally consistent with current agency practice, do not impose new substantive requirements and therefore do not contain a federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Therefore, this proposal is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reasons, we have determined that the proposed NWPs contain no regulatory requirements that might significantly or uniquely affect small governments. Therefore, the proposed issuance and modification of NWPs is not subject to the requirements of section 203 of UMRA.

Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the proposed rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives.

The proposed NWPs are not subject to this Executive Order because they are not economically significant as defined in Executive Order 12866. In addition, the proposed NWPs do not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires agencies to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The phrase ''policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Tribes, on the relationship between the federal government and the Tribes, or on the distribution of power and responsibilities between the federal government and Tribes.''

The proposal to issue NWPs does not have tribal implications. It is generally consistent with current agency practice and will not have substantial direct effects on tribal governments, on the relationship between the federal government and the Tribes, or on the distribution of power and responsibilities between the federal government and Tribes. Therefore, Executive Order 13175 does not apply to this proposal. However, in the spirit of Executive Order 13175, we specifically request comment from Tribal officials on the proposed rule. Each Corps district will be conducting government-to-government consultation with Tribes, to identify regional conditions or other local NWP modifications that may be necessary to protect aquatic resources of interest to Tribes, as part of the Corps' responsibility to protect trust resources.

Environmental Documentation

A draft decision document, which includes a draft environmental assessment and Finding of No Significant Impact (FONSI) has been prepared for each proposed NWP. These draft decision documents are available at: *www.regulations.gov* (docket ID number COE–2015–0017). They are also available by contacting Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, 441 G Street NW., Washington, DC 20314–1000.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing the final NWPs and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The proposed NWPs are not a ''major rule'' as defined by 5 U.S.C. 804(2).

Executive Order 12898

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each federal agency conduct its programs, policies,

and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

The proposed NWPs are not expected to negatively impact any community, and therefore are not expected to cause any disproportionately high and adverse impacts to minority or low-income communities.

Executive Order 13211

The proposed NWPs are not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Authority

We are proposing to issue new NWPs, modify existing NWPs, and reissue NWPs without change under the authority of section 404(e) of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*).

Dated: May 18, 2016.

Donald E. Jackson,

Major General, U.S. Army, Deputy Commanding General for Civil and Emergency Operations.

Nationwide Permits, Conditions, Further Information, and Definitions

A. Index of Nationwide Permits, Conditions, District Engineer's Decision, Further Information, and Definitions

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Stream channelization
Structure
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Vegetated shallows
Waterbody

B. Nationwide Permits

1. *Aids to Navigation.* The placement of aids to navigation and regulatory markers that are approved by and installed in accordance with the requirements of the U.S. Coast Guard (see 33 CFR, chapter I, subchapter C, part 66). (Section 10)

2. *Structures in Artificial Canals.* Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized (see 33 CFR 322.5(g)). (Section 10)

3. *Maintenance.* (a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP also authorizes the removal of previously authorized structures or fills. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project or within the boundaries of the structure or fill. This NWP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris in the vicinity of existing structures (*e.g.,* bridges, culverted road crossings, water intake structures, etc.) and/or the placement of new or additional riprap to protect the structure. The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend farther than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. The placement of new or additional riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the district engineer.

(c) This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After conducting the maintenance activity, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation. This NWP does not authorize beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Sections 10 and 404)

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act section 404(f) exemption for maintenance.

4. *Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.* Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, and clam and oyster digging, fish aggregating devices, and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the United States for the culture or holding of motile species such as lobster, or the use of covered oyster trays or clam racks. (Sections 10 and 404)

5. *Scientific Measurement Devices.* Devices, whose purpose is to measure and record scientific data, such as staff gages, tide and current gages, meteorological stations, water recording and biological observation devices, water quality testing and improvement devices, and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards. Upon completion of the use of the device to measure and record scientific data, the measuring device and any other structures or fills associated with that device (*e.g.,* foundations, anchors, buoys, lines, etc.) must be removed to the maximum extent practicable and the site restored to pre-construction elevations. (Sections 10 and 404)

6. *Survey Activities.* Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, sample plots or transects for wetland delineations, and historic resources surveys. For the purposes of this NWP, the term ''exploratory trenching'' means mechanical land clearing of the upper soil profile to expose bedrock or substrate, for the purpose of mapping or sampling the exposed material. The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work and must not drain a water of the United States. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. This NWP authorizes the construction of temporary pads, provided the discharge does not exceed 1/10-acre in waters of the U.S. Discharges and structures associated with the

recovery of historic resources are not authorized by this NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration are not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling mud and cuttings may require a permit under section 402 of the Clean Water Act. (Sections 10 and 404)

7. *Outfall Structures and Associated Intake Structures.* Activities related to the construction or modification of outfall structures and associated intake structures, where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted by, or otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program (section 402 of the Clean Water Act). The construction of intake structures is not authorized by this NWP, unless they are directly associated with an authorized outfall structure.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Sections 10 and 404)

8. *Oil and Gas Structures on the Outer Continental Shelf.* Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the Department of the Interior, Bureau of Ocean Energy Management. Such structures shall not be placed within the limits of any designated shipping safety fairway or traffic separation scheme, except temporary anchors that comply with the fairway regulations in 33 CFR 322.5(l). The district engineer will review such proposals to ensure compliance with the provisions of the fairway regulations in 33 CFR 322.5(l). Any Corps review under this NWP will be limited to the effects on navigation and national security in accordance with 33 CFR 322.5(f), as well as 33 CFR 322.5(l) and 33 CFR part 334. Such structures will not be placed in established danger zones or restricted areas as designated in 33 CFR part 334, nor will such structures be permitted in EPA or Corps-designated dredged material disposal areas.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Section 10)

9. *Structures in Fleeting and Anchorage Areas.* Structures, buoys, floats and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where the U.S. Coast Guard has established such areas for that purpose. (Section 10)

10. *Mooring Buoys.* Non-commercial, single-boat, mooring buoys. (Section 10)

11. *Temporary Recreational Structures.* Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use, provided that such structures are removed within 30 days after use has been discontinued. At Corps of Engineers reservoirs, the reservoir manager must approve each buoy or marker individually. (Section 10)

12. *Utility Line Activities.* Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than ½-acre of waters of the United States for each single and complete project.

Utility lines: This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters of the United States (*i.e.,* section 10 waters) for crossings of those waters associated with the construction, maintenance, or repair of utility lines, including outfall and intake structures. There must be no change in pre-construction contours of waters of the United States. A ''utility line'' is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and internet, radio, and television communication. The term ''utility line'' does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (*e.g.,* backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than ½-acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead utility line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than ½-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (*e.g.,* at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (See 33 CFR part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP authorizes, to the extent that DA authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling muds to waters of the United States through subsoil fissures or fractures (*i.e.,* frac-outs) that might occur during horizontal directional drilling activities to install or replace utility lines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling muds to waters of the United States during horizontal directional drilling activities for the installation or replacement of utility lines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if any of the following criteria are met: (1) The activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (*i.e.,* water of the United States), and it runs parallel to or along a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1/10-acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials. (See general condition 32.) (Sections 10 and 404)

Note 1: Where the utility line is constructed or installed in navigable waters of the United States (*i.e.,* section 10 waters) within the coastal United States, the Great Lakes, and United States territories, a copy of the NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

Note 2: For utility line activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Utility lines with independent utility must comply with 33 CFR 330.6(d).

Note 3: Utility lines consisting of aerial electric power transmission lines crossing navigable waters of the United States must comply with the applicable minimum clearances specified in 33 CFR 322.5(i).

Note 4: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 5: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

Note 6: This NWP authorizes utility line maintenance and repair activities do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

Note 7: For overhead utility lines authorized by this NWP, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Note 8: For NWP 12 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, ''District Engineer's Decision.'' The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

13. *Bank Stabilization.* Bank stabilization activities necessary for erosion control or prevention, such as vegetative stabilization, sills, rip rap, revetment, gabion baskets, stream barbs, and bulkheads, or combinations of bank stabilization techniques, provided the activity meets all of the following criteria:

(a) No material is placed in excess of the minimum needed for erosion protection;

(b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;

(c) The activity will not exceed an average of one cubic yard per running foot, as measured along the bank, below the plane of the ordinary high water mark or the high tide line, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;

(d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;

(e) No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the United States;

(f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored native trees and treetops may be used in low energy areas);

(g) The activity is not a stream channelization activity; and

(h) The activity must be properly maintained, which may require repairing after severe storms or erosion events. This NWP authorizes those maintenance and repair activities.

This NWP also authorizes temporary structures, fills, and work necessary to construct the bank stabilization activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary

fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Native plants appropriate for current site conditions, including salinity, must be used for bioengineering or vegetative bank stabilization.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) Involves discharges into special aquatic sites; or (2) is in excess of 500 feet in length; or (3) will involve the discharge of greater than an average of one cubic yard per running foot along the bank below the plane of the ordinary high water mark or the high tide line. (See general condition 32.) (Sections 10 and 404)

14. *Linear Transportation Projects.* Activities required for the construction, expansion, modification, or improvement of linear transportation projects (*e.g.,* roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than ½-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than ⅓-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The loss of waters of the United States exceeds ⅒-acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 32.) (Sections 10 and 404)

Note 1: For linear transportation projects crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Linear transportation projects with independent utility must comply with 33 CFR 330.6(d).

Note 2: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Note 3: For NWP 14 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, ''District Engineer's Decision.'' The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

15. *U.S. Coast Guard Approved Bridges.* Discharges of dredged or fill material incidental to the construction of a bridge across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills, provided the construction of the bridge structure has been authorized by the U.S. Coast Guard under section 9 of the Rivers and Harbors Act of 1899 or other applicable laws. Causeways and approach fills are not included in this NWP and will require a separate section 404 permit. (Section 404)

16. *Return Water From Upland Contained Disposal Areas.* Return water from an upland contained dredged material disposal area. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs in an area that has no waters of the United States and does not require a section 404 permit. This NWP satisfies the technical requirement for a section 404 permit for the return water where the quality of the return water is controlled by the state through the section 401 certification procedures. The dredging activity may require a section 404 permit (33 CFR 323.2(d)), and will require a section 10 permit if located in navigable waters of the United States. (Section 404)

17. *Hydropower Projects.* Discharges of dredged or fill material associated with hydropower projects having: (a) Less than 5000 kW of total generating capacity at existing reservoirs, where the project, including the fill, is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; or (b) a licensing exemption granted by the FERC pursuant to section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and section 30 of the Federal Power Act, as amended.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Section 404)

18. *Minor Discharges.* Minor discharges of dredged or fill material into all waters of the United States, provided the activity meets all of the following criteria:

(a) The quantity of discharged material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;

(b) The discharge will not cause the loss of more than ⅒-acre of waters of the United States; and

(c) The discharge is not placed for the purpose of a stream diversion.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge or the volume of area excavated exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line, or (2) the discharge is in a special aquatic site, including wetlands. (See general condition 32.) (Sections 10 and 404)

19. *Minor Dredging.* Dredging of no more than 25 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the United States (*i.e.,* section 10 waters). This NWP does not authorize the dredging or degradation through siltation of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist but may not be present in a given year), anadromous fish spawning areas, or wetlands, or the connection of canals or other artificial waterways to navigable waters of the

United States (see 33 CFR 322.5(g)). All dredged material must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. (Sections 10 and 404)

20. *Response Operations for Oil or Hazardous Substances.* Activities conducted in response to a discharge or release of oil or hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) including containment, cleanup, and mitigation efforts, provided that the activities are done under either: (1) The Spill Control and Countermeasure Plan required by 40 CFR 112.3; (2) the direction or oversight of the federal on-scene coordinator designated by 40 CFR part 300; or (3) any approved existing state, regional or local contingency plan provided that the Regional Response Team (if one exists in the area) concurs with the proposed response efforts. This NWP also authorizes activities required for the cleanup of oil releases in waters of the United States from electrical equipment that are governed by EPA's polychlorinated biphenyl spill response regulations at 40 CFR part 761. This NWP also authorizes the use of temporary structures and fills in waters of the U.S. for spill response training exercises. (Sections 10 and 404)

21. *Surface Coal Mining Activities.* Discharges of dredged or fill material into waters of the United States associated with surface coal mining and reclamation operations, provided the following criteria are met:

(1) The activities are already authorized, or are currently being processed by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 or as part of an integrated permit processing procedure by the Department of the Interior, Office of Surface Mining Reclamation and Enforcement;

(2) The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal individual and cumulative adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed ½-acre. This NWP does not authorize discharges into tidal waters or non-tidal wetlands adjacent to tidal waters; and

(3) The discharge is not associated with the construction of valley fills. A ''valley fill'' is a fill structure that is typically constructed within valleys associated with steep, mountainous terrain, associated with surface coal mining activities.

Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 32.) (Sections 10 and 404)

22. *Removal of Vessels.* Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man-made obstructions to navigation. This NWP does not authorize maintenance dredging, shoal removal, or riverbank snagging.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The vessel is listed or eligible for listing in the National Register of Historic Places; or (2) the activity is conducted in a special aquatic site, including coral reefs and wetlands. (See general condition 32.) If condition 1 above is triggered, the permittee cannot commence the activity until informed by the district engineer that compliance with the ''Historic Properties'' general condition is completed. (Sections 10 and 404)

Note 1: If a removed vessel is disposed of in waters of the United States, a permit from the U.S. EPA may be required (see 40 CFR 229.3). If a Department of the Army permit is required for vessel disposal in waters of the United States, separate authorization will be required.

Note 2: Compliance with general condition 18, Endangered Species, and general condition 20, Historic Properties, is required for all NWPs. The concern with historic properties is emphasized in the notification requirements for this NWP because of the possibility that shipwrecks may be historic properties.

23. *Approved Categorical Exclusions.* Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

(a) That agency or department has determined, pursuant to the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (40 CFR part 1500 *et seq.*), that the activity is categorically excluded from the requirement to prepare an environmental impact statement or environmental assessment analysis, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and

(b) The Office of the Chief of Engineers (Attn: CECW–CO) has concurred with that agency's or department's determination that the activity is categorically excluded and approved the activity for authorization under NWP 23.

The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency's categorical exclusions under this NWP.

Notification: Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letters. (Sections 10 and 404)

Note: The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW–CO). Prior to approval for authorization under this NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. As of the date of issuance of this NWP, agencies with approved categorical exclusions are the: Bureau of Reclamation, Federal Highway Administration, and U.S. Coast Guard. Activities approved for authorization under this NWP as of the date of this notice are found in Corps Regulatory Guidance Letter 05–07, which is available at: *http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl05-07.pdf.* Any future approved categorical exclusions will be announced in Regulatory Guidance Letters and posted on this same Web site.

24. *Indian Tribe or State Administered Section 404 Programs.* Any activity permitted by a state or Indian Tribe administering its own section 404 permit program pursuant to 33 U.S.C. 1344(g)–(l) is permitted pursuant to section 10 of the Rivers and Harbors Act of 1899. (Section 10)

Note 1: As of the date of the promulgation of this NWP, only New Jersey and Michigan administer their own section 404 permit programs.

Note 2: Those activities that do not involve an Indian Tribe or State section 404 permit are not included in this NWP, but certain structures will be exempted by Section 154 of Public Law 94–587, 90 Stat. 2917 (33 U.S.C. 591) (see 33 CFR 322.4(b)).

25. *Structural Discharges.* Discharges of material such as concrete, sand, rock, etc., into tightly sealed forms or cells where the material will be used as a

structural member for standard pile supported structures, such as bridges, transmission line footings, and walkways, or for general navigation, such as mooring cells, including the excavation of bottom material from within the form prior to the discharge of concrete, sand, rock, etc. This NWP does not authorize filled structural members that would support buildings, building pads, homes, house pads, parking areas, storage areas and other such structures. The structure itself may require a separate section 10 permit if located in navigable waters of the United States. (Section 404)

26. [Reserved]

27. *Aquatic Habitat Restoration, Establishment, and Enhancement Activities.* Activities in waters of the United States associated with the restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas, the restoration and enhancement of non-tidal streams and other non-tidal open waters, and the rehabilitation or enhancement of tidal streams, tidal wetlands, and tidal open waters, provided those activities result in net increases in aquatic resource functions and services.

To the extent that a Corps permit is required, activities authorized by this NWP include, but are not limited to: The removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms, as well as discharges of dredged or fill material to restore appropriate stream channel configurations after small water control structures, dikes, and berms, are removed; the installation of current deflectors; the enhancement, restoration, or establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or establish stream meanders; the backfilling of artificial channels; the removal of existing drainage structures, such as drain tiles, and the filling, blocking, or reshaping of drainage ditches to restore wetland hydrology; the installation of structures or fills necessary to establish or re-establish wetland or stream hydrology; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; shellfish seeding; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; re-establishment of submerged aquatic vegetation in areas where those plant communities previously existed; re-establishment of tidal wetlands in tidal waters where those wetlands previously existed; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

This NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services.

Except for the relocation of non-tidal waters on the project site, this NWP does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (*e.g.,* the conversion of a stream to wetland or vice versa) or uplands. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type. This NWP does not authorize stream channelization. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Compensatory mitigation is not required for activities authorized by this NWP since these activities must result in net increases in aquatic resource functions and services.

Reversion. For enhancement, restoration, and establishment activities conducted: (1) In accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland establishment agreement, between the landowner and the U.S. Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), U.S. Forest Service (USFS), or their designated state cooperating agencies; (2) as voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or (3) on reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining Reclamation and Enforcement (OSMRE) or the applicable state agency, this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (*i.e.,* prior to the restoration, enhancement, or establishment activities). The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge occurs after this NWP expires. The five-year reversion limit does not apply to agreements without time limits reached between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS, or an appropriate state cooperating agency. This NWP also authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, FWS, or their designated state cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a section 404 permit). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before conducting any reversion activity the permittee or the appropriate Federal or state agency must notify the district engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements are applicable to that type of land at the time. The requirement that the activity results in a net increase in aquatic resource functions and services does not apply to reversion activities meeting the above conditions. Except for the activities described above, this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion.

Reporting. For those activities that do not require pre-construction notification, the permittee must submit to the district engineer a copy of: (1) The binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement, or a project description, including project plans and location map; (2) the NRCS or USDA Technical Service Provider documentation for the voluntary stream enhancement or restoration action or wetland restoration, enhancement, or establishment action; or (3) the SMCRA permit issued by OSMRE or the

applicable state agency. The report must also include information on baseline ecological conditions on the project site, such as a delineation of wetlands, streams, and/or other aquatic habitats. These documents must be submitted to the district engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing any activity (see general condition 32), except for the following activities:

(1) Activities conducted on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS or their designated state cooperating agencies;

(2) Voluntary stream or wetland restoration or enhancement action, or wetland establishment action, documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or

(3) The reclamation of surface coal mine lands, in accordance with an SMCRA permit issued by the OSMRE or the applicable state agency.

However, the permittee must submit a copy of the appropriate documentation to the district engineer to fulfill the reporting requirement. (Sections 10 and 404)

Note: This NWP can be used to authorize compensatory mitigation projects, including mitigation banks and in-lieu fee projects. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition, since compensatory mitigation is generally intended to be permanent.

28. *Modifications of Existing Marinas.* Reconfiguration of existing docking facilities within an authorized marina area. No dredging, additional slips, dock spaces, or expansion of any kind within waters of the United States is authorized by this NWP. (Section 10)

29. *Residential Developments.* Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of a single residence, a multiple unit residential development, or a residential subdivision. This NWP authorizes the construction of building foundations and building pads and attendant features that are necessary for the use of the residence or residential development. Attendant features may include but are not limited to roads, parking lots, garages, yards, utility lines, storm water management facilities, septic fields, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development).

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed ½-acre.

Subdivisions: For residential subdivisions, the aggregate total loss of waters of United States authorized by this NWP cannot exceed ½-acre. This includes any loss of waters of the United States associated with development of individual subdivision lots.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Sections 10 and 404)

30. *Moist Soil Management for Wildlife.* Discharges of dredged or fill material into non-tidal waters of the United States and maintenance activities that are associated with moist soil management for wildlife for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to, plowing or discing to impede succession, preparing seed beds, or establishing fire breaks. Sufficient riparian areas must be maintained adjacent to all open water bodies, including streams, to preclude water quality degradation due to erosion and sedimentation. This NWP does not authorize the construction of new dikes, roads, water control structures, or similar features associated with the management areas. The activity must not result in a net loss of aquatic resource functions and services. This NWP does not authorize the conversion of wetlands to uplands, impoundments, or other open water bodies. (Section 404)

Note: The repair, maintenance, or replacement of existing water control structures or the repair or maintenance of dikes may be authorized by NWP 3. Some such activities may qualify for an exemption under section 404(f) of the Clean Water Act (see 33 CFR 323.4).

31. *Maintenance of Existing Flood Control Facilities.* Discharges of dredged or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/detention basins, levees, and channels that: (i) Were previously authorized by the Corps by individual permit, general permit, or 33 CFR 330.3, or did not require a permit at the time they were constructed, or (ii) were constructed by the Corps and transferred to a non-Federal sponsor for operation and maintenance. Activities authorized by this NWP are limited to those resulting from maintenance activities that are conducted within the ''maintenance baseline,'' as described in the definition below. Discharges of dredged or fill materials associated with maintenance activities in flood control facilities in any watercourse that have previously been determined to be within the maintenance baseline are authorized under this NWP. To the extent that a Corps permit is required, this NWP authorizes the removal of vegetation from levees associated with the flood control project. This NWP does not authorize the removal of sediment and associated vegetation from natural water courses except when these activities have been included in the maintenance baseline. All dredged material must be placed in an area that has no waters of the United States or a separately authorized disposal site in waters of the United States, and proper siltation controls must be used.

Maintenance Baseline: The maintenance baseline is a description of the physical characteristics (*e.g.,* depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized by NWP 31, subject to any case-specific conditions required by the district engineer. The district engineer will approve the maintenance baseline based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed channels but which are part of the facility. The prospective permittee will provide documentation of the physical characteristics of the flood control facility (which will normally consist of as-built or approved drawings) and documentation of the approved and

constructed design capacities of the flood control facility. If no evidence of the constructed capacity exists, the approved capacity will be used. The documentation will also include best management practices to ensure that the adverse environmental impacts are no more than minimal, especially in maintenance areas where there are no constructed channels. (The Corps may request maintenance records in areas where there has not been recent maintenance.) Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR 330.5. Except in emergencies as described below, this NWP cannot be used until the district engineer approves the maintenance baseline and determines the need for mitigation and any regional or activity-specific conditions. Once determined, the maintenance baseline will remain valid for any subsequent reissuance of this NWP. This NWP does not authorize maintenance of a flood control facility that has been abandoned. A flood control facility will be considered abandoned if it has operated at a significantly reduced capacity without needed maintenance being accomplished in a timely manner.

Mitigation: The district engineer will determine any required mitigation one-time only for impacts associated with maintenance work at the same time that the maintenance baseline is approved. Such one-time mitigation will be required when necessary to ensure that adverse environmental impacts are no more than minimal, both individually and cumulatively. Such mitigation will only be required once for any specific reach of a flood control project. However, if one-time mitigation is required for impacts associated with maintenance activities, the district engineer will not delay needed maintenance, provided the district engineer and the permittee establish a schedule for identification, approval, development, construction and completion of any such required mitigation. Once the one-time mitigation described above has been completed, or a determination made that mitigation is not required, no further mitigation will be required for maintenance activities within the maintenance baseline. In determining appropriate mitigation, the district engineer will give special consideration to natural water courses that have been included in the maintenance baseline and require compensatory mitigation and/or best management practices as appropriate.

Emergency Situations: In emergency situations, this NWP may be used to authorize maintenance activities in flood control facilities for which no maintenance baseline has been approved. Emergency situations are those which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if action is not taken before a maintenance baseline can be approved. In such situations, the determination of mitigation requirements, if any, may be deferred until the emergency has been resolved. Once the emergency has ended, a maintenance baseline must be established expeditiously, and mitigation, including mitigation for maintenance conducted during the emergency, must be required as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer before any maintenance work is conducted (see general condition 32). The pre-construction notification may be for activity-specific maintenance or for maintenance of the entire flood control facility by submitting a five-year (or less) maintenance plan. The pre-construction notification must include a description of the maintenance baseline and the dredged material disposal site. (Sections 10 and 404)

32. *Completed Enforcement Actions.* Any structure, work, or discharge of dredged or fill material remaining in place or undertaken for mitigation, restoration, or environmental benefit in compliance with either:

(i) The terms of a final written Corps non-judicial settlement agreement resolving a violation of Section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899; or the terms of an EPA 309(a) order on consent resolving a violation of section 404 of the Clean Water Act, provided that:

(a) The activities authorized by this NWP cannot adversely affect more than 5 acres of non-tidal waters or 1 acre of tidal waters;

(b) The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that is authorized by this NWP; and

(c) The district engineer issues a verification letter authorizing the activity subject to the terms and conditions of this NWP and the settlement agreement, including a specified completion date; or

(ii) The terms of a final Federal court decision, consent decree, or settlement agreement resulting from an enforcement action brought by the United States under section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or

(iii) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under Section 311 of the Clean Water Act, Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, Section 312 of the National Marine Sanctuaries Act, section 1002 of the Oil Pollution Act of 1990, or the Park System Resource Protection Act at 16 U.S.C. 19jj, to the extent that a Corps permit is required.

Compliance is a condition of the NWP itself. Any authorization under this NWP is automatically revoked if the permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before reaching any settlement agreement, the Corps will ensure compliance with the provisions of 33 CFR part 326 and 33 CFR 330.6(d)(2) and (e). (Sections 10 and 404)

33. *Temporary Construction, Access, and Dewatering.* Temporary structures, work, and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard. This NWP also authorizes temporary structures, work, and discharges, including cofferdams, necessary for construction activities not otherwise subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if the district engineer determines that it will not cause more than minimal adverse environmental effects. Following completion of construction, temporary fill must be entirely removed to an area that has no waters of the United States, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate. This

permit does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use. Structures left in place after construction is completed require a separate section 10 permit if located in navigable waters of the United States. (See 33 CFR part 322.)

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the activity is conducted in navigable waters of the United States (*i.e.,* section 10 waters) (see general condition 32). The pre-construction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. (Sections 10 and 404)

34. *Cranberry Production Activities.* Discharges of dredged or fill material for dikes, berms, pumps, water control structures or leveling of cranberry beds associated with expansion, enhancement, or modification activities at existing cranberry production operations. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, must not exceed 10 acres of waters of the United States, including wetlands. The activity must not result in a net loss of wetland acreage. This NWP does not authorize any discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas. For the purposes of this NWP, the cumulative total of 10 acres will be measured over the period that this NWP is valid.

Notification: The permittee must submit a pre-construction notification to the district engineer once during the period that this NWP is valid, and the NWP will then authorize discharges of dredge or fill material at an existing operation for the permit term, provided the 10-acre limit is not exceeded. (See general condition 32.) (Section 404)

35. *Maintenance Dredging of Existing Basins.* The removal of accumulated sediment for maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress, whichever is less. All dredged material must be placed in an area that has no waters of the United States or in a separately authorized disposal site in waters of the United States. Proper siltation controls must be used for the disposal site. (Section 10)

36. *Boat Ramps.* Activities required for the construction of boat ramps, provided the activity meets all of the following criteria:

(a) The discharge into waters of the United States does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or in the form of pre-cast concrete planks or slabs, unless the district engineer waives the 50 cubic yard limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;

(b) The boat ramp does not exceed 20 feet in width, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;

(c) The base material is crushed stone, gravel or other suitable material;

(d) The excavation is limited to the area necessary for site preparation and all excavated material is removed to an area that has no waters of the United States; and,

(e) No material is placed in special aquatic sites, including wetlands.

The use of unsuitable material that is structurally unstable is not authorized. If dredging in navigable waters of the United States is necessary to provide access to the boat ramp, the dredging must be authorized by another NWP, a regional general permit, or an individual permit.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge into waters of the United States exceeds 50 cubic yards, or (2) the boat ramp exceeds 20 feet in width. (See general condition 32.) (Sections 10 and 404)

37. *Emergency Watershed Protection and Rehabilitation.* Work done by or funded by:

(a) The Natural Resources Conservation Service for a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624);

(b) The U.S. Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 2509.13);

(c) The Department of the Interior for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual part 620, Ch. 3);

(d) The Office of Surface Mining, or states with approved programs, for abandoned mine land reclamation activities under Title IV of the Surface Mining Control and Reclamation Act (30 CFR subchapter R), where the activity does not involve coal extraction; or

(e) The Farm Service Agency under its Emergency Conservation Program (7 CFR part 701).

In general, the prospective permittee should wait until the district engineer issues an NWP verification or 45 calendar days have passed before proceeding with the watershed protection and rehabilitation activity. However, in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the emergency watershed protection and rehabilitation activity may proceed immediately and the district engineer will consider the information in the pre-construction notification and any comments received as a result of agency coordination to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

Notification: Except in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). (Sections 10 and 404)

38. *Cleanup of Hazardous and Toxic Waste.* Specific activities required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Court ordered remedial action plans or related settlements are also authorized by this NWP. This NWP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Sections 10 and 404)

Note: Activities undertaken entirely on a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

39. *Commercial and Institutional Developments.* Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are

not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, wastewater treatment facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses and new ski areas is not authorized by this NWP.

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in only minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed ½-acre. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Sections 10 and 404)

Note: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

40. *Agricultural Activities.* Discharges of dredged or fill material into non-tidal waters of the United States for agricultural activities, including the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the United States; and similar activities.

This NWP also authorizes the construction of farm ponds in non-tidal waters of the United States, excluding perennial streams, provided the farm pond is used solely for agricultural purposes. This NWP does not authorize the construction of aquaculture ponds.

This NWP also authorizes discharges of dredged or fill material into non-tidal waters of the United States to relocate existing serviceable drainage ditches constructed in non-tidal streams.

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed ½-acre. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Section 404)

Note: Some discharges for agricultural activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4). This NWP authorizes the construction of farm ponds that do not qualify for the Clean Water Act section 404(f)(1)(C) exemption because of the recapture provision at section 404(f)(2).

41. *Reshaping Existing Drainage Ditches.* Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage ditches constructed in waters of the United States, for the purpose of improving water quality by regrading the drainage ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, and increase uptake of nutrients and other substances by vegetation. The reshaping of the ditch cannot increase drainage capacity beyond the original as-built capacity nor can it expand the area drained by the ditch as originally constructed (*i.e.,* the capacity of the ditch must be the same as originally constructed and it cannot drain additional wetlands or other waters of the United States). Compensatory mitigation is not required because the work is designed to improve water quality.

This NWP does not authorize the relocation of drainage ditches constructed in waters of the United States; the location of the centerline of the reshaped drainage ditch must be approximately the same as the location of the centerline of the original drainage ditch. This NWP does not authorize stream channelization or stream relocation projects. (Section 404)

42. *Recreational Facilities.* Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of recreational facilities. Examples of recreational facilities that may be authorized by this NWP include playing fields (*e.g.,* football fields, baseball fields), basketball courts, tennis courts, hiking trails, bike paths, golf courses, ski areas, horse paths, nature centers, and campgrounds (excluding recreational vehicle parks). This NWP also authorizes the construction or expansion of small support facilities, such as maintenance and storage buildings and stables that are directly related to the recreational activity, but it does not authorize the construction of hotels, restaurants, racetracks, stadiums, arenas, or similar facilities.

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed ½-acre. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Section 404)

43. *Stormwater Management Facilities.* Discharges of dredged or fill material into non-tidal waters of the United States for the construction of stormwater management facilities, including stormwater detention basins and retention basins and other stormwater management facilities; the construction of water control structures, outfall structures and emergency spillways; and the construction of low impact development integrated management features such as bioretention facilities (*e.g.,* rain gardens), vegetated filter strips, grassed swales, and infiltration trenches. This NWP also authorizes, to the extent that a section 404 permit is required, discharges of dredged or fill material into non-tidal waters of the United States for the maintenance of stormwater management facilities. Note that stormwater management facilities that meet the criteria at 33 CFR part 328.3(b)(6) are not waters of the United States, and maintenance of these waste

treatment systems does not require a section 404 permit.

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed ½-acre. This NWP does not authorize discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams.

Notification: For the construction of new stormwater management facilities, or the expansion of existing stormwater management facilities, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) Maintenance activities do not require pre-construction notification if they are limited to restoring the original design capacities of the stormwater management facility. (Section 404)

44. *Mining Activities.* Discharges of dredged or fill material into non-tidal waters of the United States for mining activities, except for coal mining activities, provided the activity meets all of the following criteria:

(a) For mining activities involving discharges of dredged or fill material into non-tidal wetlands, the discharge must not cause the loss of greater than ½-acre of non-tidal wetlands;

(b) For mining activities involving discharges of dredged or fill material in non-tidal open waters (*e.g.,* rivers, streams, lakes, and ponds) the mined area, including permanent and temporary impacts due to discharges of dredged or fill material into jurisdictional waters, must not exceed ½-acre; and

(c) The acreage loss under paragraph (a) plus the acreage impact under paragraph (b) does not exceed ½-acre.

The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects.

The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed ½-acre.

This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction-notification to the district engineer prior to commencing the activity. (See general condition 32.) If reclamation is required by other statutes, then a copy of the final reclamation plan must be submitted with the pre-construction notification. (Sections 10 and 404)

45. *Repair of Uplands Damaged by Discrete Events.* This NWP authorizes discharges of dredged or fill material, including dredging or excavation, into all waters of the United States for activities associated with the restoration of upland areas damaged by storms, floods, or other discrete events. This NWP authorizes bank stabilization to protect the restored uplands. The restoration of the damaged areas, including any bank stabilization, must not exceed the contours, or ordinary high water mark, that existed before the damage occurred. The district engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this NWP. The work must commence, or be under contract to commence, within two years of the date of damage, unless this condition is waived in writing by the district engineer. This NWP cannot be used to reclaim lands lost to normal erosion processes over an extended period.

This NWP does not authorize beach restoration or nourishment.

Minor dredging is limited to the amount necessary to restore the damaged upland area and should not significantly alter the pre-existing bottom contours of the waterbody.

Notification: The permittee must submit a pre-construction notification to the district engineer (see general condition 32) within 12 months of the date of the damage; for major storms, floods, or other discrete events, the district engineer may waive the 12-month limit for submitting a pre-construction notification if the permittee can demonstrate funding, contract, or other similar delays. The pre-construction notification must include documentation, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. (Sections 10 and 404)

Note: The uplands themselves that are lost as a result of a storm, flood, or other discrete event can be replaced without a section 404 permit, if the uplands are restored to the ordinary high water mark (in non-tidal waters) or high tide line (in tidal waters). (See also 33 CFR 328.5.) This NWP authorizes discharges of dredged or fill material into waters of the United States associated with the restoration of uplands.

46. *Discharges in Ditches.* Discharges of dredged or fill material into non-tidal ditches that are: (1) constructed in uplands, (2) receive water from an area determined to be a water of the United States prior to the construction of the ditch, (3) divert water to an area determined to be a water of the United States prior to the construction of the ditch, and (4) determined to be waters of the United States. The discharge must not cause the loss of greater than one acre of waters of the United States.

This NWP does not authorize discharges of dredged or fill material into ditches constructed in streams or other waters of the United States, or in streams that have been relocated in uplands. This NWP does not authorize discharges of dredged or fill material that increase the capacity of the ditch and drain those areas determined to be waters of the United States prior to construction of the ditch.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Section 404)

47. [Reserved]

48. *Commercial Shellfish Aquaculture Activities.* Discharges of dredged or fill material in waters of the United States or structures or work in navigable waters of the United States necessary for new and continuing commercial shellfish aquaculture operations in authorized project areas. For the purposes of this NWP, the project area is the area in which the operator is authorized to conduct commercial shellfish aquaculture activities, as identified through a lease or permit issued by an appropriate state or local government agency, a treaty, or any easement, lease, deed, contract, or other legally binding agreement that establishes an enforceable property interest for the operator. A ''new commercial shellfish aquaculture operation'' is an operation in an area where commercial shellfish aquaculture activities have not been conducted during the past 100 years.

This NWP authorizes the installation of buoys, floats, racks, trays, nets, lines, tubes, containers, and other structures into navigable waters of the United States. This NWP also authorizes discharges of dredged or fill material into waters of the United States necessary for shellfish seeding, rearing, cultivating, transplanting, and

harvesting activities. Rafts and other floating structures must be securely anchored and clearly marked.

This NWP does not authorize:

(a) The cultivation of a nonindigenous species unless that species has been previously cultivated in the waterbody;

(b) The cultivation of an aquatic nuisance species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990;

(c) Attendant features such as docks, piers, boat ramps, stockpiles, or staging areas, or the deposition of shell material back into waters of the United States as waste; or

(d) Activities that directly affect more than ½-acre of submerged aquatic vegetation beds in areas that have not been used for commercial shellfish aquaculture activities during the past 100 years.

Notification: The permittee must submit a pre-construction notification to the district engineer if: (1) The activity will include a species that has never been cultivated in the waterbody; or (2) the activity occurs in an area that has not been used for commercial shellfish aquaculture activities during the past 100 years. (See general condition 32.)

In addition to the information required by paragraph (b) of general condition 32, the pre-construction notification must also include the following information: (1) A map showing the boundaries of the project area, with latitude and longitude coordinates for each corner of the project area; (2) the name(s) of the species that will be cultivated during the period this NWP is in effect; (3) whether canopy predator nets will be used; (4) whether suspended cultivation techniques will be used; and (5) general water depths in the project area (a detailed survey is not required). (Sections 10 and 404)

Note 1: The permittee should notify the applicable U.S. Coast Guard office regarding the project.

Note 2: To prevent introduction of aquatic nuisance species, no material that has been taken from a different waterbody may be reused in the current project area, unless it has been treated in accordance with the applicable regional aquatic nuisance species management plan.

Note 3: The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 defines ''aquatic nuisance species'' as ''a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural, or recreational activities dependent on such waters.''

49. *Coal Remining Activities.* Discharges of dredged or fill material into non-tidal waters of the United States associated with the remining and reclamation of lands that were previously mined for coal. The activities must already be authorized, or they must currently be in process as part of an integrated permit processing procedure, by the Department of the Interior Office of Surface Mining Reclamation and Enforcement, or by states with approved programs under Title IV or Title V of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Areas previously mined include reclaimed mine sites, abandoned mine land areas, or lands under bond forfeiture contracts.

As part of the project, the permittee may conduct new coal mining activities in conjunction with the remining activities when he or she clearly demonstrates to the district engineer that the overall mining plan will result in a net increase in aquatic resource functions. The Corps will consider the SMCRA agency's decision regarding the amount of currently undisturbed adjacent lands needed to facilitate the remining and reclamation of the previously mined area. The total area disturbed by new mining must not exceed 40 percent of the total acreage covered by both the remined area and the additional area necessary to carry out the reclamation of the previously mined area.

Notification: The permittee must submit a pre-construction notification and a document describing how the overall mining plan will result in a net increase in aquatic resource functions to the district engineer and receive written authorization prior to commencing the activity. (See general condition 32.) (Sections 10 and 404)

50. *Underground Coal Mining Activities.* Discharges of dredged or fill material into non-tidal waters of the United States associated with underground coal mining and reclamation operations provided the activities are authorized, or are currently being processed as part of an integrated permit processing procedure, by the Department of the Interior, Office of Surface Mining Reclamation and Enforcement, or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977.

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed ½-acre. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize coal preparation and processing activities outside of the mine site.

Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 32.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification. (Sections 10 and 404)

Note: Coal preparation and processing activities outside of the mine site may be authorized by NWP 21.

51. *Land-Based Renewable Energy Generation Facilities.* Discharges of dredged or fill material into non-tidal waters of the United States for the construction, expansion, or modification of land-based renewable energy production facilities, including attendant features. Such facilities include infrastructure to collect solar (concentrating solar power and photovoltaic), wind, biomass, or geothermal energy. Attendant features may include, but are not limited to roads, parking lots, and stormwater management facilities within the land-based renewable energy generation facility.

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed ½-acre. This permit does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Sections 10 and 404)

Note 1: Utility lines constructed to transfer the energy from the land-based renewable energy generation facility to a distribution system, regional grid, or other facility are generally considered to be linear projects and

each separate and distant crossing of a waterbody is eligible for treatment as a separate single and complete linear project. Those utility lines may be authorized by NWP 12 or another Department of the Army authorization.

Note 2: If the only activities associated with the construction, expansion, or modification of a land-based renewable energy generation facility that require Department of the Army authorization are discharges of dredged or fill material into waters of the United States to construct, maintain, repair, and/or remove utility lines and/or road crossings, then NWP 12 and/or NWP 14 shall be used if those activities meet the terms and conditions of NWPs 12 and 14, including any applicable regional conditions and any case-specific conditions imposed by the district engineer.

Note 3: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

52. *Water-Based Renewable Energy Generation Pilot Projects.* Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States for the construction, expansion, modification, or removal of water-based wind, water-based solar, or hydrokinetic renewable energy generation projects and their attendant features. Attendant features may include, but are not limited to, land-based collection and distribution facilities, control facilities, roads, parking lots, and stormwater management facilities.

For the purposes of this NWP, the term ''pilot project'' means an experimental project where the renewable energy generation units will be monitored to collect information on their performance and environmental effects at the project site.

The discharge must not cause the loss of greater than ½-acre of waters of the United States, including the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The placement of a transmission line on the bed of a navigable water of the United States from the renewable energy generation unit(s) to a land-based collection and distribution facility is considered a structure under Section 10 of the Rivers and Harbors Act of 1899 (see 33 CFR 322.2(b)), and the placement of the transmission line on the bed of a navigable water of the United States is not a loss of waters of the United States for the purposes of applying the ½-acre or 300 linear foot limits.

For each single and complete project, no more than 10 generation units (*e.g.,* wind turbines or hydrokinetic devices) are authorized. For floating solar panels in navigable waters of the United States, each single and complete project cannot exceed ½-acre in water surface area covered by the floating solar panels.

This NWP does not authorize activities in coral reefs. Structures in an anchorage area established by the U.S. Coast Guard must comply with the requirements in 33 CFR 322.5(l)(2). Structures may not be placed in established danger zones or restricted areas as designated in 33 CFR part 334, Federal navigation channels, shipping safety fairways or traffic separation schemes established by the U.S. Coast Guard (see 33 CFR 322.5(l)(1)), or EPA or Corps designated open water dredged material disposal areas.

Upon completion of the pilot project, the generation units, transmission lines, and other structures or fills associated with the pilot project must be removed to the maximum extent practicable unless they are authorized by a separate Department of the Army authorization, such as another NWP, an individual permit, or a regional general permit. Completion of the pilot project will be identified as the date of expiration of the Federal Energy Regulatory Commission (FERC) license, or the expiration date of the NWP authorization if no FERC license is issued.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Sections 10 and 404)

Note 1: Utility lines constructed to transfer the energy from the land-based collection facility to a distribution system, regional grid, or other facility are generally considered to be linear projects and each separate and distant crossing of a waterbody is eligible for treatment as a separate single and complete linear project. Those utility lines may be authorized by NWP 12 or another Department of the Army authorization.

Note 2: An activity that is located on an existing locally or federally maintained U.S. Army Corps of Engineers project requires separate approval from the Chief of Engineers or District Engineer under 33 U.S.C. 408.

Note 3: If the pilot project, including any transmission lines, are placed in navigable waters of the United States (*i.e.,* section 10 waters) within the coastal United States, the Great Lakes, and United States territories, copies of the pre-construction notification and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration, National Ocean Service, for charting the generation units and associated transmission line(s) to protect navigation.

Note 4: Hydrokinetic renewable energy generation projects that require authorization by the Federal Energy Regulatory Commission under the Federal Power Act of 1920 do not require separate authorization from the Corps under section 10 of the Rivers and Harbors Act of 1899.

Note 5: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Proposed NWP A. *Removal of Low-Head Dams.* Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States associated with the removal of low head dams. For the purposes of this NWP, the term ''low-head dam'' is defined as a dam built across a stream to pass flows from upstream over the entire width of the dam crest on an uncontrolled basis.

All of the removed dam structures must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Sections 10 and 404)

Proposed NWP B. *Living Shorelines.* Living shoreline bank stabilization activities in navigable waters of the United States and discharges of dredged or fill material into waters of the United States for the construction and maintenance of living shorelines to stabilize banks and shores in low- to mid-energy coastal waters and lakes. ''Living shoreline'' is a broad term that encompasses a range of shoreline stabilization techniques along estuarine coasts, bays, sheltered coastlines, and tributaries. A living shoreline has a footprint that is made up mostly of native material. It incorporates vegetation or other living, natural ''soft'' elements alone or in combination with some type of harder shoreline structure (*e.g.,* oyster reefs or rock sills) for added stability. Living shorelines should maintain the natural continuity of the land-water interface, and retain or enhance shoreline ecological processes. Living shorelines must have a substantial biological component, either

tidal or lacustrine fringe wetlands or reef structures. The following conditions must be met:

(a) The structures and fill area, including sills, breakwaters, or reefs, cannot extend into the waterbody more than 30 feet from the mean high water line or ordinary high water mark, unless the district engineer waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects;

(b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects;

(c) Coir logs, coir mats, stone, native oyster shell, native wood debris and other structural materials must be adequately anchored, of sufficient weight, or installed in a manner that prevents relocation in most wave action or water flow conditions, except for extremely severe storms;

(d) For living shorelines consisting of tidal or lacustrine fringe wetlands, native plants appropriate for current site conditions, including salinity, must be used;

(e) Discharges of dredged or fill material into waters of the United States, and reef structures in navigable waters, must be the minimum necessary for the establishment and maintenance of the living shoreline;

(f) The activity must be designed, constructed, and maintained so that it has no more than minimal adverse effects on water movement between the waterbody and the shore and the movement of aquatic organisms between the waterbody and the shore;

(g) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects; and

(h) The living shoreline must be properly maintained as a living shoreline, which may require repairing sills, breakwaters, and reefs, replacing sand fills, and replanting vegetation after severe storms or erosion events. This NWP authorizes those maintenance and repair activities to the original permitted conditions.

This NWP does not authorize beach nourishment or land reclamation activities.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the construction of the living shoreline. (See general condition 32.) The pre-construction notification must include a delineation of special aquatic sites (see paragraph (b)(4) of general condition 32). Pre-construction notification is not required for maintenance and repair activities for living shorelines unless required by applicable NWP general conditions or regional conditions. (Sections 10 and 404)

C. Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. *Navigation.* (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. *Aquatic Life Movements.* No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

3. *Spawning Areas.* Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (*e.g.,* through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. *Migratory Bird Breeding Areas.* Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. *Shellfish Beds.* No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. *Suitable Material.* No activity may use unsuitable material (*e.g.,* trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. *Water Supply Intakes.* No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. *Adverse Effects From Impoundments.* If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. *Management of Water Flows.* To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if

it benefits the aquatic environment (*e.g.,* stream restoration or relocation activities).

10. *Fills Within 100-Year Floodplains.* The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. *Equipment.* Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. *Soil Erosion and Sediment Controls.* Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. *Removal of Temporary Fills.* Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. *Proper Maintenance.* Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. *Single and Complete Project.* The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. *Wild and Scenic Rivers.* (a) No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a ''study river'' for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a ''study river'' for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. The permittee shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (*e.g.,* National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: *http://www.rivers.gov/.*

17. *Tribal Rights.* No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. *Endangered Species.* (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which ''may affect'' a listed species or critical habitat, unless section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the NWP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still are reasonably certain to occur.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. If pre-construction notification is required for the proposed activity, Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity ''may affect'' or will have ''no effect'' to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have ''no effect'' on listed species or critical habitat, or until section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the ''take'' of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (*e.g.,* an ESA Section 10 Permit, a Biological Opinion with ''incidental take'' provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word ''harm'' in the definition of ''take'' means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns,

including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide Web pages at *http://www.fws.gov/* or *http://www.fws.gov/ipac* and *http://www.nmfs.noaa.gov/pr/species/esa/* respectively.

19. *Migratory Birds and Bald and Golden Eagles.* The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service to determine applicable measures to reduce impacts to migratory birds or eagles, including whether ''incidental take'' permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. *Historic Properties.* (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act. If pre-construction notification is required for the proposed NWP activity, Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h–2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. *Discovery of Previously Unknown Remains and Artifacts.* If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. *Designated Critical Resource Waters.* Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and proposed NWP B, notification is required in accordance with general condition 32, for any activity proposed

in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. *Mitigation.* The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (*i.e.,* on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation to ensure that the activity results in no more than minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (*e.g.,* conservation easements) of riparian areas next to open waters. In some cases, the restoration of riparian areas may be the only compensatory mitigation required. Restored riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (*e.g.,* riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)).

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, restoration of these areas should be the first compensatory mitigation option considered.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (*e.g.,* resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. *Safety of Impoundment Structures.* To ensure that all impoundment structures are safely

designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. *Water Quality.* Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. *Coastal Zone Management.* In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. *Regional and Case-By-Case Conditions.* The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. *Use of Multiple Nationwide Permits.* The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed ⅓-acre.

29. *Transfer of Nationwide Permit Verifications.* If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

''When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.''

_____

(Transferee)

_____

(Date)

30. *Compliance Certification.* Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation.

31. *Activities Affecting Structures or Works Built by the United States.* If an NWP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a ''USACE project''), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission is not authorized by NWP until the appropriate Corps district office issues the section 408 permission to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. *Pre-Construction Notification.* (a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is

''no effect'' on listed species or ''no potential to cause effects'' on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures. For single and complete linear projects, the PCN must include the quantity of proposed losses of waters of the United States for each single and complete crossing of waters of the United States. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (*e.g.,* a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-Federal permittees, if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or utilize the designated critical habitat that might be affected by the proposed activity. For any NWP activity that requires pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-Federal permittees, if the NWP activity may have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property may have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a ''study river'' for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the ''study river'' (see general condition 16); and

(10) For an activity that requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from the Corps district having jurisdiction over that USACE project.

(c) *Form of Pre-Construction Notification:* The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is an NWP PCN and must include all of the applicable information required in paragraphs (b)(1) through (9) of this general condition. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials.

(d) *Agency Coordination:* (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) All NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed; (iii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iv) proposed NWP B activities in excess of

500 linear feet, that extend into the waterbody more than 30 feet from the mean high water line or ordinary high water mark, or involve discharges into special aquatic sites.

(3) When agency coordination is required, the district engineer will immediately provide (*e.g.,* via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

D. District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the verification for that NWP if it meets the terms in the text of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal adverse environmental effects and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the individual crossings to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51, 52, or proposed NWP B, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal adverse environmental effects.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (*e.g.,* partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (*e.g.,* watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters (*e.g.,* streams). The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added

to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) That the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31, or to evaluate PCNs for activities authorized by NWPs 21, 49, and 50), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

E. Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

F. Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term ''discharge'' means any discharge of dredged or fill material into waters of the United States.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the acres or linear feet of stream bed that is filled or excavated as a result of the regulated activity. Waters of the United States temporarily filled,

flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(c)(4). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (*i.e.,* spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of ''open waters'' include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(c)(6)).

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (*i.e.,* spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term ''single and complete project'' is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (*i.e.,* a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term ''single and complete project'' is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of ''independent utility''). Single and complete non-linear projects may not be ''piecemealed'' to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or

improve the quality (*i.e.,* by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a wetland (*i.e.,* water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(c)(4) and (d), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(c)(7).

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWPs, a waterbody is a jurisdictional water of the United States. If a wetland is adjacent to a waterbody determined to be a water of the United States under 33 CFR 328.3(a)(1) through (5), that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of ''waterbodies'' include streams, rivers, lakes, ponds, and wetlands.

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Part IV

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10 CFR Parts 429 and 430

Energy Conservation Program: Test Procedures for Portable Air Conditioners; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2014–BT–TP–0014]

RIN 1904–AD22

Energy Conservation Program: Test Procedures for Portable Air Conditioners

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: On February 25, 2015, the U.S. Department of Energy (DOE) published a notice of proposed rulemaking (NOPR), in which it proposed to establish test procedures for portable air conditioners (ACs) to determine capacities and energy efficiency metrics for portable ACs. On November 27, 2015, DOE published a supplemental notice of proposed rulemaking (SNOPR) to revise the proposal by modifying the cooling and heating mode test requirements, introducing the seasonally adjusted cooling capacity (SACC) and a revised combined energy efficiency ratio (CEER), and clarifying several aspects of test setup. The proposed test procedure serves as the basis for this action. DOE is issuing a final rule to establish a new test procedure for portable ACs in a new appendix. The new test procedure in appendix CC will be used to determine the SACC and CEER for portable ACs that are subject to the adopted test procedure. The test procedure is based on industry standards, with several modifications to ensure the test procedure is representative of typical use and to improve accuracy and repeatability while minimizing test burden.

DATES: The effective date of this rule is July 1, 2016. The final rule changes will be mandatory for representations of energy use or efficiency on or after November 28, 2016. The incorporation by reference of certain publications listed in this rule was approved by the Director of the Federal Register as of July 1, 2016.

ADDRESSES: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov*. All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at *http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-TP-0014*. This Web page will contain a link to the docket for this document on the *www.regulations.gov* site. The *www.regulations.gov* Web page will contain simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *portable_ACs@ee.doe.gov*

Ms. Sarah Butler, U.S. Department of Energy, Office of the General Counsel, Mailstop GC–33, 1000 Independence Ave. SW., Washington, DC 20585–0121. Telephone: 202–586–1777. Email: *Sarah.Butler@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: This final rule incorporates by reference the following industry standard into 10 CFR parts 429 and 430:

American National Standards Institute (ANSI)/Association of Home Appliance Manufacturers (AHAM) PAC–1–2015, Portable Air Conditioners, June 19, 2015.

Copies of ANSI/AHAM PAC–1–2015 can be obtained from the Association of Home Appliance Manufacturers, 1111 19th Street NW., Suite 402, Washington, DC 20036, 202–872–5955, or by going to *https://www.aham.org/ht/d/Store/*.

This final rule also incorporates by reference the following industry standards into 10 CFR part 430:

ANSI/American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) Standard 37–2009, (''ASHRAE Standard 37–2009''), Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment, ANSI approved June 25, 2009.

International Electrotechnical Commission (IEC) 62301 (''IEC 62301''), Household electrical appliances—Measurement of standby power, (Edition 2.0, 2011–01).

Copies of ANSI/ASHRAE Standard 37–2009 can be obtained from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., Publication Sales, 1791 Tullie Circle NE., Atlanta, GA 30329, 800–527–4723 or 404–636–8400, or go to *http://www.ashrae.org*.

Copies of IEC 62301 can be obtained from the IEC at *https://webstore.iec.ch/* and also from the American National Standards Institute, 25 W. 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or go to *http://webstore.ansi.org*.

See section IV.N of this rulemaking for a further discussion of these standards.

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I. Authority and Background

Portable air conditioners (portable ACs) are a type of heating, cooling, and air-conditioning equipment, for which the U.S. Department of Energy (DOE) is establishing test procedures, subject to the requirements of 42 U.S.C. 6293(b)(1)(B). DOE is considering energy conservation standards for portable ACs in a concurrent rulemaking. The following sections discuss DOE's authority to establish test procedures for portable ACs and relevant background information detailing the history of the portable AC test procedure rulemaking.

A. Authority

Title III of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291, *et seq.;* ''EPCA'' or, ''the Act'') [1] sets forth various provisions designed to improve energy efficiency. Part B [2] of title III establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles,'' which covers consumer products and certain commercial products (hereinafter referred to as ''covered products''). EPCA authorizes DOE to establish technologically feasible, economically justified energy conservation standards for covered products or equipment that would be likely to result in significant national energy savings. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)) In addition to specifying a list of covered consumer and industrial products, EPCA contains provisions that enable the Secretary of Energy to classify additional types of consumer products as covered products. (42 U.S.C. 6292(a)(20)) For a given product to be classified as a covered product, the Secretary must determine that:

(1) Classifying the product as a covered product is necessary for the purposes of EPCA; and

(2) The average annual per-household energy use by products of each type is likely to exceed 100 kilowatt-hours (kWh) per year. (42 U.S.C. 6292(b)(1))

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) making representations about the efficiency of those products. Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA.

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA provides in relevant part that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results that measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) In addition, if DOE determines that a test procedure should be prescribed or amended, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2))

B. Background

There are currently no DOE test procedures or energy conservation standards for portable ACs. On July 5, 2013, DOE issued a notice of proposed determination (NOPD) of coverage (hereinafter referred to as the ''July 2013 NOPD''), in which DOE announced that it tentatively determined that portable ACs meet the criteria under 42 U.S.C. 6292(b)(1) to be classified as a covered product. 78 FR 40403. In a final determination of coverage published in the **Federal Register** on April 18, 2016 (the April 2016 Coverage Determination), DOE classified portable ACs as covered consumer products under EPCA. 81 FR 22514.

Concurrently, DOE has initiated rulemaking processes to establish test procedures and energy conservation standards for portable ACs. DOE initiated this test procedure rulemaking with a notice of data availability (NODA), published on May 9, 2014 (hereinafter referred to as the ''May 2014 NODA''). 79 FR 26639 (May 9, 2014). In the May 2014 NODA, DOE addressed comments received in response to the June 2013 NOPD, and specifically recognized those comments that supported the development of a DOE test procedure for portable ACs to provide consistency and clarity for representations of energy use of these products. DOE evaluated available industry test procedures to determine whether such methodologies would be suitable for incorporation in a future DOE test procedure. To support development of a standardized DOE test procedure for portable ACs, DOE conducted testing on a range of portable ACs to determine typical cooling capacities and cooling energy efficiencies based on the existing industry test methods and other modified approaches for portable ACs. DOE presented the results of this testing for public review and comment in the May 2014 NODA. 79 FR 26639, 26640 (May 9, 2014).

On February 25, 2015, DOE published in the **Federal Register** a notice of proposed rulemaking (NOPR) (hereinafter referred to as the ''February 2015 NOPR''), in which it addressed comments received in response to the July 2013 NOPD that were not previously addressed in the May 2014 NODA, and proposed test procedures for single-duct and dual-duct portable ACs that would provide a means of determining efficiency in various operating modes, including cooling mode, heating mode, off-cycle mode, standby mode, and off mode. 80 FR 10211. For cooling mode and heating mode, DOE proposed test procedures based on the then-current industry-accepted test procedure, AHAM PAC–1–2014, ''Portable Air Conditioners,'' with additional provisions to account for heat transferred to the indoor conditioned space from the case, ducts, and any infiltration air from unconditioned spaces. DOE also proposed various clarifications for cooling mode and heating mode testing, including: (1) Test duct configuration; (2) instructions for condensate collection; (3) control settings for operating mode, fan speed, temperature set point, and louver oscillation; (4) clarification of test condition tolerances; and (5) unit placement within the test chamber. For off-cycle mode, DOE proposed a test procedure that would measure energy use when the ambient dry-bulb temperature is at or below the setpoint. DOE also identified relevant low-power modes, proposed definitions for inactive mode and off mode, and proposed test procedures to determine representative energy consumption for these modes. *Id.*

In the February 2015 NOPR, DOE proposed to use a combined energy efficiency ratio (CEER) metric for representing the overall energy efficiency of single-duct and dual-duct portable ACs. The CEER metric would

[1] All references to EPCA refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Public Law 114–11 (April 30, 2015).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

represent energy use in all available operating modes. DOE also proposed a cooling mode-specific CEER for units that do not provide a heating function to provide a basis for comparing performance with other cooling products such as room ACs. In addition, DOE proposed separate energy efficiency ratio (EER) metrics for determining energy efficiency in cooling mode and heating mode only. 80 FR 10211, 10234–10235 (Feb. 25, 2015). In response to the February 2015 NOPR, DOE received comments during a public meeting, in which DOE presented the proposals, as well as in eight written comments from interested parties. DOE has addressed these comments in the subsequent rulemaking publications discussed below, including this final rule.

On November 17, 2015, DOE published in the **Federal Register** a supplemental notice of proposed rulemaking (SNOPR) (hereinafter referred to as the ''November 2015 SNOPR), in which DOE proposed additions and clarifications to its proposed portable AC test procedure. The additions and clarifications included: (1) Minor revisions to the indoor and outdoor cooling mode test conditions; (2) an additional test condition for cooling mode testing; (3) updated infiltration air and capacity calculations to account for the second cooling mode test condition, in the form of new condition-specific adjusted cooling capacities (ACC_{95} and ACC_{83}) and the newly introduced seasonally adjusted cooling capacity (SACC); (4) removal of the measurement of case heat transfer; (5) a clarification of test unit placement within the test chamber; (6) removal of the heating mode test procedure; (7) a revision to the CEER calculation to reflect the two cooling mode test conditions and removal of heating mode testing; (8) a clarification of the active mode test duration; and (9) additional technical corrections and clarifications. Other than the specific amendments newly proposed in the SNOPR, DOE continued to propose the general test procedure originally included in the February 2015 NOPR. 80 FR 74020 (Nov. 17, 2015). In response to the November 2015 SNOPR, DOE received four written comments from interested parties. In the relevant sections of this final rule, DOE presents those comments, DOE's responses, and any applicable modifications to DOE's test procedure.

DOE also recently initiated a separate rulemaking to consider establishing energy conservation standards for portable ACs. DOE received additional test procedure-related comments during the preliminary analysis stage of this concurrent energy conservation standards rulemaking and addresses those comments in this final rule. Any new standards would be based on the same efficiency metrics derived from the test procedure that DOE is establishing in this final rule.

II. Synopsis of the Final Rule

DOE has reviewed its analysis and comments received in response to the November 2015 SNOPR, and has concluded that the proposals contained therein, including proposals that remained unchanged from the February 2015 NOPR, warrant adoption of a new test procedure for single-duct and dual-duct portable ACs except as follows: (1) Adopting a lower value for the duct convection heat transfer coefficient; (2) slightly revising the proposed definitions of ''single-duct portable air conditioner'' and ''dual-duct portable air conditioner'' and withdrawing the proposed definition for ''spot cooler;'' (3) requiring that any single-duct or dual-duct portable ACs that may be configured in both single-duct and dual-duct configurations must be tested in both configurations; and (4) incorporating clarifying edits to the duct installation instructions and duct surface area calculation. DOE is codifying the new test procedure at 10 CFR part 430, subpart B, appendix CC, to contain provisions for measuring the energy consumption of single-duct and dual-duct portable ACs in active, standby, and off modes. In addition, in this final rule, DOE establishes provisions for certification, compliance, and enforcement for portable ACs in 10 CFR part 429. Specifically, these amendments add new section 10 CFR 429.62 with requirements for determining SACC and CEER for a basic model.

III. Discussion

In this test procedure final rule, DOE is adopting definitions, test procedures, and certification and enforcement requirements for portable ACs. These provisions will be incorporated into relevant sections of parts 429 and 430 of Title 10 of the CFR, as specified in Table III.1. The definitions discussed and established in this final rule include various operating modes (cooling mode, off-cycle mode, standby mode, inactive mode, and off mode), duct configurations (single-duct and dual-duct), and performance metrics (seasonally adjusted cooling capacity and combined energy efficiency ratio). The test procedures established in this final rule provide a measure of portable AC performance under representative operating modes and conditions, which are discussed further in this final rule. DOE further establishes test sampling requirements.

TABLE III.1—SUMMARY OF FINAL RULE PROVISIONS, THEIR LOCATION WITHIN THE CODE OF FEDERAL REGULATIONS, AND THE APPLICABLE PREAMBLE DISCUSSION

CFR Location	Topics	Summary of provisions	Applicable preamble discussion
10 CFR 429.62	Sampling Plan	Minimum number of portable ACs to be tested to rate a portable AC basic model.	Section III.J.
10 CFR 430.2	Definitions	Definitions pertinent to categorizing and testing of portable ACs.	Section III.A.
10 CFR 429.4 and 10 CFR 430.3.	Incorporation by Reference	Description of industry standards incorporated by reference in the DOE test procedure.	Section IV.N.
10 CFR 430.23(dd) and Appendix CC to Subpart B.	Test Procedure	Instructions for determining the SACC and CEER for applicable portable ACs.	Sections III.C, III.F, III.G, and III.H.

The Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SCGC), Southern California Edison (SCE), and San Diego Gas and Electric Company (SDG&E) (hereinafter the ''California Investor-Owned Utilities (IOUs)''), the National Association of Manufacturers (NAM), and AHAM supported DOE's rulemakings to establish energy conservations standards and test procedures for portable ACs. AHAM further stated that

the test procedure should include repeatable and reproducible measures that are representative of actual consumer use, but not unduly burdensome to conduct. (California IOUs, No. 20 at p. 1; NAM, No. 17 at p. 1; AHAM, No. 18 at p. 1; AHAM, No. 23 at pp. 1–2) [3]

A. Covered Products and Configurations

In the April 2016 Coverage Determination, DOE established the definition of a portable AC as a portable encased assembly, other than a packaged terminal air conditioner, room air conditioner, or dehumidifier, that delivers cooled, conditioned air to an enclosed space, and is powered by single-phase electric current. The definition also states that a portable AC includes a source of refrigeration and may include additional means for air circulation and heating. 81 FR 22514, 22516, 22519, 22520 (April 18, 2016). This definition encompasses several categories and configurations of portable ACs. For the purposes of specifying the appropriate test method(s) and, potentially, energy conservation standards for these different categories and configurations of portable ACs, DOE is adopting specific definitions for ''single-duct portable air conditioner'' and ''dual-duct portable air conditioner,'' and clarifying the test method for convertible products. DOE discusses these definitions and test provisions, including any comments received related to them, in section III.A.1 and section III.A.2 of this rule.

1. Configuration Definitions

In the February 2015 NOPR, DOE identified three general categories of portable ACs, distinguished by duct configuration and associated handling of condenser air flow. Accordingly, DOE proposed definitions for these three configurations: ''single-duct portable air conditioners,'' ''dual-duct portable air conditioners,'' and ''spot coolers.'' 80 FR 10211, 10214–10216 (Feb. 25, 2015). The various ducting configurations are discussed in more detail in the following sections.

a. Single-Duct and Dual-Duct Portable ACs

DOE proposed in the February 2015 NOPR to define a single-duct portable AC as a portable AC that draws all of the condenser inlet air from the conditioned space without the means of a duct, and discharges the condenser outlet air outside the conditioned space through a single duct. 80 FR 10211, 10215–10216 (Feb. 25, 2015). DOE also proposed a definition of a dual-duct portable AC as a portable AC that draws some or all of the condenser inlet air from outside the conditioned space through a duct, and may draw additional condenser inlet air from the conditioned space. DOE further defined a dual-duct portable AC as discharging the condenser outlet air outside the conditioned space by means of a separate duct. *Id.* at 10216. The portable AC configuration definitions proposed in the February 2015 NOPR were the basis for the development of the concurrent energy conservation standards rulemaking preliminary analysis, published on February 27, 2015 (February 2015 Preliminary Analysis). DOE also maintained these proposed definitions in the November 2015 SNOPR.

In response to the February 2015 Preliminary Analysis, DENSO Products and Services Americas, Inc. (DENSO) expressed concern that the terminology for a dual-duct configuration could be potentially misleading. (DENSO, Standards Preliminary Analysis, No. 13 at p. 9) [4] DOE notes that the definition of a dual-duct portable AC requires ducts at both the condenser inlet and outlet. This definition would exclude other portable AC configurations with two ducts, such as portable ACs equipped with inlet and outlet ducts on the evaporator side, but without ducts at the condenser inlet and outlet. However, DOE is aware that some manufacturers may sell these portable ACs (defined as ''spot coolers'' in the February 2015 NOPR and November 2015 SNOPR) with optional inlet and/or outlet ducts for the condenser side. Therefore, DOE considered whether these products with the optional duct(s) installed could be considered single-duct or dual-duct portable ACs. DOE reviewed product specifications, manufacturer information, and available accessories for spot coolers. DOE observed that the optional ducting accessories for these products are typically available in a range of sizes and configurations, which precludes DOE from determining a representative ducted setup for testing. See section III.A.1.b of this preamble for further discussion of the testing concerns for spot coolers with optional ducting.

DOE also revisited the product specifications and manufacturer information for the products it had considered single-duct and dual-duct portable ACs in the February 2015 Preliminary Analysis. DOE observed that all single-duct and dual-duct portable ACs include similar ducting configurations that include adjustable window mounting brackets for the condenser ducts. DOE determined that single-duct and dual-duct portable ACs implement an adjustable window mounting bracket to maintain portability and flexibility for users to install these products in multiple locations while exhausting condenser air outside through the most common available spaces—windows of varying sizes. DOE also notes that it found no spot coolers that have an adjustable window mounting bracket with the optional duct accessories. DOE identified the presence of an adjustable window mounting bracket as a primary feature of single-duct and dual-duct portable ACs. The corresponding consistency in installation enabled the development of a test procedure that yields energy use results representative of real-world use. As discussed in section III.A.1.b of this preamble, portable ACs without adjustable window mounting brackets for condenser ducts (*e.g.,* spot coolers) may be installed and used in a variety of applications and are not addressed by this test procedure. DOE, therefore, establishes in this final rule the following single-duct portable AC and dual-duct portable AC definitions in 10 CFR 430.2, which include the requirement for an adjustable window bracket.

Single-duct portable air conditioner means a portable air conditioner that draws all of the condenser inlet air from the conditioned space without the means of a duct, and discharges the condenser outlet air outside the conditioned space through a single duct attached to an adjustable window bracket.

Dual-duct portable air conditioner means a portable air conditioner that draws some or all of the condenser inlet air from outside the conditioned space through a duct attached to an adjustable window bracket, may draw additional

[3] A notation in the form ''California IOUs, No. 20 at p. 1'' identifies a written comment: (1) Made by the Pacific Gas and Electric Company, Southern California Gas Company, Southern California Edison, and San Diego Gas and Electric Company (''the California IOUs''); (2) recorded in document number 20 that is filed in the docket of this test procedure rulemaking (Docket No. EERE–2014–BT–TP–0014) and available for review at *www.regulations.gov*; and (3) which appears on page 1 of document number 20.

[4] A notation in the form ''DENSO, Preliminary Analysis, No. 13 at p. 9'' identifies a written comment: (1) Made by DENSO Products and Services Americas, Inc.; (2) recorded in document number 13 that is filed in the docket of the concurrent energy conservation standards rulemaking (Docket No. EERE–2013–BT–STD–0013) and available for review at *www.regulations.gov*; and (3) which appears on page 9 of document number 13.

condenser inlet air from the conditioned space, and discharges the condenser outlet air outside the conditioned space by means of a separate duct attached to an adjustable window bracket.

In reviewing the February 2015 NOPR proposal, DOE noted that the terms ''single-duct portable air conditioner'' and ''dual-duct portable air conditioner'' are used in provisions of the DOE regulations outside of the test procedure that will be codified at appendix CC to part 430 of Title 10 of the CFR. For example, the terms are used in the general test procedure instructions to be codified at 10 CFR 430.23(dd). Therefore, to ensure the appropriate scope of applicability for the single-duct and dual-duct portable AC definitions, DOE is codifying these definitions at 10 CFR 430.2.

b. Other Portable ACs

In the February 2015 NOPR, DOE described ''spot coolers'' as portable ACs that have no ducting on the condenser side and may utilize small directional ducts on the evaporator exhaust. DOE noted that typical applications for spot coolers are those that require cooling in one localized zone and can tolerate exhaust heat outside of this zone. These applications are typically larger spaces with harsh conditions, and spot coolers are therefore generally more robust in construction than their single-duct and dual-duct portable AC counterparts. As such, DOE proposed defining a spot cooler as a portable AC that draws condenser inlet air from and discharges condenser outlet air to the conditioned space, and draws evaporator inlet air from and discharges evaporator outlet air to a localized zone within the conditioned space. In the February 2015 NOPR, DOE did not propose testing provisions for measuring the energy performance of spot coolers because these products do not provide net cooling to the conditioned space, and because they incorporate different design features and usage patterns than single-duct and dual-duct portable ACs. 80 FR 10211, 10213, 10214–10215 (Feb. 25, 2015).

In response to the February 2015 Preliminary Analysis, DENSO commented that a spot cooler with optional ducts on either the condenser or evaporator side should still be classified as a spot cooler rather than a single-duct or dual-duct portable AC. (DENSO, Standards Preliminary Analysis, No. 13 at pp. 1–2)

DOE agrees that a portable AC with no ducts on the condenser side, but with ducts on the evaporator side, would not be considered a single-duct or dual-duct portable AC because the portable AC would not be able to reject heat from the condenser to the ambient air through a window to space outside that in which the unit is located (*i.e.,* the conditioned space), as is required by the single-duct and dual-duct portable AC definitions. Ducts optionally attached to the evaporator side would simply direct the delivery of the cooling air to a specific zone within the conditioned space.

Optional ducts that may be attached to spot coolers on the condenser side vary significantly in purpose and design from those accompanying single-duct and dual-duct portable ACs (*i.e.,* spot cooler condensers are not typically intended to be ducted through a window by means of an adjustable mounting bracket, but instead may be ducted through the ceiling or to a specific location within or outside the conditioned space by typically longer and larger-diameter ducts). Under the definitions established in this final rule for single-duct and dual-duct portable ACs, a portable AC with optional ducts on the condenser side that do not attach to an adjustable window mounting bracket would not classify the product as a single-duct or dual-duct portable AC.

The California IOUs urged DOE to adopt test procedures and consider future performance standards for spot coolers under DOE's proposed definitions. The California IOUs noted that 321 of the 427 spot cooler models in the California Energy Commission (CEC) Appliance Efficiency Database have cooling capacities below 14,000 British thermal units per hour (Btu/hr), and assumed this distribution is an indicator of widespread market availability of products below 14,000 Btu/hr. The California IOUs further commented that, should DOE decide not to adopt test procedures for spot coolers, DOE should define spot coolers as a non-covered product in order to avoid coverage for a category of equipment without establishing any standards, thereby preempting any state regulations. (California IOUs, No. 20 at pp. 1–2; California IOUs, No. 24 at p. 4) In this final rule, DOE maintains the approach proposed in the February 2015 NOPR to not establish test procedures for spot coolers because they do not provide net cooling to the conditioned space and they incorporate different design features and usage patterns than single-duct and dual-duct portable ACs. Additionally, due to the significant variability in operating conditions and installation configurations (including the variety of optional accessories) for spot coolers with optional condenser ducting attached, DOE does not have information to determine appropriate test setup and testing conditions to measure spot cooler energy use in a representative test procedure. Therefore, DOE is establishing testing requirements for only single-duct and dual-duct portable ACs at this time, as discussed in section III.A.1.a of this preamble.

Upon review of the spot cooler entries in the CEC Appliance Efficiency Database,[5] DOE concludes that a number of listed products would meet DOE's definitions of single-duct or dual-duct portable ACs. Such single-duct or dual-duct portable ACs would be covered by the test procedures adopted in this final rule. DOE also notes that, because spot coolers meet the definition of a portable AC as established by the April 2016 Coverage Determination, they are covered products under EPCA.

The Appliance Standards Awareness Project (ASAP), Alliance to Save Energy (ASE), American Council for an Energy-Efficient Economy (ACEEE), National Consumer Law Center (NCLC), Natural Resources Defense Council (NRDC), and Northwest Energy Efficiency Alliance (NEEA) (hereinafter the ''NOPR Joint Commenters'') and the California IOUs, expressed concern, in response to the February 2015 NOPR, that products not intended to be used as spot coolers could meet the definition of spot cooler and thereby avoid having to comply with portable AC standards. (NOPR Joint Commenters, No. 19 at p. 2; California IOUs, No. 20 at p. 2) In response to the concern raised by the NOPR Joint Commenters and California IOUs, DOE does not expect that manufacturers would begin selling products in spot cooler configurations due to the consumer utility impacts of exhausting the hot condenser air within the conditioned space.

NAM urged DOE to exclude commercial portable ACs[6] from the portable AC test procedure due to the unique construction and limited energy use of these niche products. Oceanaire and NAM explained that commercial portable ACs are primarily used to address temporary or short-term extreme conditions (elevated temperature, humidity, and corrosive surroundings). These commenters stated that commercial portable AC environmental conditions vary more significantly than those in consumer households, and therefore, claimed that

[5] The CEC Appliance Efficiency Database is accessible at *https://cacertappliances.energy.ca.gov/Pages/ApplianceSearch.aspx*.

[6] DOE expects that ''commercial portable ACs,'' as discussed by NAM and Oceanaire, likely refers to spot coolers. This determination was based on reviewing their overall comments and Oceanaire's product availability.

a single ambient test condition would not accurately reflect commercial portable AC performance. (Oceanaire, No. 10 at pp. 2–3; NAM, No. 17 at pp. 2–3) DOE established a definition and coverage for portable ACs in the April 2016 Coverage Determination. 81 FR 22514, 22516–22517, 22519–22520 (April 18, 2016). This definition requires that a portable AC operate on single-phase electric current, which DOE expects would exclude those products intended only for use in industrial applications. Any products that meet the portable AC definition are subject to the test procedures in this final rule, if applicable, and would be subject to any energy conservation standards should DOE establish them. As discussed earlier in this section, DOE is establishing test procedures only for single-duct and dual-duct portable ACs in this final rule. Accordingly, any portable ACs that meet the single-duct and dual-duct portable AC definitions are required to be tested according to appendix CC. Although DOE has identified portable AC configurations other than single-duct and dual-duct portable ACs, DOE is not establishing test procedures for such portable ACs in this final rule because it has not identified testing provisions that would be representative of operation during typical use. Further, because the test procedures established in this final rule apply only to single-duct and dual-duct portable ACs as discussed previously in this rule, DOE is not establishing the spot cooler definition proposed in the February 2015 NOPR and November 2015 SNOPR, as DOE has determined that it is not necessary for purposes of testing or product classification.

In conclusion, DOE is establishing, in this final rule, definitions for single-duct and dual-duct portable ACs. As noted in section III.A.1.a of this final rule, DOE is codifying these definitions at 10 CFR 430.2, rather than appendix CC, to reflect their applicability to the entirety of DOE's portable AC regulations, not only the test methods contained in appendix CC.

2. Convertible Products

DOE recognizes that some single-duct or dual-duct portable ACs may provide the consumer with the option to operate the unit as either a single-duct or dual-duct portable AC. If a product is distributed in commerce in both configurations, the different configurations represent different ''basic models'' within DOE's regulatory framework and the product must be rated and certified in both configurations. If a single-duct or dual-duct portable AC is offered with options for single-ducting and dual-ducting, such a unit would be required to be tested as a single-duct portable AC and a dual-duct portable AC. To the extent DOE establishes energy conservation standards for single-duct and dual-duct portable ACs, a single-duct or dual-duct portable AC distributed in commerce with multiple duct configurations would also be required to comply with any energy conservation standards applicable to those configurations. DOE notes that DOE's definition of ''distributed in commerce'' includes any representations made on manufacturer Web sites or in marketing literature, including optional accessories, regardless of the configuration in which the model is typically sold. That is, if a single-duct or dual-duct portable AC is advertised as capable of operating in both a single-duct and dual-duct configuration, that model would meet DOE's definitions of both single-duct and dual-duct portable ACs and, therefore, would be required to be tested and certified under both configurations.

This approach is similar to how DOE has treated other types of covered products and equipment, including dehumidifiers. In the recent dehumidifier test procedure final rule, DOE explained that products that meet the definitions for both portable and whole-home dehumidifiers as produced by the manufacturer, exclusive of any third-party modifications, must be tested in both configurations and comply with any applicable energy conservations standards for each configuration. 80 FR 45802, 45806 (July 31, 2015). Therefore, under this final rule, single-duct and dual-duct portable ACs that are distributed in commerce with multiple duct configuration options must be tested in each applicable configuration and the performance in each tested configuration must comply with any applicable energy conservation standards.

B. Active Mode

In the February 2015 NOPR, DOE proposed to define ''active mode'' as a mode in which the portable AC is connected to a mains power source, has been activated, and is performing the main functions of cooling or heating the conditioned space, circulating air through activation of its fan or blower without activation of the refrigeration system, or defrosting the refrigerant coil. 80 FR 10211, 10216 (Feb. 25, 2015). In the November 2015 SNOPR, DOE determined that the existing statutory definition of ''active mode'' was sufficient for purposes of the portable AC test procedure and therefore no longer proposed a separate definition of ''active mode'' for portable ACs. 80 FR 74020, 74022 (Nov. 27, 2015).

AHAM agreed with DOE's proposal to remove the expanded definition for active mode from the test procedure. (AHAM, No. 23 at p. 2) DOE maintains the November 2015 SNOPR proposal and does not establish a separate definition of ''active mode'' for portable ACs in this final rule.

C. Cooling Mode

1. General Test Approach

In the November 2015 SNOPR, DOE proposed a test procedure with provisions for measuring portable AC energy use in cooling mode that would be based on the current version of AHAM PAC–1, ANSI/AHAM PAC–1–2015. The general test method in ANSI/AHAM PAC–1–2015 measures cooling capacity and EER based on an air enthalpy approach that measures the air flow rate, dry-bulb temperature, and water vapor content of air at the inlet and outlet of the portable AC when it is installed in a test chamber at specified indoor ambient conditions and the ducts are connected to a second chamber at specified outdoor ambient conditions. DOE noted in the November 2015 SNOPR that AHAM issued this new version of PAC–1 in 2015, with no changes in language from the 2014 version. Therefore, although DOE previously proposed in the February 2015 NOPR to adopt a test procedure for portable ACs that would be based on AHAM PAC–1–2014, DOE proposed in the November 2015 SNOPR to reference the identical updated version, ANSI/AHAM PAC–1–2015, in the proposed DOE portable AC test procedure in order to reference the most current industry version. 80 FR 74020, 74023 (Nov. 27, 2015).

AHAM supported the updated reference to ANSI/AHAM PAC–1–2015, confirming that the two versions are identical and noting that ANSI/AHAM PAC–1–2015 was a re-publication under ANSI requirements. (AHAM, No. 23 at p. 2)

DOE maintains the November 2015 SNOPR proposal and establishes ANSI/AHAM PAC–1–2015 as the basis for the DOE portable AC test procedure in this final rule.

DOE determined, however, in the February 2015 NOPR and November 2015 SNOPR that the results from ANSI/AHAM PAC–1–2015 tests do not fully account for operational factors that contribute to an apparent reduction of cooling capacity in the field, namely air infiltration from outside the conditioned space and heat transfer through the

ducts and product case. DOE observed that infiltration from outside the conditioned space occurs due to the negative pressure induced as condenser air is exhausted outside the conditioned space. Although this effect is most pronounced for single-duct units, which draw all of their condenser air from with the conditioned space, dual-duct units also typically draw a portion of their condenser air from the conditioned space, which creates a negative pressure in the conditioned space, leading to infiltration air from unconditioned spaces (*e.g.,* outdoors, attics, and crawlspaces). Accordingly, DOE proposed in the February 2015 NOPR numerical calculations that would adjust the measured cooling capacity by subtracting the sensible and latent heat transfer of infiltration air at the outdoor conditions, as well as measured duct and case heat transfer. 80 FR 10211, 10223–10227 (Feb. 25, 2015); 80 FR 74020, 74026–74030 (Nov. 27, 2015). DOE received multiple comments regarding these proposed adjustments. Comments relating to the incorporation of infiltration air adjustments are discussed in this section, while those pertaining to duct and case heat transfer are discussed later in section III.C.5 and section III.C.6 of this final rule.

Related to an adjustment for infiltration, ASAP supported incorporating the effects of infiltration air in the measure of cooling capacity. (ASAP, Public Meeting Transcript, No. 13 at p. 44) Conversely, AHAM and De' Longhi Appliances s.r.l. (De' Longhi) opposed DOE's proposal to apply a numerical adjustment for infiltration air to the results of ANSI/AHAM PAC–1–2015 testing. They indicated that it is not possible to identify or incorporate realistic infiltration air field conditions in a test procedure. AHAM suggested that factors such as home construction, floorplan, insulation, and leakage are all variables that affect the impact of infiltration air and are outside the control of the manufacturing process. According to AHAM, unlike duct heat transfer and leakage loss which can be controlled and, to some extent, standardized, air infiltration cannot be standardized without assumptions to analyze the variables. Additionally, AHAM urged DOE to obtain portable AC-specific data to support its proposed test procedure. (AHAM, No. 23 at pp. 1–3; De' Longhi, No. 25 at p. 1)

Data presented in the February 2015 NOPR demonstrated that the net cooling of portable ACs is generally significantly lower than the air enthalpy measurements in ANSI/AHAM PAC–1–2015 would suggest, primarily due to the effects of air infiltration. Therefore, DOE determined that the use of ANSI/AHAM PAC–1–2015 alone would not accurately represent portable AC performance. Further, DOE's testing results indicated that varying air flow rates and heat losses among different portable ACs would preclude a fixed translation factor that could be applied to the results of ANSI/AHAM PAC–1–2015 to account for the impact of air infiltration. 80 FR 10211, 10221 (Feb. 25, 2015). DOE requested additional portable AC usage data from interested parties in both the February 2015 NOPR and November 2015 SNOPR and received no specific information that would impact DOE's proposals. DOE further notes, as discussed in section I.A of this final rule, that in accordance with EPCA, a test procedure must be designed to produce test results that measure energy efficiency during a representative average period of use. (42 U.S.C. 6293(b)(3)) Consequently, a DOE test procedure need not predict performance under every application, but rather under reasonably representative conditions applied consistently across all products. Therefore, DOE maintains its determination that the effects of infiltration air must be accounted for in the portable AC test procedure it establishes in this final rule, as it represents the performance of portable ACs under their typical installations and applications.

De' Longhi expressed concern that modifying the AHAM PAC–1–2014 method to account for infiltration air would disproportionately impact single-duct portable AC performance and subsequently cause the removal of such products from the market. De' Longhi asserted that single-duct portable ACs provide a unique consumer utility, allowing for easy installation, lighter weights, smaller dimensions, and the corresponding ability to easily move the equipment from room to room. According to De' Longhi, overall energy consumption may be reduced by using single-duct portable ACs because no room is conditioned unnecessarily. Therefore, De' Longhi did not agree with the proposal to modify the cooling capacity equation in AHAM PAC–1–2014 to address the effects of infiltration air. De' Longhi further noted that a certain amount of fresh air (make up air) is always required for proper ventilation. For residential occupancies, one to two air changes per hour are recommended. So the effect of air ventilation should be considered also, in general, for all air conditioning categories or it should be discounted for portable ACs. (De' Longhi, Public Meeting Transcript, No. 13 at pp. 13–15, 40; De' Longhi, No. 16 at pp. 1–3)

In response to De' Longhi's concerns regarding disproportionate impacts on single-duct portable ACs when infiltration air is accounted for, DOE notes that DOE's test procedure must provide an accurate representation of portable AC energy consumption during an average cycle of use. As noted previously, single-duct portable ACs typically generate higher rates of infiltration air than comparable dual-duct units, and such infiltration affects the capacity and efficiency. Therefore, DOE believes it is appropriate to address the impacts of infiltration air in the SACC and CEER, as this represents expected installation and performance.

However, as discussed further in section III.C.2, section III.C.3, and III.H of this final rule, the rating conditions and SACC calculation proposed in the November 2015 SNOPR mitigate De' Longhi's concerns. DOE recognizes that the impact of infiltration on portable AC performance is test-condition dependent and, thus, more extreme outdoor test conditions (*i.e.,* elevated temperature and humidity) emphasize any infiltration-related performance differences. The rating conditions and weighting factors proposed in the November 2015 SNOPR, and adopted in this final rule (see section III.C.2.a and section III.C.3 of this final rule), represent more moderate conditions than those proposed in the February 2015 NOPR. Therefore, the performance impact of infiltration air heat transfer on all portable AC configurations is less extreme. In consideration of the changes in test conditions and performance calculations since the February 2015 NOPR and the test procedure established in this final rule, DOE expects that single-duct portable AC performance is significantly less impacted by infiltration air.

Friedrich stated that the test procedure requires both rooms to be within 6 percent of the measured cooling or heating capacity, and therefore, because the rooms are balanced and there is a minor amount of pressure differential between both rooms, there is no need to take into account the infiltrated air. (Friedrich, Public Meeting Transcript, No. 13 at pp. 44–45) DOE infers that Friedrich's comment references Section 7.2 of ANSI/ASHRAE Standard 37–2009, ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment'' (ANSI/ASHRAE Standard 37–2009), which specifies that two simultaneous tests be conducted to determine the capacity of products rated

at less than 135,000 Btu/h, and Section 10.1.2 of that standard which specifies that the results of these tests must agree within 6 percent. However, these sections of ANSI/ASHRAE Standard 37–2009 are not referenced in ANSI/AHAM PAC–1–2015, nor were they referenced in the proposed DOE test procedure in the February 2015 NOPR or November 2015 SNOPR. Therefore, Friedrich's comment does not apply to the DOE portable AC test procedure. In this final rule, DOE maintains that the initial measured cooling capacity prior to other adjustments be based on the indoor cooling capacity, as described in Section 7.3 of ANSI/ASHRAE Standard 37–2009 and referenced in Section 7.1.b of ANSI/AHAM PAC–1–2015.

2. Rating Conditions

a. Test Chamber Temperatures

In the February 2015 NOPR, DOE proposed the following standard rating conditions for cooling mode testing, adopting the conditions in Table 3, ''Standard Rating Conditions,'' in ANSI/AHAM PAC–1–2015, shown in Table III.2, where Test Configuration 3 applies to dual-duct units and Test Configuration 5 applies to single-duct units.[7] 80 FR 10211, 10226 (Feb. 25, 2015).

TABLE III.2—STANDARD RATING CONDITIONS—COOLING MODE—NOPR PROPOSAL

Test configuration	Evaporator inlet air, °F (°C)		Condenser inlet air, °F (°C)	
	Dry bulb	Wet bulb	Dry bulb	Wet bulb
3 (Dual-Duct)	80.6 (27)	66.2 (19)	95 (35)	75.2 (24)
5 (Single-Duct)	80.6 (27)	66.2 (19)	80.6 (27)	66.2 (19)

In response to the February 2015 NOPR, DENSO suggested that the relative humidity conditions differed significantly between the 2009 and 2014 versions of AHAM PAC–1 and that the test conditions should be expressed in whole degrees. Based on DENSO's comment, in the November 2015 SNOPR, DOE examined the relative impact of the varying latent heat differential between the indoor (evaporator) and outdoor (condenser) conditions in the February 2015 NOPR proposal and in AHAM PAC–1–2009, which specified slightly different temperatures in rounded °F.[8] DOE estimated that the change in test conditions from the 2009 to the 2015 version of AHAM PAC–1, proposed in the February 2015 NOPR, would decrease cooling capacity by 5–10 percent, an amount which DOE considered to be significant. DOE further noted that, although the test conditions in ANSI/AHAM PAC–1–2015 are harmonized with those in Canadian Standards Association (CSA) C370–2013 and ANSI/ASHRAE Standard 128–2011, they do not align with the test conditions in the DOE test procedures for other cooling products, particularly room ACs and central ACs. Therefore, to maintain consistency with the DOE test procedures of other cooling products, DOE proposed in the November 2015 SNOPR to revise the test conditions proposed in the February 2015 NOPR to align with the test conditions in AHAM PAC–1–2009. Namely, DOE proposed in the November 2015 SNOPR to specify indoor test conditions of 80 °F dry-bulb and 67 °F wet-bulb temperature, and a set of outdoor test conditions of 95 °F dry-bulb and 75 °F wet-bulb temperature. 80 FR 74020, 74024 (Nov. 27, 2015).

In the November 2015 SNOPR, DOE also proposed to include a second cooling mode test condition for dual-duct units at outdoor test conditions. Specifically, DOE proposed to reflect both the high-temperature conditions when cooling is most needed and the weighted-average temperature and humidity observed during the hottest 750 hours (the hours during which DOE expects portable ACs to operate in cooling mode) by testing using both the 95 °F dry-bulb and 75 °F wet-bulb temperature test condition and a second 83 °F dry-bulb temperature and 67.5 °F wet-bulb temperature test condition. For single-duct units, as both the evaporator inlet and condenser inlet air conditions are based on the indoor air condition, the air enthalpy test is not affected by the outdoor air conditions. The effects of any infiltration air are then calculated rather than tested directly. Accordingly, DOE proposed to maintain the same air enthalpy test for single-duct units. In addition to the infiltration air impacts assuming 95 °F dry-bulb and 75.2 °F wet-bulb temperature outdoor air, DOE proposed a second set of numerical calculations for adjusted cooling capacity (ACC) at the specific test conditions, and updated calculations for SACC and CEER based on the two proposed infiltration air conditions. (See section III.C.2.c of this rulemaking for discussion of the numerical adjustments by means of infiltration air calculations.) This approach was designed to minimize testing burden for single-duct portable ACs. Table III.3 shows the complete set of cooling mode rating conditions that DOE proposed for portable ACs in the November 2015 SNOPR. 80 FR 74020, 74026 (Nov. 27, 2015).

TABLE III.3—STANDARD RATING CONDITIONS—COOLING MODE—SNOPR PROPOSAL

Test configuration	Evaporator inlet air, °F (°C)		Condenser inlet air, °F (°C)	
	Dry bulb	Wet bulb	Dry bulb	Wet bulb
3 (Dual-Duct, Condition A)	80 (26.7)	67 (19.4)	95 (35)	75 (23.9)
3 (Dual-Duct, Condition B)	80 (26.7)	67 (19.4)	83 (28.3)	67.5 (19.7)
5 (Single-Duct)	80 (26.7)	67 (19.4)	80 (26.7)	67 (19.4)

[7] Additional information regarding the operating and test configurations can be found in Table 2 and Figure 1 of ANSI/AHAM PAC–1–2015.

[8] AHAM PAC–1–2009 prescribed evaporator inlet (indoor) conditions of 80 °F dry-bulb and 67 °F wet-bulb temperature, and condenser inlet (outdoor) conditions of 95 °F dry-bulb and 75 °F wet-bulb temperature.

AHAM agreed with DOE's assessment of the impact on cooling capacity and measured efficiency due to small changes in the test conditions between the 2009 and 2015 versions of AHAM PAC–1 and therefore supported DOE's proposal to revise the single-duct and the dual-duct (Condition A) test chamber conditions to be consistent with those in AHAM PAC–1–2009. AHAM also supported the proposal to conduct two tests for dual-duct units and noted that the increase in test burden is necessary in order to more accurately measure cooling capacity. (AHAM, No. 23 at pp. 2, 4)

NAM challenged DOE's assertion that portable ACs are used during the hottest 750 hours of the cooling season, suggesting that consumers often use portable ACs during the transition periods before and after summer to cool only a certain room or rooms prior to activating their central cooling or heating and that a temperature representing the hottest times of the cooling season is not representative of consumer use. (NAM, No. 17 at p. 2) DENSO stated that during the off season, the unit would be unplugged. (DENSO, No. 14 at p. 3)

In response to NAM's comment that portable ACs are often used during seasonal transition periods rather than during the hottest 750 hours of the cooling season and therefore test conditions based on the hottest times of the cooling season are not representative of consumer use, DOE notes that, as discussed in the February 2015 NOPR, in developing the representative rating conditions for portable ACs, DOE's view was that the room AC annual operating hours and test conditions presented in the most recent test procedure NOPR (hereinafter the ''room AC test procedure NOPR'') [9] were an appropriate proxy for portable ACs. DOE made this determination based on the many similarities between room ACs and portable ACs in design, cost, functionality, consumer utility, and applications. In the room AC test procedure in 10 CFR 430.23(f) and appendix F to subpart B of 10 CFR part 430, cooling mode is allotted 750 hours and testing is conducted at 95 °F, a high-temperature outdoor test condition during which cooling is most needed. Based on DOE's approach that the annual operating hours for room AC cooling was a reasonable proxy for portable AC cooling, DOE determined in the February 2015 NOPR that the portable AC cooling mode also should be allotted the hottest 750 hours during the cooling season. DOE requested information regarding this determination of cooling mode operating hours in the February 2015 NOPR and the November 2015 SNOPR. 80 FR 10211, 10235, 10242–10243 (Feb. 25, 2015); 80 FR 740202, 74032 (Nov. 27, 2015). No data regarding portable AC annual operating hours were provided to controvert DOE's approach in response to either the February 2015 NOPR or the November 2015 SNOPR.

DOE further notes that portable ACs may be used in spaces within the home that typically have no alternate conditioning equipment, such as new additions, attics, garages, and basements. In those locations, DOE expects portable ACs would be used as the primary conditioning equipment as central cooling is not typically utilized or available. Due to commonality with room AC use and variability in installation location, which suggests portable ACs are likely used as the primary mode of cooling for some applications, DOE maintains its determination that portable AC cooling mode use is most likely to occur during the hottest 750 hours during the cooling season, and has used this determination in establishing the test conditions for portable ACs in this final rule.

ASAP, ASE, and NEEA (hereinafter the ''SNOPR Joint Commenters'') and the California IOUs commented that with multiple test conditions, the proposed test procedure for portable ACs would not be comparable with the DOE test procedure for room ACs. These commenters suggested that any weight given to a different test condition (*e.g.,* the 83 °F outdoor dry-bulb temperature) would result in discrepancies in rated performance that would not allow for accurate comparison between the two similar and competing products. They asserted that the portable AC metric should be comparable with the room AC metric in order to achieve consistency with labeling and consumer expectations of equipment that provides similar utility. The SNOPR Joint Commenters and California IOUs supported a single test condition that reflects energy outputs during peak times when the equipment is most needed, as electric utilities are shifting towards peak-demand pricing. This single test condition would be the same as the current test procedure for room ACs, with an outdoor dry-bulb temperature of 95 °F, which these commenters believe best reflects peak usage. Because a seasonal adjustment inherently does not reflect peak performance, the SNOPR Joint Commenters and the California IOUs asserted that it would potentially underestimate peak portable AC energy use. The SNOPR Joint Commenters and the California IOUs further claimed that it is in the best interest of consumers that portable ACs function as anticipated in warmer temperatures. (SNOPR Joint Commenters, No. 22 at p. 1; California IOUs, No. 24 at p. 2)

In developing a test procedure for portable ACs, DOE is required, under 42 U.S.C. 6293(b)(3), to determine performance under common operating conditions to provide relevant information to the consumer and to measure energy efficiency during a representative period of use. DOE recognizes the value in measuring performance at peak operating conditions, as the performance of portable ACs will vary as a non-linear function of outdoor air temperature, such that a single rating at one outdoor test condition to represent the expected average operating condition may not capture the increased energy consumption at peak outdoor air temperatures and, therefore, would not accurately predict performance over an average cycle of use. DOE therefore concludes that capturing the performance at the peak operating conditions, in light of the variability expected within the cooling season, is necessary. As such, DOE's test procedure as established in this final rule captures performance at both the peak, high-temperature operating condition (95 °F dry-bulb and 75 °F wet-bulb temperature test condition) and the expected average operating condition (83 °F dry-bulb temperature and 67.5 °F wet-bulb temperature test condition) during the cooling season, and with weighting factors applied to the two conditions, collectively represent portable AC operating conditions during the cooling season.

As discussed in section III.C.3 of this final rule, the single CEER metric provides a representative measure of overall portable AC performance that accounts for the variability in performance during the cooling season. DOE did not receive comment on the proposed indoor air condition (evaporator inlet air); therefore, DOE is maintaining the indoor conditions as proposed in the November 2015 SNOPR.

In sum, DOE establishes standard rating conditions in this final rule that are identical with those proposed in the November 2015 SNOPR and summarized in Table III.3. DOE also clarifies that for the purposes of the cooling mode test procedure established in this final rule, evaporator inlet air is considered the ''indoor air'' of the conditioned space and (for dual-duct portable ACs) condenser inlet air is

[9] See 73 FR 74639 (Dec. 9, 2008).

considered the ''outdoor air'' outside of the conditioned space. DOE agrees that comparative ratings between room ACs and portable ACs is desirable and will consider whether rating conditions representative of room AC usage should be adjusted when it conducts a rulemaking for its room AC test procedures.

b. Infiltration Air Conditions

DOE proposed in the November 2015 SNOPR a numerical adjustment to the cooling capacity measured under ANSI/AHAM PAC–1–2015 using, in part, the heat transfer from infiltration air at the outdoor conditions (condenser inlet air) specified in Table III.3 for Test Configuration 3. 80 FR 74020, 74024–74026 (Nov. 27, 2015).

The SNOPR Joint Commenters supported using infiltration air conditions equivalent to the outdoor test condition. According to the SNOPR Joint Commenters, all infiltration air is ultimately coming from the outdoors, and in many cases, the bulk of the infiltration air may be coming directly from outdoors due to leaks through the window where the portable AC is installed. Although they agree that the temperature of infiltration air coming from sources other than the window bracket could be either higher or lower than the outdoor air temperature, they believe that portable ACs should not derive a *de facto* benefit by being rated at a lower infiltration air temperature achieved via the energy consumption of other air conditioning equipment. (SNOPR Joint Commenters, No. 22 at p. 2)

AHAM and NAM stated that air temperature and humidity vary for different field installations and among different rooms within a home. Therefore, they do not believe there is a representative infiltration air condition under which to test portable ACs with considerations for infiltration air heat transfer. (AHAM, No. 18 at p. 3; NAM, No. 17 at p. 2) Nonetheless, AHAM and De' Longhi stated that, should DOE include provisions in the test procedure to account for infiltration air effects despite their objections, DOE must select a representative test temperature for that infiltration air. (AHAM, No. 18 at p. 1; De' Longhi, No. 25 at p. 1) De' Longhi suggested that DOE's analysis is inconsistent by considering both a national average condition (the 83 °F dry-bulb temperature) and a weighted average of the 83 °F and 95 °F dry-bulb temperature conditions when considering a representative temperature for the infiltration air. (De' Longhi, No. 25 at p. 2)

DOE agrees with AHAM and NAM that, in practice, the infiltration air conditions are variable depending on the specifics of installation, time of use, and other parameters. It is therefore necessary to identify testing conditions that best represent the typical range of parameters without being unduly burdensome to conduct. In specifying an appropriate test condition for the infiltration air, DOE maintains its assertion that infiltration air conditions are best represented by the outdoor air conditions. As discussed in the November 2015 SNOPR, DOE's research indicated that infiltration air flow rates are significant and represent a substantial percentage of the evaporator air flow rates for both single-duct and dual-duct portable ACs. These infiltration air flow rates are primarily due to the net negative pressure within the conditioned space due to portable AC operation. Additionally, certain units may have poor sealing in and around the window-mounting apparatus. The lack of sealing at the mounting point was supported by research conducted for room ACs within similar window installations and observation of portable AC installation equipment supplied by manufacturers. 80 FR 74020, 74025–74026 (Nov. 27, 2015). Thus, available information points to infiltration air predominantly entering the conditioned space directly from outside the window, and DOE maintains that assertion in specifying the infiltration-related test provisions for portable ACs adopted in this final rule with the conditions listed in Table III.3. Additionally, for the reasons discussed in section III.C.2.a of this final rule, DOE establishes that both the 83 °F and 95 °F dry-bulb temperatures and associated wet-bulb temperatures are representative outdoor conditions to include in the test procedure.

DENSO commented that if the effects of infiltration air are considered, they should be included on an annual basis, in which case the infiltration will lead to net cooling during the majority of the year when the infiltration air will be cooler than the temperature of the conditioned space. (DENSO, No. 14 at p. 2) However, as noted previously, DENSO also stated that during the off season, the unit would be unplugged. (DENSO, No. 14 at p. 3)

As discussed previously in section III.C.2 of this final rule, DOE expects that portable ACs operate during the hottest 750 hours of the cooling season based on annual operating hours determined by DOE for its room AC test procedure. DOE does not have information to suggest that the number of cooling season operating hours for portable ACs is significantly different than the average number of operating hours for room ACs, as they provide a similar consumer utility and serve similar applications. However, as suggested by DENSO, DOE expects that portable ACs would be unplugged outside of their operation during the cooling season. Therefore, DOE does not expect infiltration air associated with portable AC operation to occur outside of the cooling season.

To further address DENSO's comment regarding infiltration air and portable AC operation during the year, DOE presents the following field-metered study for portable ACs that suggests typical portable AC operation occurs only during the cooling season. In research conducted by Burke, *et al.,* using field-metered data for a sample of 19 single-duct and dual-duct portable ACs (hereinafter referred to as the Burke Portable AC Study),[10] an annual energy use model was developed which included an estimate of the percentage of time that a typical portable AC spends in cooling mode as a function of the outdoor temperature. The linear equation, based on outdoor dry-bulb temperature in °F for residential sites, is expressed as:

$$\%\ \textit{Time in Cooling Mode} = 0.005 \times \textit{Outdoor Temperature} - 0.2909$$

Based on this equation, a portable AC would, on average, operate in cooling mode approximately four to five times more often when the outdoor temperatures are at the rating conditions of 83 °F and 95 °F (12 percent and 18 percent of the time, respectively) than when outdoor temperatures are 65 °F or lower, which are conditions more likely to be experienced outside of the cooling season. For portable ACs installed in commercial sites, the percentage of time spent in cooling mode is even higher, as indicated by the following linear equation from the Burke Portable AC Study:

$$\%\ \textit{Time in Cooling Mode} = 0.0193 \times \textit{Outdoor Temperature} - 0.9382$$

When outdoor conditions are 83 °F and 95 °F, a portable AC in a commercial location would be expected to spend 66 percent and 90 percent of the time in cooling mode, respectively, versus 32 percent or less when outdoor temperatures are no more than 65 °F.

Therefore, because portable ACs operate a significantly greater percentage of the time in cooling mode

[10] T. Burke, et al., ''Using Field-Metered Data to Quantify Annual Energy Use of Portable Air Conditioners,'' Lawrence Berkeley National Laboratory, Report No. LBNL–6868E-Rev (December 2014). Available at *https://publications.lbl.gov/islandora/object/ir%3A6868E-Rev*.

when outdoor temperatures are those associated with the rating conditions, which are derived from climate data during the cooling season, than when outdoor temperatures are more consistent with time periods outside the cooling season, DOE did not consider year-round operation when evaluating the impacts of infiltration air on portable AC cooling capacity. Furthermore, due to their portability and ease of installation, DOE expects the majority of portable ACs are likely to be installed only during the cooling season rather than year-round, thereby avoiding the infiltration of air cooler than the conditioned space. For these reasons, DOE concludes that the condenser inlet air (outdoor) rating conditions specified for Test Configuration 3 (Conditions A and B) are appropriate temperatures to use in applying the numerical adjustment to account for air infiltration effects.

c. Infiltration Air Calculations

As discussed in section III.C.2.b of this final rule, DOE proposed in the November 2015 SNOPR a numerical adjustment to the cooling capacity measured under ANSI/AHAM PAC–1–2015 using, in part, the heat transfer from infiltration air at the outdoor conditions. In the November 2015 SNOPR, DOE proposed to calculate the sensible and latent heat components of infiltration air using the nominal test chamber and infiltration air conditions, as:

$$Q_s = \dot{m} \times 60 \times [(c_{p_da} \times (T_{ia} _ T_{indoor})) + (c_{p_wv} \times (\omega_{ia} \times T_{ia} _ \omega_{indoor} \times T_{indoor}))]$$

Where:

Q_s is the sensible heat added to the room by infiltration air, in Btu/h;

$\dot{m}$ is the dry air mass flow rate of infiltration air for a single-duct or dual-duct unit, in pounds per minute (lb/m);

c_{p_da} is the specific heat of dry air, 0.24 Btu per pound per degree Fahrenheit (Btu/lb_m-°F).

c_{p_wv} is the specific heat of water vapor, 0.444 Btu/lb_m-°F.

T_{indoor} is the indoor chamber dry-bulb temperature, 80 °F.

T_{ia} is the infiltration air dry-bulb temperature, 95 °F.

ω_{ia} is the humidity ratio of the infiltration air, 0.0141 pounds of water per pounds of dry air (lb_w/lb_{da}).

ω_{indoor} is the humidity ratio of the indoor chamber air, 0.0112 lb_w/lb_{da}.

60 is the conversion factor from minutes to hours.

$$Q_l = \dot{m} \times 60 \times H_{fg} \times (\omega_{ia} _ \omega_{indoor})$$

Where:

Q_l is the latent heat added to the room by infiltration air, in Btu/h.

$\dot{m}$ is the mass flow rate of infiltration air for a single-duct or dual-duct duct unit, in lb/m.

H_{fg} is the latent heat of vaporization for water vapor, 1061 Btu/lb_m.

ω_{ia} is the humidity ratio of the infiltration air, 0.0141 lb_w/lb_{da}.

ω_{indoor} is the humidity ratio of the indoor chamber air, 0.0112 lb_w/lb_{da}.

60 is the conversion factor from minutes to hours.

The sensible and latent heat components of infiltration air are added, and this sum is subtracted from the measured indoor-side cooling capacity to provide a representative measure of net cooling capacity provided to the conditioned space. DOE received no comments on the sensible and latent heat components of infiltration air equations using the nominal test chamber and infiltration air conditions, and maintains these equations in this final rule.

3. Seasonally Adjusted Cooling Capacity

In the November 2015 SNOPR, DOE proposed to apply weighting factors of 20 percent and 80 percent to the adjusted capacities from the two proposed conditions of 95 °F and 83 °F, respectively. These weighting factors were developed using an analytical approach based upon 2012 hourly climate data from the National Climatic Data Center (NCDC) of the National Oceanic and Atmospheric Administration (NOAA), collected at weather stations in 44 representative states, and data from the 2009 edition of the *Residential Energy Consumption Survey* (*RECS*),[11] and estimating the percentage of portable AC operating hours that would be associated with each rating condition. DOE allocated the number of annual hours with temperatures that ranged from 80 °F (the indoor test condition) to 89 °F (a temperature mid-way between the two rating conditions) to the 83 °F rating condition. Similarly, the hours in which the ambient temperature was greater than 89 °F were assigned to the 95 °F rating condition. DOE then performed a geographical weighted averaging using data from *RECS* to determine weighting factors of 19.7 percent and 80.3 percent, respectively, for the 95 °F and 83 °F rating conditions. DOE proposed in the November 2015 SNOPR to apply rounded weighting factors of 20 percent and 80 percent to the results of its testing at 95 °F and 83 °F, respectively. The calculation for this ''seasonally adjusted cooling capacity'' (SACC), based on the cooling capacities measured at each rating condition and adjusted for the effect of infiltration air and duct heat transfer (the ''adjusted cooling capacity'' (ACC)), was proposed in the November 2015 SNOPR according to the following equation.

$$SACC = (ACC_{95} \times 0.2) + (ACC_{83} \times 0.8)$$

Where:

SACC is the seasonally adjusted cooling capacity, in Btu/h.

ACC_{95} and ACC_{83} are the adjusted cooling capacities calculated at the 95 °F and 83 °F dry-bulb outdoor conditions, in Btu/h, respectively.

0.2 is the weighting factor for ACC_{95}.

0.8 is the weighting factor for ACC_{83}.

The California IOUs stated that the proposed weighting for these test conditions implies that portable ACs are four times more likely to be used when outdoor conditions are 83 °F versus 95 °F, the reverse of what they claim is expected. The California IOUs and SNOPR Joint Commenters expect consumers to primarily operate portable ACs during the hottest times, and stated that the test procedure should only measure performance at 95 °F without the weighting proposed in the November 2015 SNOPR. The California IOUs expressed concern that the 83 °F rating condition is not representative of actual use, and therefore objected to the 80-percent weighting of the results at that test condition in the calculations of SACC and CEER as proposed in the November 2015 SNOPR. The California IOUs urged DOE to base the portable AC test procedure and performance metrics on the single outdoor temperature of 95 °F. (California IOUs, No. 24 at p. 2; SNOPR Joint Commenters, No. 22 at p. 1)

AHAM and De' Longhi disagreed with DOE's approach to assign a temperature greater than 89 °F to the 95 °F rating condition. They noted that Table 16 of the ANSI/Air-Conditioning, Heating, and Refrigeration Institute (AHRI) Standard 210/240, ''Performance Rating of Unitary Air-Conditioning and Air-Source Heat Pump Equipment'' (ANSI/AHRI Standard 210/240), provides the distribution of fractional hours within a cooling season, and shows that temperatures greater than 95 °F account for only about 2 percent of the cooling season. Because these data are more granular than *RECS* data, AHAM and De' Longhi suggested that DOE apply weighting factors of 98 percent to the 83 °F condition and 2 percent to the 95 °F condition in the SACC and CEER equations, which De' Longhi noted would still correspond to a weighted-average temperature higher than DOE's estimated national-average dry-bulb temperature of 83 °F. (AHAM, No. 23 at pp. 3–4; De' Longhi, No. 25 at p. 2)

For the reasons discussed in section III.C.2.a of this rulemaking, DOE has

[11] *RECS* data are available online at *http://www.eia.gov/consumption/residential/data/2009/* ''*www.eia.gov/consumption/residential/data/2009/*.

concluded based on research of typical ambient temperature conditions, expected geographical distribution, and annual usage of portable ACs that the 83 °F and 95 °F outdoor rating conditions are representative rating conditions. DOE notes that the analysis presented in the November 2015 SNOPR utilizes *RECS* data to determine the geographical distribution of the number of hours at the two test conditions within the cooling season. Although ANSI/AHRI Standard 210/240 provides a fractional distribution of hours in the cooling season, that single distribution is not necessarily appropriate for states in which *RECS* data suggest portable ACs are typically used. Furthermore, DOE believes it is appropriate to assign all hours at temperatures above 89 °F to the 95 °F test condition as the measured performance of the equipment varies incrementally between 83 °F and 95 °F and the performance measured at the 95 °F test condition is more representative of equipment performance for temperatures between 89 °F and 95 °F (*e.g.,* 90 °F) than the measured performance at the 83 °F rating condition. Because the threshold temperature of 89 °F evenly divides the temperature range that DOE apportions between the two rating conditions, DOE maintains that the weighting values proposed in the November 2015 SNOPR, based on the climate analysis and *RECS* data for geographical weighting of the distribution of temperature hours within the cooling season, are representative of the SACC during typical periods of operation. Therefore, DOE is adopting, in this final rule, weights of 80 percent and 20 percent for the ACCs determined based on the 83 °F and 95 °F rating conditions, respectively, as proposed in the November 2015 SNOPR.

4. Test Duration

In the November 2015 SNOPR, DOE noted that ANSI/AHAM PAC–1–2015 specifies testing in accordance with certain sections of ANSI/ASHRAE Standard 37–2009, but does not explicitly specify the test duration required when conducting portable AC active mode testing. DOE therefore proposed that the active mode test duration be determined in accordance with Section 8.7 of ANSI/ASHRAE Standard 37–2009.[12] 80 FR 74020, 74027 (Nov. 27, 2015).

AHAM agreed with the proposal to aid in standardizing the test procedure and reducing variation in the results. In addition to Section 8.7 of ANSI/ASHRAE Standard 37–2009, AHAM suggested including Section 7.1.2 from ANSI/AHAM PAC–1–2015 that clarifies the test period adjustments necessary for portable ACs with a condensate pump. AHAM believes that referencing these sections will maximize accuracy, repeatability, and reproducibility of a DOE portable AC test procedure. (AHAM, No. 23 at pp. 4–5) In response to AHAM's suggestion, DOE notes that section 3.1.1.3 of the DOE test procedure proposed in the November 2015 SNOPR provides direction on conducting the test for units with different condensate collection and removal capabilities. In that section, DOE prescribed specific test requirements for units tested with condensate pumps and stated that section 7.1.2 of ANSI/AHAM PAC–1–2015 should be used for units tested with a condensate pump that do not have an auto-evaporative feature or gravity drain and for which the manufacturer has not specified the use of an included condensate pump during cooling mode operation. These test provisions are discussed in more detail in section III.C.8 of this final rule.

In this final rule, DOE adopts the November 2015 SNOPR proposals regarding the active mode test duration period.

5. Duct Heat Transfer and Leakage

a. Duct Heat Transfer Impacts

In the February 2015 NOPR, DOE presented its determination that duct heat losses and air leakage are non-negligible effects, and proposed to account for heat transferred from the duct surface to the conditioned space in the portable AC test procedure. DOE proposed that four equally spaced thermocouples be adhered to the side of the length of the condenser exhaust duct for single-duct units and the condenser inlet and exhaust ducts for dual-duct units. DOE proposed to determine the duct heat transfer for each duct from the average duct surface temperature as measured by the four thermocouples, a convection heat transfer coefficient of 4 Btu/h per square foot per °F (Btu/h-ft^2-°F), and the calculated duct surface area based on the test setup. 80 FR 10211, 10227 (Feb. 25, 2015).

In the November 2015 SNOPR, DOE found that the exhaust and intake duct surface heat transfer impacts were sufficiently significant to warrant the added test burdens associated with measuring and incorporating duct heat transfer impacts into the overall seasonally adjusted cooling capacity. 80 FR 74020, 74028 (Nov. 27, 2015).

AHAM and the SNOPR Joint Commenters agreed with DOE's proposal that duct heat transfer and losses need to be addressed as the duct heat transfer impacts are substantial and vary significantly among units. The SNOPR Joint Commenters supported incorporating duct heat transfer impacts in the test procedure to better reflect actual cooling capacity and efficiency of portable ACs and to encourage manufacturers to reduce duct heat transfer. (AHAM, No. 23 at p. 5; SNOPR Joint Commenters, No. 22 at p. 6)

In this final rule, DOE adopts the proposal in the November 2015 SNOPR and establishes that the duct heat transfer impacts be measured and incorporated into the overall SACC.

b. Convection Coefficient

In the November 2015 SNOPR, DOE maintained the overall heat transfer convection coefficient of 4 Btu/h-ft^2-°F for calculating duct heat losses originally proposed in the February 2015 NOPR. DOE explained that the *2013 ASHRAE Handbook—Fundamentals*[13] (hereinafter the *ASHRAE Handbook*) provides typical convection coefficient values for various types of assemblies in buildings. The proposed convection coefficient of 4 Btu/h-ft^2-°F was based on typical free convection coefficients, ranging from 0.22 to 1.63 Btu/h-ft^2-°F, and typical forced convection coefficients, between 4.00 and 6.00 Btu/h-ft^2-°F, depending upon the air speed. DOE determined that the air speeds discussed in the *ASHRAE Handbook* would be similar to the air speeds over the portable AC duct(s) due to air circulation within the conditioned space.

In support of the November 2015 SNOPR, DOE re-examined the data it obtained from testing a sample of four single-duct and two dual-duct portable ACs for the May 2014 NODA to determine the duct heat transfer convection coefficient for each unit. The calculated heat transfer convection coefficients based on DOE's testing ranged from 1.70 Btu/h-ft^2-°F to a high of 5.26 Btu/h-ft^2-°F, with an average of 3.13 Btu/h-ft^2-°F. In the November 2015 SNOPR, DOE noted that, although the average heat transfer coefficient calculated from DOE's test results was

[12] Section 8.7 of ANSI/ASHRAE Standard 37–2009 requires a steady-state period during which performance is consistent with the test tolerances specified in Table 2 of ANSI/ASHRAE Standard 37–2009 before cooling capacity test data are recorded. Data used in evaluating cooling capacity is then recorded at equal intervals that span five minutes or less until readings over a period of one-half hour are within the tolerances prescribed in section 9.2 of ANSI/ASHRAE Standard 37–2009.

[13] *ASHRAE Handbook—Fundamentals. American Society of Heating, Refrigerating, and Air-Conditioning Engineers,* Atlanta, GA. 2013.

slightly lower than the value proposed in the February 2015 NOPR, the proposed value of 4 Btu/h-ft²-°F was within the range of values measured during DOE's testing and was appropriate based on the lower end of the range of typical convection coefficients in the *ASHRAE Handbook.* In the November 2015 SNOPR, DOE also noted the significant variation in individual results due to different duct types, installation configurations, forced convection air flow patterns, and other factors; therefore, it is possible that DOE's test results do not represent the full range of possible heat loss coefficient values. DOE believed that the measured duct losses reported in the November 2015 SNOPR confirmed that the original value proposed in the February 2015 NOPR was sufficiently representative of typical duct losses and proposed to maintain the original duct heat transfer proposal from the February 2015 NOPR, including the convection heat transfer coefficient of 4 Btu/h-ft²-°F. 80 FR 74020, 74029 (Nov. 27, 2015).

AHAM and De' Longhi stated that the average measured convection heat transfer coefficient in Table III.4 of the November 2015 SNOPR was 3.13 Btu/h-ft²-°F, which according to AHAM was based on values of the heat transfer coefficient ranging from a low of 2.11 Btu/h-ft²-°F to a high of 4.10 Btu/h-ft²-°F. AHAM asserted that the test data did not validate the value proposed in the February 2015 NOPR and therefore, AHAM suggested that, unless additional data supported a different value for the heat transfer coefficient, DOE adopt a rounded average value of 3 Btu/h-ft²-°F. De' Longhi similarly recommended that DOE use a value of 3 Btu/h-ft²-°F for the duct convection heat transfer coefficient. (AHAM, No. 23 at p. 5; De' Longhi, No. 25 at p. 2)

DOE notes that the value for the convection heat transfer coefficient proposed in the November 2015 SNOPR was based on standard industry handbook values under reasonably representative air flow conditions and was generally confirmed based on consideration of test data from DOE's sample of portable ACs. However, following additional consideration, DOE recognizes that the typical industry handbook convection coefficient values may not represent the variation of test conditions and range of convection coefficients applicable to portable AC ducts. As noted above, for both single-duct and dual-duct portable ACs in DOE's test sample, the duct heat transfer coefficients ranged from 1.70 to 5.26 Btu/h-ft²-°F, as listed in Table III.4 of the November 2015 SNOPR, with an average value of approximately 3.1 Btu/h-ft²-°F. 80 FR 74020, 74029 (Nov. 27, 2015).

After considering the AHAM and De' Longhi comments and reviewing the test data presented in the November 2015 SNOPR, DOE has concluded that its test data provide the best indication of the appropriate convection heat transfer coefficient for portable AC ducts. Therefore, DOE concludes that the most representative value of the convection heat transfer coefficient would be a rounded average of its measured values, and in this final rule establishes the convection heat transfer coefficient as 3 Btu/h-ft²-°F.

c. Duct Surface Area Measurements

In the February 2015 NOPR, DOE proposed that the duct surface area be calculated using the outer duct diameter and extended length of the duct while under test. 80 FR 10211, 10227 (Feb. 25, 2015). In response to comments suggesting that the ducts have corrugated surfaces and there is likely a high uncertainty in measuring the duct surface area, DOE reassessed the duct surface area calculations and concluded in the November 2015 SNOPR that any uncertainty or variability in duct surface area measurements would not have a significant impact on test repeatability and reproducibility and maintained the surface area measurement as proposed in the February 2015 NOPR. 80 FR 74020, 74029 (Nov. 27, 2015).

DOE received no comments regarding uncertainty of duct surface area measurements in response to the November 2015 SNOPR proposals, and therefore maintains and establishes in this final rule that the duct surface area be calculated using the measured outer duct diameter and extended length of the duct while under test. However, DOE clarifies in the calculation of the duct surface area that the outer diameter of the duct includes any manufacturer-supplied insulation. See section III.C.7 of this final rule for further discussion regarding setup and installations instructions for such insulation.

6. Case Heat Transfer

In the February 2015 NOPR, DOE proposed that case heat transfer be determined using a method similar to the approach proposed for duct heat transfer. DOE proposed that the surface area and average temperature of each side of the case be measured to determine the overall heat transferred from the portable AC case to the conditioned space, which would be used to adjust the cooling capacity and efficiency. DOE noted that the case heat transfer methodology would impose additional test burden, but determined that the burdens were likely outweighed by the benefit of addressing the heat transfer effects of all internal heating components. 80 FR 10211, 10227–10229 (Feb. 25, 2015).

In the November 2015 SNOPR, DOE investigated the effects of case heat transfer as a percentage of the overall cooling capacity and determined, based on test data, that the case heat transfer was, on average, 1.76 percent of the AHAM PAC–1–2009 cooling capacity, with a maximum of 6.53 percent. Because the total case heat transfer impact was, on average, less than 2 percent of the cooling capacity without adjustments for infiltration air and heat transfer effects, DOE determined it had minimal impact on the cooling capacity and therefore proposed to remove the provisions for determining case heat transfer from the portable AC test procedure proposed in the February 2015 NOPR. 80 FR 74020, 74030 (Nov. 27, 2015).

AHAM supported DOE's proposal to remove consideration of case heat transfer from the test procedure due to the minimal impact on cooling capacity. (AHAM, No. 23 at p. 5)

The SNOPR Joint Commenters noted that despite the relatively low average impact of case heat transfer on the AHAM PAC–1–2009 cooling capacity, the impact ranged from 0 percent to 6.5 percent. The SNOPR Joint Commenters also noted that the ''Modified AHAM'' cooling capacity reported in the February 2015 NOPR, which accounted for air infiltration, case, and duct heat transfer, is significantly lower than the AHAM PAC–1–2009 cooling capacity. Therefore, the impact of case heat transfer as a percentage of adjusted cooling capacity as measured by the DOE test procedure proposed in the February 2015 NOPR, which accounts for air infiltration and other heat transfer effects, would be larger than the impact as a percentage of the AHAM PAC–1–2009 cooling capacity. Accordingly, the SNOPR Joint Commenters urged DOE to retain the measurement of case heat transfer in the portable AC test procedure. (SNOPR Joint Commenters, No. 22 at pp. 2–3) DOE notes that the ''Modified AHAM'' values presented in the February 2015 NOPR are only reflective of performance and infiltration air at the 95 °F test condition. DOE subsequently conducted additional analysis to determine the overall impact of case heat transfer on the SACC as determined based on the two test conditions proposed in the November 2015 SNOPR and adopted in this final rule (see section III.C.2 of this final rule). DOE found that the overall impact of case heat transfer on the

SACC, which includes adjustments for infiltration air and duct heat transfer at the two test conditions, ranged from 0 percent to 9.1 percent with an average impact of 2.12 percent. DOE maintains, therefore, that the case heat transfer typically would have a minimal impact on SACC, and that any slight improvement in the accuracy of the SACC metric by including it would not warrant the added burden associated with the case heat transfer measurements. DOE also observed that the range of case heat transfer impacts varied despite products in the test sample including similar amounts of case insulation and similar case designs. DOE expects that thermocouple placement in relation to internal components (*e.g.,* compressor and condenser placement) may introduce variability in the case heat transfer results. For these reasons, DOE is not including a measurement of case heat transfer in the portable AC test procedure established in this final rule.

The California IOUs opposed elimination of the case heat transfer measurement because they believe manufacturers may produce leakier, less-insulated cases in order to reduce the duct heat transfer, which is measured in the test procedure and impacts performance. They urged DOE to require measurement of the case surface temperature in the portable AC test procedure to incentivize manufacturers to design units with better-insulated cases. The California IOUS further noted that the heating effects of the case and duct are inter-dependent. (California IOUs, No. 24 at p. 4) DOE recognizes that case and duct heat transfer are related and that manufacturers are able to make design tradeoffs between duct heat transfer and localized heat transfer through the case. However, DOE notes that the units in DOE's test sample had similar case insulation, and does not expect manufacturers to significantly adjust construction of their products because greater leakage and reduced insulation would also increase noise and case surface temperatures, potentially reducing customer satisfaction.

7. Test Setup and Unit Placement

In the February 2015 NOPR, DOE proposed that for all portable AC configurations, there must be no less than 6 feet between the evaporator inlet and any chamber wall surface, and for single-duct units, there must be no less than 6 feet between the condenser inlet surface and any other wall surface. Additionally, DOE proposed that there be no less than 3 feet between the other surfaces of the portable AC with no air inlet or exhaust (other than the bottom of the unit) and any wall surfaces. 80 FR 10211, 10229–10230 (Feb. 25, 2015). In the November 2015 SNOPR, DOE modified that proposal, and further clarified that there shall be no less than 3 feet between any test chamber wall and any surface on the portable AC (other than the bottom surface), except the surface or surfaces that have a duct attachment, as prescribed by the ANSI/AHAM PAC–1–2015 test setup requirements. 80 FR 74020, 74030 (Nov. 27, 2015).

AHAM agreed with DOE's proposal that the test unit and all ducting components, as supplied by the manufacturer, be set up and installed in accordance with manufacturer instructions. AHAM stated, however, that certain sections of ANSI/AHAM PAC–1–2015 include appropriate requirements for unit placement in the test chamber and suggested that DOE change the unit placement requirements to reference the setup requirements in ANSI/AHAM PAC–1–2015. (AHAM, No. 23 at p. 6; AHAM, No. 18 at pp. 5–6) As discussed in the February 2015 NOPR and the November 2015 SNOPR, although Section 7.3.7, ''Condenser (heat rejection) arrangement,'' of ANSI/AHAM PAC–1–2015 includes test unit placement instructions in reference to the surface of the portable AC that includes the duct attachments, by means of specifying the distance from the test unit to the test chamber partition wall, it does not provide placement instructions in relation to the other surfaces of the test unit. Therefore, in this final rule, DOE maintains the proposals from the November 2015 SNOPR that the test unit placement be such that there is no less than 3 feet between any test chamber wall and any surface on the portable AC (other than the bottom surface), except that placement of the surface or surfaces that have a duct attachment shall be as prescribed by Section 7.3.7 of ANSI/AHAM PAC–1–2015. DOE notes that this specification is consistent with the requirements of ANSI/AHAM PAC–1–2015 and serves only to add specificity to the placement of the unit with respect to the other surfaces that do not have a duct attachment, which is not specified by ANSI/AHAM PAC–1–2015.

AHAM commented that DOE's duct setup and duct temperature measurement instructions do not account for any sealing or insulation materials that may be provided by the manufacturer. Therefore, AHAM suggested language to add in the installation instructions proposed in the November 2015 SNOPR that would address sealing and insulation materials in the duct setup and duct temperature measurement instructions. DOE's proposed duct setup and temperature measurement requirements presented in the November 2015 SNOPR with AHAM's suggested additions to the proposed text, denoted in bold text, are:

3.1.1.1 Duct Setup. Use ducting components provided by the manufacturer, including, where provided by the manufacturer, **sealing, insulation,** ducts, connectors for attaching the duct(s) to the test unit, and window mounting fixtures. Do not apply additional sealing or insulation.

3.1.1.6 Duct temperature measurements. Measure the surface temperatures of each duct using four equally spaced thermocouples per duct, adhered to the outer surface of the entire length of the duct. Temperature measurements must have an error no greater than ±0.5 °F over the range being measured. **Insulation and sealing provided by the manufacturer must be installed prior to measurement.** (AHAM, No. 23 at p. 6)

De' Longhi suggested similar modifications to the installation instructions proposed in the November 2015 SNOPR to address manufacturer-provided sealing and insulation materials in the duct setup and duct temperature measurement instructions. (De' Longhi, No. 25 at p. 2)

DOE agrees that any duct insulation or mounting sealant provided by the manufacturer should be installed according to manufacturer instructions, and that duct temperature measurements should be made with any such insulation or sealant in place. However, DOE believes it is necessary to clarify in the specification of duct temperature measurements that the measurements should occur on the outer surface of the entire duct, which would be the outer surface of the insulation, if provided by the manufacturer. DOE therefore establishes the following modified duct setup and duct temperature measurement instructions in this final rule, clarifying AHAM's and De' Longhi's suggested language for the duct temperature measurements.

3.1.1.1 Duct Setup. Use ducting components provided by the manufacturer, including, where provided by the manufacturer, ducts, connectors for attaching the duct(s) to the test unit, sealing, insulation, and window mounting fixtures. Do not apply additional sealing or insulation.

3.1.1.6 Duct temperature measurements. Install any insulation and sealing provided by the manufacturer. Then adhere four equally spaced thermocouples per duct to the

outer surface of the entire length of the duct. Measure the surface temperatures of each duct. Temperature measurements must have an error no greater than ±0.5 °F over the range being measured.

8. Condensate Collection

In the February 2015 NOPR, DOE proposed that portable ACs undergoing cooling mode testing would be configured in accordance with manufacturer installation and setup instructions unless otherwise specified in the DOE test procedure. In addition, DOE proposed that, where available and as instructed by the manufacturer, the auto-evaporation feature would be utilized for condensate removal during cooling mode testing. DOE proposed that, if no auto-evaporative feature is available, the gravity drain would be used. DOE further proposed that, if no auto-evaporative feature or gravity drain is available, and a condensate pump is included, or if the manufacturer specifies the use of an included condensate pump during cooling mode operation, then the portable AC would be tested with the condensate pump enabled. For these units, DOE also proposed to require the use of Section 7.1.2 of AHAM PAC–1–2014 if the pump cycles on and off. 80 FR 10211, 10229 (Feb. 25, 2015).

AHAM agreed that, for portable ACs both with and without means for auto-evaporation to remove the collected condensate, an internal pump to collect condensate should be used only if it is specified by the manufacturer for use during typical cooling operation. (AHAM, No. 18 at p. 6) DENSO agreed that the test procedure should specify the form of condensate disposal recommended by the manufacturer. (DENSO, No. 14 at p. 2) Therefore, DOE adopts in this final rule the test setup instructions relating directly to condensate collection proposed in the February 2015 NOPR.

9. Control Settings

In the February 2015 NOPR, DOE proposed that when conducting the cooling mode and heating mode tests (the latter of which was removed from consideration in the November 2015 SNOPR), the fan be set at the maximum speed if the fan speed is user adjustable and the temperature controls be set to the lowest or highest available values, respectively. These control settings represent the settings a consumer would select to achieve the primary function of the portable AC, which is to cool or heat the desired space as quickly as possible and then to maintain these conditions. 80 FR 10211, 10229 (Feb. 25, 2015).

AHAM and DENSO agreed with DOE's proposed control settings for fan speed and cooling and heating mode temperature controls. (AHAM, No. 18 at p. 6; DENSO, No. 14 at pp. 2–3) DOE maintains the February 2015 NOPR proposal in this final rule to set the fan speed to the maximum speed and the thermostat to the lowest setting during cooling mode testing. As noted earlier in this section and discussed in more detail in section III.D of this final rule, in the November 2015 SNOPR, DOE removed heating mode testing from its proposal; and, therefore, the February 2015 NOPR proposal regarding configuration of controls during heating mode is no longer relevant.

In the February 2015 NOPR, DOE proposed that all portable AC testing be conducted with any louver oscillation feature disabled and the louvers fully open and positioned parallel to the air flow to provide maximum air flow and capacity. If the louvers oscillate by default with no option to disable the feature, testing would proceed with the louver oscillation enabled, without altering the unit construction or programming. 80 FR 10211, 10229 (Feb. 25, 2015).

AHAM and DENSO agreed with DOE's proposed clarification that all portable AC performance testing be conducted with the maximum louver opening and, where applicable, with the louver oscillation feature disabled throughout testing. (AHAM, No. 18 at p. 6; DENSO, No. 14 at pp. 2–3) DOE adopts in this final rule the proposals in the February 2015 NOPR regarding the louver positioning and oscillating feature settings.

10. Electrical Supply

In the February 2015 NOPR, DOE proposed that for active mode testing, the input standard voltage be maintained at 115 V ±1 percent and that the electrical supply be set to the nameplate listed rated frequency, maintained within ±1 percent. 80 FR 10211, 10230 (Feb. 25, 2015).

AHAM supported DOE's proposed input voltage and frequency standard. (AHAM, No. 18 at p. 7) DOE adopts in this final rule the February 2015 NOPR proposals regarding the input standard voltage and frequency settings.

11. Power Factor

The California IOUs recommended that DOE require testing and reporting of portable AC power factor [14] under the proposed test procedure, as this would allow DOE to better assess minimum power factor requirements and related consumer benefits in a future rulemaking. The California IOUs believe that improving power factor may yield significant societal benefits through cost savings for electric utility customers, improved grid efficiency, and reduced greenhouse gases. The California IOUs noted that the CEC currently requires reporting of power factor for a variety of appliances including fluorescent lamp ballasts, residential portable light-emitting diode (LED) luminaires, televisions, and large battery charger systems, and specifies minimum power factor requirements for portable LED luminaires and large battery charger systems. (California IOUs, Standards Preliminary Analysis, No. 15 at p. 4; California IOUs, No. 20 at pt. 2)

Based on limited power factor data on four test units, DOE observed average power factors of 0.978, 0.971, 0.987, and 0.95 with all cooling mode components operating. Because the power factors are consistently near 1, DOE's information suggests there is no significant difference between the power drawn by a portable AC and the apparent power supplied to the unit. DOE expects that the metrics established in this final rule accurately reflect the energy consumption of portable ACs, and that the burdens of measuring and reporting power factor would outweigh any potential benefits of this information. Therefore, DOE is not establishing requirements for measuring and reporting power factor in this final rule.

12. Test Condition Tolerances

In the February 2015 NOPR, DOE proposed a more stringent tolerance for the evaporator inlet dry-bulb temperature when testing single-duct portable ACs compared to the tolerance specified for dry-bulb temperature in Table 2b of ANSI/ASHRAE Standard 37–2009. The proposed tolerance is consistent with the evaporator inlet wet-bulb temperature tolerance; *i.e.,* individual values must remain within a range of 1.0 °F, with the average of all measured values within 0.3 °F of the nominal value. Specifically, DOE proposed that the condenser inlet dry-bulb temperature would be maintained within the test tolerance as specified in Table 2b of ANSI/ASHRAE Standard 37–2009. This tolerance modification ensured that all test laboratories first maintain the evaporator inlet test

[14] The power factor of an alternating current electrical power system is defined as the ratio of the real power flowing to the load to the apparent power in the circuit. A load with a low power factor draws more electrical current than a load with a high power factor for the same amount of useful power transferred. The higher currents associated with low power factor increase the amount of energy lost in the electricity distribution system.

conditions and then ensure that condenser inlet conditions satisfy the tolerance requirements. 80 FR 10211, 10226 (Feb. 25, 2015).

AHAM agreed with DOE's proposed tolerance for the evaporator inlet dry-bulb within a range of 1.0 °F with an average difference of 0.3 °F. (AHAM, No. 18 at p. 5) Therefore, in this final rule, DOE adopts this tolerance specification in appendix CC.

D. Heating Mode

In the February 2015 NOPR, DOE proposed a definition for heating mode and proposed a heating mode test procedure that was based on AHAM PAC–1–2014 with comparable adjustments as were considered for cooling mode, except at lower temperature ambient conditions. 80 FR 10211, 10230–10231 (Feb. 25, 2015). DOE received comments in response to the February 2015 NOPR proposals, and, based on those comments, in the November 2015 SNOPR, DOE removed the heating mode test provisions from the proposed DOE portable AC test procedure, including the definition of heating mode and calculations for heating mode-specific and total combined energy efficiency ratio. DOE concluded that the combined energy efficiency ratio, CEER, which represents energy efficiency in cooling mode, off-cycle mode, standby mode, and off mode, would capture representative performance of portable ACs because they are primarily used as cooling products. 80 FR 74020, 74031 (Nov. 27, 2015).

AHAM supported DOE's proposal to remove the heating mode metric from the test procedure, as it is consistent with AHAM's position that heating is not the main consumer utility and that there is no adequate data on consumer usage to demonstrate a benefit that would justify the burden of testing in this mode. (AHAM, No. 23 at pp. 5–6)

The California IOUs commented that heating mode is a significant operating mode for portable ACs and should be included in the test procedure in order to accurately reflect the actual usage of the equipment. The California IOUs noted that heating mode may work in conjunction with cooling mode, as seen in products with an ''auto mode'' that automatically selects heating or cooling mode using a thermostat to maintain the set temperature. They further noted that DOE's annual operating hour estimates for heating mode suggested that the heating season is longer than the cooling season and would therefore provide more opportunity for heating mode operation. The California IOUs concluded that cooling and heating functions are both primary modes, unlike dehumidification mode and others omitted from the test procedure. The California IOUs believe that including heating mode testing would not disproportionately increase test burden. The California IOUs proposed that DOE define a separate efficiency ratio, $CEER_{HM}$, similar to the cooling mode metric proposed in the February 2015 NOPR, $CEER_{CM}$, and that units with a heating mode would then be rated with a separate metric for heating capacity. The California IOUs believe that this would mitigate potential confusion with a blended metric and consumers would be effectively informed of independent performance in cooling and heating modes. (California IOUs, No. 24 at p. 3)

DOE notes that although some portable ACs offer an ''auto mode'' that allows for both cooling and heating mode operation depending upon the ambient temperature, available data suggest that portable ACs are not used for heating purposes for a substantial amount of time. In the Burke Portable AC Study, the 19 metered test units were determined to operate solely in cooling mode, fan mode, or off/standby mode, even for an example test site where monthly average outdoor temperatures ranged from 59.8 °F to 71.5 °F. Input from manufacturers during confidential interviews confirmed the conclusion that any heating function for portable ACs is infrequently used, and no further substantiation was provided by the California IOUs to support their assertion that heating mode is a significant operating mode. DOE concludes that doubling the active mode testing time and correspondingly increasing test burden is not justified. Therefore, DOE maintains the November 2015 SNOPR proposal and does not establish a heating mode test or efficiency metric in this final rule. As stated in the November 2015 SNOPR, DOE will continue to evaluate the need for a representative heating mode test procedure for portable ACs and may consider including a test for heating mode in a future test procedure rulemaking.

E. Air Circulation Mode

In the February 2015 NOPR, DOE proposed to not measure energy consumption in, or allocate annual operating hours to, air circulation mode due to lack of usage information for this consumer-initiated air circulation feature. 80 FR 10211, 10216, 10236 (Feb. 25, 2015).

AHAM and DENSO agreed with DOE's proposal to not include a measurement for air circulation mode. (AHAM, Public Meeting Transcript, No. 13 at p. 64; DENSO, No. 14 at p. 3)

DOE adopts in this final rule the February 2015 NOPR proposals to not measure or allocate annual operating hours to air circulation mode.

F. Off-Cycle Mode

In the February 2015 NOPR, DOE proposed a definition for off-cycle mode and further proposed that off-cycle mode energy use be measured according to a test beginning 5 minutes after the completion of the cooling mode test and ending after a period of 2 hours. DOE also proposed that the electrical supply be the same as specified for cooling mode (see section III.C.10 of this final rule) and that this measurement be made using the same power meter specified for standby mode and off mode. DOE further proposed that for units with adjustable fan speed settings, the fan remain set at the maximum speed during off-cycle mode testing. 80 FR 10211, 10232 (Feb. 25, 2015).

AHAM opposed the proposed measurement of off-cycle mode energy use, suggesting that DOE did not provide sufficient portable AC-specific usage data to support the inclusion of off-cycle mode and estimate the burden associated with testing. Specifically, AHAM expressed concern that DOE based the proposed definition and testing provisions for portable ACs on a recent dehumidifier test procedure rulemaking because the two products do not have the same consumer usage. AHAM suggested that portable ACs have fewer standby operating hours than dehumidifiers and that off-cycle mode will contribute a negligible amount of energy use. (AHAM, No. 18 at p. 8)

Because portable ACs have a similar off-cycle mode to dehumidifiers, DOE used the dehumidifier test procedure as a starting point for the development of the portable AC definitions and test procedure. DOE notes that for dehumidifiers and portable ACs, off-cycle mode is a mode automatically entered when the dehumidifier humidity setpoint or portable AC temperature setpoint is reached. Therefore, although the consumer usage of these products affects the time spent in off-cycle mode by means of the humidity or temperature setpoint selection, off-cycle mode hours are also a function of the unit capacity, room size, and ambient heat or humidity load. Therefore, there is no basis for concluding that the dehumidifier provisions for testing off-cycle mode are any less applicable to portable ACs than they are for dehumidifiers. Further,

because off-cycle mode is performed immediately following active mode, there are no necessary test setup adjustments and the only burden associated with off-cycle mode is test time, during which no technician input is necessary. Therefore, DOE believes the incremental test burden associated with testing off-cycle mode energy consumption is low. DOE discusses the burden associated with the adopted portable AC test procedure in detail in section IV.B of this final rule.

DENSO noted that other similar products, such as room ACs, generally operate the fans only when the compressor operates, possibly with a short delay-off at the end of the compressor cycle. In addition, DENSO commented that it does not believe that the fan would be operating at the maximum speed unless the compressor is running. DENSO commented, therefore, that off-cycle mode testing should be conducted under representative operating conditions, and that the fan control setting should be in accordance with manufacturer's instructions. (DENSO, No. 14 at p. 3)

In development of the portable AC test procedure, DOE reviewed other test procedures for similar products. With respect to DENSO's comment, DOE recognizes that there may be benefits associated with running the fan for a short period of time following a compressor cycle, such as for defrosting and drying coils and providing additional cooling to the room, and therefore maintains the provisions in this final rule which specify that the off-cycle mode test procedure begin 5 minutes following the end of a compressor on cycle. Because consumers are unlikely to readjust control settings, including fan speed, between cooling mode and off-cycle mode and manufacturers may automatically adjust fan speed during off-cycle mode regardless of the user control settings, DOE is specifying that no control settings other than temperature setpoint are to be manually changed between cooling mode testing and the subsequent off-cycle mode testing in the appendix CC established in this final rule.

G. Standby Mode and Off Mode

1. Mode Definitions

In the February 2015 NOPR, DOE proposed definitions for standby mode and off mode, as well as methods to measure standby mode and off mode energy consumption for portable ACs. DOE also proposed to consider the power consumption in inactive mode, defined as a standby mode, as representative of delay-start mode and to include the operating hours for delay-start mode in the estimate for inactive mode operating hours for the purposes of calculating a combined metric. Further detail on each of these modes and the proposal to include the delay-start mode hours in the estimate for inactive mode operating hours can be found in the February 2015 NOPR. 80 FR 10211, 10233 (Feb. 25, 2015).

AHAM agreed with DOE's proposed definitions of standby mode and also agreed with DOE's proposal to incorporate delay start into inactive mode. (AHAM, No. 18 at p. 9)

In this final rule, DOE establishes in appendix CC the standby mode, inactive mode, and off mode definitions proposed in the February 2015 NOPR, and also maintains the determination that the power consumption in inactive mode is representative of delay-start mode and thus does not require measurement of delay-start mode power consumption.

2. Determination of Standby Mode and Off Mode Power Consumption

In the February 2015 NOPR, DOE proposed to specify testing and conditions for measuring standby mode and off power consumption according to International Electrotechnical Commission (IEC) Standard 62301, ''Household electrical appliances—Measurement of standby power,'' Publication 62301, Edition 2.0 (2011–01) (hereinafter referred to as ''IEC Standard 62301'') in accordance with EPCA. DOE proposed that the power consumption in inactive mode be measured, and that the annual hours assigned to that power measurement would be the sum of annual hours for inactive mode and bucket-full mode,[15] based on a determination of commonality in power consumption in inactive and bucket-full modes. DOE additionally proposed that the test room ambient air temperatures for standby mode and off mode testing would be specified in accordance with IEC Standard 62301. 80 FR 10211, 10233–10234 (Feb. 25, 2015).

AHAM agreed with each of these proposals. (AHAM, No. 18 at p. 9) In this final rule, DOE establishes the February 2015 NOPR proposals regarding the determination of standby mode and off mode power consumption, the test room ambient temperature during testing, and the assignment of power consumption and operating hours for inactive mode and bucket-full mode.

H. Energy Efficiency Metrics

1. Annual Operating Mode Hours

As initially presented in the February 2015 NOPR, DOE developed estimates of portable AC annual operating mode hours for cooling mode, heating mode, off-cycle mode, and inactive or off mode. In the November 2015 SNOPR, DOE removed consideration of heating mode and updated the proposed annual operating hours for the remaining modes based on the ''Cooling Only'' scenario presented in the February 2015 NOPR as follows in Table III.4:

TABLE III.4—SNOPR PROPOSED ANNUAL OPERATING HOURS BY MODE

Modes	Operating hours
Cooling Mode	750
Off-Cycle Mode	880
Inactive or Off Mode	1,355

More information on the development of these annual hours for each operating mode can be found in the February 2015 NOPR. 80 FR 10211, 10235–10237 (Feb. 25, 2015).

AHAM opposed DOE's reliance on room AC data to determine annual operating hours for portable ACs. According to AHAM, although portable ACs and room ACs are similar, they have inherent differences in installation and use patterns. AHAM urged DOE to obtain portable AC-specific consumer usage data to demonstrate that portable AC and room AC use are comparable to validate the annual operating hour proposals. (AHAM, No. 23 at pp. 6–7)

In response to AHAM's concern regarding the lack of portable AC-specific data, DOE notes that the utility of portable ACs and room ACs are similar, in that they serve similar applications and are similar in technologies, cost, and functionality. Therefore, DOE believes that it is reasonable to assume that usage patterns of portable ACs and room ACs will also be similar. DOE requested data and information regarding consumer usage of portable ACs in both the February 2015 NOPR and the November 2015 SNOPR. DOE notes that no additional information or data were provided by AHAM or any other party regarding portable AC usage patterns. Therefore, in the absence of additional consumer usage data from any available sources, DOE continues to utilize the most

[15] In the February 2015 NOPR, DOE described bucket-full mode as a standby mode in which the condensate level in the internal collection container reaches a manufacturer-specified threshold or the collection container is removed; any cooling, heating, or air-circulation functions are disabled; and an indication is provided to the consumer that the container is full.

relevant consumer use data available for portable ACs and establishes in appendix CC the annual operating mode hours in Table III.4.

2. CEER Calculation

In the November 2015 SNOPR, DOE proposed to revise the CEER metric calculation that was proposed in the February 2015 NOPR to reflect the elimination of heating mode and the addition of a second set of testing conditions for dual-duct units. DOE proposed that the updated CEER calculation, which would use the same weighting factors as were developed for SACC, would be determined as:

$$CEER_{SD} = \left[\frac{(ACC_{95} \times 0.2 + ACC_{83} \times 0.8)}{\left(\frac{AEC_{SD} + AEC_T}{k \times t}\right)}\right]$$

$$CEER_{DD} = \left[\frac{ACC_{95}}{\left(\frac{AEC_{95} + AEC_T}{k \times t}\right)}\right] \times 0.2 + \left[\frac{ACC_{83}}{\left(\frac{AEC_{83} + AEC_T}{k \times t}\right)}\right] \times 0.8$$

Where:

$CEER_{SD}$ and $CEER_{DD}$ are the combined energy efficiency ratios for single-duct and dual duct units, respectively, in British thermal units per watt-hour (Btu/Wh).

ACC_{95} and ACC_{83} are the adjusted cooling capacities at the 95 °F and 83 °F dry-bulb outdoor conditions, respectively, in Btu/h.

AEC_{SD} is the annual energy consumption in cooling mode for single-duct units, in kWh/year.

AEC_{95} is the annual energy consumption in cooling mode for dual-duct units, assuming all cooling mode hours would be at the 95 °F dry-bulb outdoor conditions, in kWh/year.

AEC_{83} is the annual energy consumption in cooling mode for dual-duct units, assuming all cooling mode hours would be at the 83 °F dry-bulb outdoor conditions, in kWh/year.

AEC_T is the total annual energy consumption attributed to all modes except cooling, in kWh/year.

t is the number of cooling mode hours per year, 750.

k is 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

0.2 is the weighting factor for the 95 °F dry-bulb outdoor condition test.

0.8 is the weighting factor for the 83 °F dry-bulb outdoor condition test.

80 FR 74020, 74032 (Nov. 27, 2015).

The California IOUs supported the proposed test procedure and CEER calculations with the ACC metric, which accounts for the impact of infiltration air due to the draw of condenser air flow from the conditioned space as well as duct and case heat transfer effects. (California IOUs, No. 20 at p. 1)

AHAM opposed the proposed CEER equations as proposed in the February 2015 NOPR, commenting that the equations should be modified to remove the considerations for air infiltration and duct and case heat transfer effects. (AHAM, No. 18 at p. 10)

For the reasons discussed previously in this preamble, DOE is including air infiltration and duct heat transfer effects in its measurement of portable AC performance, but is not including case heat transfer effects (see section III.C.2.c, section III.C.5, and section III.C.6 of this final rule, respectively). DOE maintains the proposals from the November 2015 SNOPR, and establishes the above CEER calculations in this final rule.

3. Annual Operating Costs

In the February 2015 NOPR, DOE proposed that the annual energy consumption in cooling mode, AEC_{cm}, and the total annual energy consumption in all modes except cooling and heating, AEC_T, would be utilized in calculating the estimated annual operating cost. The sum of the two annual energy consumption metrics would then be multiplied by a representative average unit cost of electrical energy in dollars per kilowatt-hour as provided by the Secretary to obtain the estimated annual operating cost. 80 FR 10211, 10234 (Feb. 25, 2015). DOE maintained this proposal in the November 2015 SNOPR with slight modifications to address multiple cooling mode test conditions and to remove reference to heating mode. DOE received no comments from interested parties in response to either proposal. Therefore, in the absence of any comments and to support a potential portable AC labeling program should the Federal Trade Commission (FTC) establish such a program similar to that for room ACs, DOE adopts in this final rule the annual operating cost calculations that were proposed in the November 2015 SNOPR.

I. Compliance With Other Energy Policy and Conservation Act Requirements

1. Test Burden

EPCA requires that any test procedures prescribed or amended be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) In the February 2015 NOPR, DOE concluded that establishing a test procedure to measure the energy consumption of single-duct and dual-duct portable ACs in active mode, standby mode, and off mode would produce the required test results and would not be unduly burdensome to conduct. This determination was driven by the many similarities between the necessary testing equipment and facilities for portable ACs and other products, the performance of which is currently certified through a DOE test procedure. Therefore, DOE tentatively concluded that manufacturers would not be required to make significant investment in test facilities and new equipment. 80 FR 10211, 10238 (Feb. 25, 2015)

In the November 2015 SNOPR, DOE proposed modifications to the test procedure proposed in the February 2015 NOPR, and noted that those modifications to the portable AC test procedures would not significantly increase the overall test burden compared to the test procedure proposed in the February 2015 NOPR and may instead reduce the overall test burden. 80 FR 74020, 74032–74033 (Nov. 27, 2015).

Because no substantive changes were made between the November 2015 SNOPR and this final rule, DOE maintains its determination from the November 2015 SNOPR that the portable AC test procedure established in this final rule would produce test results that measure energy consumption during representative use and would not be unduly burdensome to conduct.

2. Potential Incorporation of International Electrotechnical Commission Standard 62087

Under 42 U.S.C. 6295(gg)(2)(A), EPCA directs DOE to consider IEC Standard 62087 when amending test procedures for covered products to include standby mode and off mode power measurements. DOE reviewed IEC Standard 62087, ''Methods of measurement for the power consumption of audio, video, and related equipment'' (Edition 3.0 2011–04), and has determined that it would not be applicable to measuring power consumption of electrical appliances such as portable ACs. Therefore, DOE determined that referencing IEC Standards 62087 is not appropriate for the test procedure established in this final rule.

J. Sampling Plan and Rounding Requirements

In the February 2015 NOPR, DOE proposed sampling plan and rounding requirements for portable ACs to enable manufacturers to make representations of energy consumption or efficiency metrics, which would be included in the proposed 10 CFR 429.62. For the sampling plan, DOE proposed general sampling requirements for selecting units to be tested and provided direction regarding a sufficient sample size. DOE also proposed a method to determine a representative value for measures of energy consumption, that all calculations be performed with the unrounded measured values, and that the reported cooling or heating capacity be rounded in accordance with Table 1 of AHAM PAC–1–2014, now referenced as ANSI/AHAM PAC–1–2015 as discussed in section III.C.1 of this final rule. DOE further proposed that all energy efficiency metrics be rounded to the nearest 0.1 Btu/Wh. 80 FR 10211, 10237–10238 (Feb. 25, 2015).

In the November 2015 SNOPR, DOE removed reference to the eliminated cooling energy efficiency ratio and heating energy efficiency ratio and replaced cooling mode capacity and heating mode capacity with SACC in the proposed sampling plan and rounding requirements in 10 CFR part 429. The rated SACC would be based on the test sample mean, rounded as appropriate. DOE also clarified that the representative CEER for a basic model would be calculated based on statistical sampling provisions, which account for manufacturing and testing variability in product certification and compliance, rather than be determined as the mean value among tested units. Under these requirements, manufacturers would rate CEER based on the lower of the sample mean or the lower 95-percent confidence limit of the true mean divided by 0.90. 80 FR 74020, 74032 (Nov. 27, 2015). The confidence limit and derating factor proposed are consistent with those applied to other refrigeration-based consumer products, such as dehumidifiers and refrigerators, as DOE believes product variability and measurement repeatability associated with the measurements proposed for rating portable ACs are similar to those for the other consumer products.

DOE received no comments in response to the sampling plan and rounding requirements proposed in either the February 2015 NOPR or the November 2015 SNOPR, and therefore maintains the proposals from the November 2015 SNOPR to establish a new section 10 CFR 429.62 in this final rule that specifies the sampling and rounding requirements for CEER and SACC for portable ACs.

DOE also notes that certification requirements for portable ACs, which would also be located at 10 CFR 429.62(b), would be considered in the concurrent energy conservation standards rulemaking, as certification is not required for any equipment until and unless energy conservation standards are established.

K. General Comments

De' Longhi stated that a round robin test would be necessary to compare the results of different laboratories on the same units and ensure the validity of the test procedure. (De' Longhi, No. 16 at p. 4) DOE invited manufacturers and other interested parties to submit testing data on its various proposals, and did not receive any results pertaining to its proposals.

AHAM stated that it supports energy conservation standards and test procedures for portable ACs, and requested that DOE finalize the test procedure prior to publishing a proposed rule for portable AC standards. (AHAM, No. 18 at p. 2) In issuing this final rule, DOE is completing its rulemaking to establish a new test procedure for portable ACs. DOE is continuing to consider portable AC energy conservation standards in a concurrent rulemaking.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://energy.gov/gc/office-general-counsel*.

DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This final rule establishes test procedures to measure the energy consumption of single-duct and dual-duct portable ACs in active modes, standby modes, and off mode. DOE has concluded that the rule would not have a significant impact on a substantial number of small entities. The factual basis for this certification is as follows:

The Small Business Administration (SBA) considers a business entity to be small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. These size standards and codes are established by the North American Industry Classification System (NAICS). The threshold number for NAICS classification code 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing,'' which includes manufacturers of portable ACs, is 1,250 employees.

As discussed in the February 2015 NOPR, DOE surveyed the AHAM member directory to identify

manufacturers of portable ACs. DOE also consulted publicly available data, purchased company reports from vendors such as Dun and Bradstreet, and contacted manufacturers, where needed, to determine if the number of manufacturers with manufacturing facilities located within the United States that meet the SBA's definition of a ''small business manufacturing facility.''

In the February 2015 NOPR, DOE estimated that there was one small business that may manufacture single-duct or dual-duct portable ACs and would be subject to the test procedure proposed in the February 2015 NOPR. After the February 2015 NOPR was published, DOE determined that the small business does not currently produce single-duct or dual-duct portable ACs. DOE, therefore, tentatively concluded and certified in the November 2015 SNOPR that the proposed rule would not have a significant economic impact on a substantial number of small entities, since none could be identified that manufactured products subject to the test procedure proposed in the November 2015 SNOPR. Since the publication of the November 2015 SNOPR, DOE did not discover any small businesses that currently manufacturer single-duct or dual-duct portable ACs, and therefore, concludes that the test procedure established in this final rule would not have a significant impact on a substantial number of small entities. On this basis, DOE has determined that the preparation of an FRFA is not warranted and has submitted a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

DOE notes that, in response to the February 2015 NOPR, Oceanaire and NAM commented that the cost of testing and certification for commercial portable ACs would significantly impact their businesses (or manufacturers that they represent). These commenters estimated that approximately 15,000 large capacity commercial portable ACs (rated capacities up to 65,000 Btu/h) are manufactured annually. Oceanaire and NAM suggested that their niche industry utilizes specialized designs, often carrying 45 to 50 basic models and other custom designs for costumers with models typically manufactured in quantities of 10 or less annually. Oceanaire asserted that a certification program with third-party verification and compliance to the DOE statistical sampling protocol would exceed $1 million per year per company, severely limiting their ability to create unique products for customers. Oceanaire and NAM both suggested that the financial and resource impacts would ultimately force commercial portable AC manufacturers out of business. DENSO agreed, suggesting that the testing, reporting, and record-keeping associated with maintaining compliance with any DOE energy conservation standards would be substantial and place disproportionate burden on commercial portable AC manufacturers. (Oceanaire, No. 10 at pp. 1–2; NAM, No. 17 at p. 3; DENSO, No. 14 at p. 4)

Over the course of this rulemaking and the concurrent standards rulemaking for portable ACs, DOE has sought and carefully considered inputs received from interested parties regarding test burdens and associated impacts on all portable AC manufacturers affected by the rulemakings, including any small entities. Furthermore, DOE established a definition of a ''portable air conditioner'' in the April 2106 Coverage Determination for portable ACs (81 FR 22514, 22516, 22519–22520 (April 18, 2016)) that clarifies the characteristics and operation of this consumer product. The requirement that the product operate on single-phase electric current would exclude from coverage many of the high-capacity products to which Oceanaire and NAM referred. Additionally, any products that meet the portable AC definition as established in the coverage determination and that do not meet the definitions for single-duct portable AC or dual-duct portable AC are not required to be tested under the provisions established in this final rule. Although Oceanaire, NAM, and DENSO may manufacture products that meet the portable AC definition (or represent such manufacturers), DOE has determined that these niche manufacturers do not produce products that meet the single-duct or dual-duct definitions. Therefore, as discussed earlier in this section, DOE has not identified any small businesses that manufacture the single-duct and dual-duct portable ACs that would be affected by this final rule.

Furthermore, DOE evaluated the impact of the test procedure established in this final rule, should any small business manufacturers of single-duct or dual-duct portable ACs be identified in the future. This final rule adopts the proposals in the November 2015 SNOPR with minor additional modifications discussed previously in this final rule, though none of the modifications impact test burden. Therefore, the analysis regarding small business impacts conducted in the November 2015 SNOPR applies for the test procedure established in this final rule. The November 2015 SNOPR proposed modifications to the February 2015 NOPR, and DOE determined that those modifications were likely to reduce overall test burden with respect to the proposals in the February 2015 NOPR. In the February 2015 NOPR, DOE concluded that the costs associated with its proposals were small compared to the overall financial investment needed to undertake the business enterprise of developing and testing consumer products. DOE determined that no small business would require the purchase or modification of testing equipment in order to conduct cooling mode testing, and estimated a potential cost of approximately $2,000 in the event that a small business needed to purchase a wattmeter suitable for standby mode, off mode, and off-cycle mode testing. 80 FR 10211, 10239 (Feb. 25, 2015), 80 FR 74020, 74033 (Nov. 27, 2015).

After estimating the potential impacts of the new test procedure provisions and considering feedback from interested parties regarding test burdens, DOE concludes that the cost effects accruing from the final rule would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of an FRFA on that basis also would not be warranted.

C. Review Under the Paperwork Reduction Act of 1995

While there are currently no energy conservation standards for portable ACs, DOE recently published a final determination establishing portable ACs as a type of covered product (81 FR 22514, 22517 (April 18, 2016)) and is considering establishing energy conservation standards for such products as part of a parallel rulemaking (Docket No. EERE–2013–BT–STD–0033). Manufacturers of portable ACs must certify to DOE that their products comply with any applicable energy conservation standards, once established. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures for portable ACs and maintain records of that testing for a period of two years, consistent with the requirements of 10 CFR 429.71. As part of this test procedure final rule, DOE is establishing regulations for recordkeeping requirements for portable ACs. The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement

has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE establishes a test procedure for portable ACs that will be used to support any future energy conservation standards for portable ACs. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule considers a test procedure for portable ACs that is largely based upon industry test procedures and methodologies, subject to significant input from interested parties in response to the February 2015 NOPR and November 2015 SNOPR, so it would not affect the amount, quality or distribution of energy usage, and, therefore, will not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-counsel*. DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101 *et seq.*), DOE must comply with section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

This final rule establishes testing methods contained in the following commercial standards: ANSI/AHAM PAC–1–2015, ''Portable Air Conditioners''; and ANSI/ASHRAE Standard 37–2009, ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment''. While the newly established test procedure at appendix CC is not exclusively based on these standards, the general approach and many components of the test procedure adopt provisions from these standards without amendment. DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA, (*i.e.,* that they were developed in a manner that fully provides for public participation, comment, and review). DOE has consulted with the Attorney General and the Chairman of the FTC concerning the impact on competition of requiring manufacturers to use the test methods contained in these standards, and neither recommended against incorporation of these standards.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

N. Materials Incorporated by Reference

In this final rule, DOE incorporates by reference the test standard published by AHAM, titled ''Portable Air Conditioners,'' ANSI/AHAM PAC–1–2015 (ANSI Approved). ANSI/AHAM PAC–1–2015 is an industry-accepted test procedure that measures portable AC performance in cooling mode and is applicable to products sold in North America. ANSI/AHAM PAC–1–2015 specifies testing conducted in accordance with other industry-accepted test procedures (already incorporated by reference) and determines energy efficiency metrics for various portable AC configurations. The test procedure established in this final rule references various sections of ANSI/AHAM PAC–1–2015 that address test setup, instrumentation, test conduct, calculations, and rounding. ANSI/AHAM PAC–1–2015 is readily available on AHAM's Web site at *https://www.aham.org/ht/d/Store/*.

In this final rule, DOE also incorporates by reference the test standard ASHRAE Standard 37–2009, titled ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,'' (ANSI Approved). ANSI/ASHRAE Standard 37–2009 is an industry-accepted test standard referenced by ANSI/AHAM PAC–1–2015 that defines various uniform methods for measuring performance of air conditioning and heat pump equipment. Although ANSI/AHAM PAC–1–2015 references a number of sections in ANSI/ASHRAE Standards 37–2009, the test procedure established in this final rule additionally references one section in ANSI/ASHRAE Standard 37–2009 that addresses test duration. ANSI/ASHRAE Standard 37–2009 is readily available at *http://www.ashrae.org*.

In this final rule, DOE also incorporates by reference the test standard IEC 62301, titled ''Household electrical appliances—Measurement of standby power,'' (Edition 2.0, 2011–01). IEC 62301 is an industry-accepted test standard that sets a standardized method to measure the standby power of household and similar electrical appliances. IEC 62301 includes details regarding test set-up, test conditions, and stability requirements that are necessary to ensure consistent and repeatable standby and off-mode test results. IEC 62301 is readily available at *https://webstore.iec.ch/* and *http://www.webstore.ansi.org*.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 429

Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports,

Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on April 26, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE amends parts 429 and 430 of chapter II of title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 429.4 is amended by adding paragraph (b)(3) to read as follows:

§ 429.4 Materials incorporated by reference.

* * * * *

(b) * * *

(3) ANSI/AHAM PAC–1–2015 (''ANSI/AHAM PAC–1–2015''), Portable Air Conditioners, June 19, 2015, IBR approved for § 429.62.

* * * * *

■ 3. Add § 429.62 to read as follows:

§ 429.62 Portable air conditioners.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to portable air conditioners; and

(2) For each basic model of portable air conditioner, a sample of sufficient size must be randomly selected and tested to ensure that—

(i) Any represented value of energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values is greater than or equal to the higher of:

(A) The mean of the sample:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

Where:

$\bar{x}$ is the sample mean;
x_i is the ith sample; and
n is the number of units in the test sample.

Or,

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.10:

$$UCL = \bar{x} + t_{0.95}\left(\frac{s}{\sqrt{n}}\right)$$

Where:

$\bar{x}$ is the sample mean;
s is the sample standard deviation;
n is the number of units in the test sample; and
$t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n–1 degrees of freedom.

And,

(ii) Any represented value of the combined energy efficiency ratio or other measure of energy consumption of a basic model for which consumers would favor higher values is less than or equal to the lower of:

(A) The mean of the sample:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

Where:

$\bar{x}$ is the sample mean;
x_i is the ith sample; and
n is the number of units in the test sample.

Or,

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.90:

$$LCL = \bar{x} - t_{0.95}\left(\frac{s}{\sqrt{n}}\right)$$

$\bar{x}$ is the sample mean;
s is the sample standard deviation;
n is the number of units in the test sample; and
$t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n–1 degrees of freedom.

And,

(3) The value of seasonally adjusted cooling capacity of a basic model must be the mean of the seasonally adjusted cooling capacities for each tested unit of the basic model. Round the mean seasonally adjusted cooling capacity value to the nearest 50, 100, 200, or 500 Btu/h, depending on the magnitude of the calculated seasonally adjusted cooling capacity, in accordance with Table 1 of ANSI/AHAM PAC–1–2015, (incorporated by reference, see § 429.4), ''Multiples for reporting Dual Duct Cooling Capacity, Single Duct Cooling Capacity, Spot Cooling Capacity, Water Cooled Condenser Capacity and Power Input Ratings.''

(4) Round the value of combined energy efficiency ratio of a basic model to the nearest 0.1 Btu/Wh.

(5) Single-duct and dual-duct portable air conditioners distributed in commerce by the manufacturer with multiple duct configuration options that meet DOE's definitions for single-duct portable AC and dual-duct portable AC, must be rated and certified under both applicable duct configurations.

(b) *Certification reports.* [Reserved]

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 4. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 5. Section 430.2 is amended by adding, in alphabetical order, the definitions for ''dual-duct portable air conditioner'' and ''single-duct portable air conditioner'' to read as follows:

§ 430.2 Definitions.

* * * * *

Dual-duct portable air conditioner means a portable air conditioner that draws some or all of the condenser inlet air from outside the conditioned space through a duct attached to an adjustable window bracket, may draw additional condenser inlet air from the conditioned space, and discharges the condenser outlet air outside the conditioned space by means of a separate duct attached to an adjustable window bracket.

* * * * *

Single-duct portable air conditioner means a portable air conditioner that draws all of the condenser inlet air from the conditioned space without the means of a duct, and discharges the condenser outlet air outside the conditioned space through a single duct attached to an adjustable window bracket.

* * * * *

■ 6. Section 430.3 is amended by:

■ a. Removing ''appendix AA to subpart B'' in paragraph (g)(4), and adding in its place, ''appendices AA and CC to subpart B'';

■ b. Redesignating paragraph (i)(8) as (i)(9), and adding a new paragraph (i)(8); and

■ c. Removing ''and Z to subpart B'' in paragraph (p)(5), and adding in its place, ''Z and CC to subpart B''.

The addition reads as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(i) * * *

(8) ANSI/AHAM PAC–1–2015, (''ANSI/AHAM PAC–1–2015''), Portable Air Conditioners, June 19, 2015, IBR approved for appendix CC to subpart B.

* * * * *

■ 7. Section 430.23 is amended by adding paragraph (dd) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(dd) *Portable air conditioners.* (1) For single-duct and dual-duct portable air conditioners, measure the seasonally adjusted cooling capacity, expressed in British thermal units per hour (Btu/h), and the combined energy efficiency ratio, expressed in British thermal units per watt-hour (Btu/Wh) in accordance with appendix CC of this subpart.

(2) Determine the estimated annual operating cost for portable air conditioners, expressed in dollars per year, by multiplying the following two factors:

(i) For dual-duct portable air conditioners, the sum of AEC_{95} multiplied by 0.2, AEC_{83} multiplied by 0.8, and AEC_T as measured in accordance with section 5.3 of appendix CC of this subpart; or for single-duct portable air conditioners, the sum of AEC_{SD} and AEC_T as measured in accordance with section 5.3 of appendix CC of this subpart; and

(ii) A representative average unit cost of electrical energy in dollars per kilowatt-hour as provided by the Secretary.

(iii) Round the resulting product to the nearest dollar per year.

■ 8. Add and reserve appendix BB to subpart B of part 430 to read as follows:

Appendix BB to Subpart B of Part 430—[Reserved]

■ 9. Add appendix CC to subpart B of part 430 to read as follows:

Appendix CC to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Portable Air Conditioners

1. Scope

This appendix covers the test requirements used to measure the energy performance of single-duct and dual-duct portable air conditioners, as defined at 10 CFR 430.2.

2. Definitions

2.1 *ANSI/AHAM PAC–1–2015* means the test standard published by the Association of Home Appliance Manufacturers, titled ''Portable Air Conditioners,'' ANSI/AHAM PAC–1–2015 (incorporated by reference; see § 430.3).

2.2 *ASHRAE Standard 37–2009* means the test standard published by the American National Standards Institute and American Society of Heating, Refrigerating and Air-Conditioning Engineers and, titled ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,'' ASHRAE Standard 37–2009 (incorporated by reference; see § 430.3).

2.3 *Combined energy efficiency ratio* is the energy efficiency of a portable air conditioner as measured in accordance with this test procedure in Btu per watt-hours (Btu/Wh) and determined in section 5.4.

2.4 *Cooling mode* means a mode in which a portable air conditioner has activated the main cooling function according to the thermostat or temperature sensor signal, including activating the refrigeration system, or activating the fan or blower without activation of the refrigeration system.

2.5 *IEC 62301* means the test standard published by the International Electrotechnical Commission, titled ''Household electrical appliances–Measurement of standby power,'' Publication 62301 (Edition 2.0 2011–01) (incorporated by reference; see § 430.3).

2.6 *Inactive mode* means a standby mode that facilitates the activation of an active mode or off-cycle mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

2.7 *Off-cycle mode* means a mode in which a portable air conditioner:

(1) Has cycled off its main cooling or heating function by thermostat or temperature sensor signal;

(2) May or may not operate its fan or blower; and

(3) Will reactivate the main function according to the thermostat or temperature sensor signal.

2.8 *Off mode* means a mode in which a portable air conditioner is connected to a mains power source and is not providing any active mode, off-cycle mode, or standby mode function, and where the mode may persist for an indefinite time. An indicator that only shows the user that the portable air conditioner is in the off position is included within the classification of an off mode.

2.9 *Seasonally adjusted cooling capacity* means the amount of cooling, measured in Btu/h, provided to the indoor conditioned space, measured under the specified ambient conditions.

2.10 *Standby mode* means any mode where a portable air conditioner is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time:

(1) To facilitate the activation of other modes (including activation or deactivation of cooling mode) by remote switch (including remote control), internal sensor, or timer; or

(2) Continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.,* switching) and that operates on a continuous basis.

3. Test Apparatus and General Instructions

3.1 Active mode.

3.1.1 *Test conduct.* The test apparatus and instructions for testing portable air conditioners in cooling mode and off-cycle mode must conform to the requirements specified in Section 4, ''Definitions'' and Section 7, ''Tests,'' of ANSI/AHAM PAC–1–2015 (incorporated by reference; see § 430.3), except as otherwise specified in this appendix. Where applicable, measure duct heat transfer and infiltration air heat transfer according to section 4.1.1.1 and section 4.1.1.2 of this appendix, respectively. Note that if a product is able to operate as both a single-duct and dual-duct portable AC as distributed in commerce by the manufacturer, it must be tested and rated for both duct configurations.

3.1.1.1 *Duct setup.* Use ducting components provided by the manufacturer, including, where provided by the manufacturer, ducts, connectors for attaching the duct(s) to the test unit, sealing, insulation, and window mounting fixtures. Do not apply additional sealing or insulation.

3.1.1.2 *Single-duct evaporator inlet test conditions.* When testing single-duct portable air conditioners, maintain the evaporator inlet dry-bulb temperature within a range of 1.0 °F with an average difference within 0.3 °F.

3.1.1.3 *Condensate Removal.* Set up the test unit in accordance with manufacturer instructions. If the unit has an auto-evaporative feature, keep any provided drain plug installed as shipped and do not provide other means of condensate removal. If the internal condensate collection bucket fills during the test, halt the test, remove the drain plug, install a gravity drain line, and start the test from the beginning. If no auto-evaporative feature is available, remove the drain plug and install a gravity drain line. If no auto-evaporative feature or gravity drain is available and a condensate pump is included, or if the manufacturer specifies the use of an included condensate pump during cooling mode operation, then test the portable air conditioner with the condensate pump enabled. For units tested with a condensate pump, apply the provisions in Section 7.1.2 of ANSI/AHAM PAC–1–2015 (incorporated by reference; see § 430.3) if the pump cycles on and off.

3.1.1.4 *Unit Placement.* There shall be no less than 3 feet between any test chamber wall surface and any surface on the portable air conditioner, except the surface or surfaces of the portable air conditioner that include a duct attachment. The distance between the test chamber wall and a surface with one or more duct attachments is prescribed by the test setup requirements in Section 7.3.7 of ANSI/AHAM PAC–1–2015 (incorporated by reference; see § 430.3).

3.1.1.5 *Electrical supply.* Maintain the input standard voltage at 115 V ±1 percent. Test at the rated frequency, maintained within ±1 percent.

3.1.1.6 *Duct temperature measurements.* Install any insulation and sealing provided by the manufacturer. Then adhere four equally spaced thermocouples per duct to the outer surface of the entire length of the duct. Measure the surface temperatures of each duct. Temperature measurements must have an error no greater than ±0.5 °F over the range being measured.

3.1.2 *Control settings.* Set the controls to the lowest available temperature setpoint for cooling mode. If the portable air conditioner has a user-adjustable fan speed, select the maximum fan speed setting. If the portable air conditioner has an automatic louver oscillation feature, disable that feature throughout testing. If the louver oscillation feature is included but there is no option to disable it, test with the louver oscillation enabled. If the portable air conditioner has adjustable louvers, position the louvers

parallel with the air flow to maximize air flow and minimize static pressure loss.

3.1.3 *Measurement resolution.* Record measurements at the resolution of the test instrumentation.

3.2 Standby mode and off mode.

3.2.1 *Installation requirements.* For the standby mode and off mode testing, install the portable air conditioner in accordance with Section 5, Paragraph 5.2 of IEC 62301 (incorporated by reference; see § 430.3), disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes.

3.2.2 *Electrical energy supply.*

3.2.2.1 *Electrical supply.* For the standby mode and off mode testing, maintain the input standard voltage at 115 V ±1 percent. Maintain the electrical supply at the rated frequency ±1 percent.

3.2.2.2 *Supply voltage waveform.* For the standby mode and off mode testing, maintain the electrical supply voltage waveform indicated in Section 4, Paragraph 4.3.2 of IEC 62301 (incorporated by reference; see § 430.3).

3.2.3 *Standby mode and off mode wattmeter.* The wattmeter used to measure standby mode and off mode power consumption must meet the requirements specified in Section 4, Paragraph 4.4 of IEC 62301 (incorporated by reference; see § 430.3).

3.2.4 *Standby mode and off mode ambient temperature.* For standby mode and off mode testing, maintain room ambient air temperature conditions as specified in Section 4, Paragraph 4.2 of IEC 62301 (incorporated by reference; see § 430.3).

4. Test Measurement

4.1 *Cooling mode.* Measure the indoor room cooling capacity and overall power input in cooling mode in accordance with Section 7.1.b and 7.1.c of ANSI/AHAM PAC–1–2015 (incorporated by reference; see § 430.3), respectively. Determine the test duration in accordance with Section 8.7 of ASHRAE Standard 37–2009 (incorporated by reference; § 430.3). Apply the test conditions for single-duct and dual-duct portable air conditioners presented in Table 1 of this appendix instead of the test conditions in Table 3 of ANSI/AHAM PAC–1–2015. For single-duct units, measure the indoor room cooling capacity, $Capacity_{SD,}$ and overall power input in cooling mode, P_{SD}, in accordance with the ambient conditions for test configuration 5, presented in Table 1 of this appendix. For dual-duct units, measure the indoor room cooling capacity and overall power input in accordance with ambient conditions for test configuration 3, condition A ($Capacity_{95}$, P_{95}), and then measure the indoor room cooling capacity and overall power input a second time in accordance with the ambient conditions for test configuration 3, condition B ($Capacity_{83}$, P_{83}), presented in Table 1 of this appendix. Note that for the purposes of this cooling mode test procedure, evaporator inlet air is considered the ''indoor air'' of the conditioned space and condenser inlet air is considered the ''outdoor air'' outside of the conditioned space.

TABLE 1—EVAPORATOR (INDOOR) AND CONDENSER (OUTDOOR) INLET TEST CONDITIONS

Test configuration	Evaporator inlet air, °F (°C)		Condenser inlet air, °F (°C)	
	Dry bulb	Wet bulb	Dry bulb	Wet bulb
3 (Dual-Duct, Condition A)	80 (26.7)	67 (19.4)	95 (35.0)	75 (23.9)
3 (Dual-Duct, Condition B)	80 (26.7)	67 (19.4)	83 (28.3)	67.5 (19.7)
5 (Single-Duct)	80 (26.7)	67 (19.4)	80 (26.7)	67 (19.4)

4.1.1. *Duct Heat Transfer.* Measure the surface temperature of the condenser exhaust duct and condenser inlet duct, where applicable, throughout the cooling mode test. Calculate the average temperature at each individual location, and then calculate the average surface temperature of each duct by averaging the four average temperature measurements taken on that duct. Calculate the surface area (A_{duct_j}) of each duct according to:

$A_{duct_j} = \pi \times d_j \times L_j$

Where:

d_j = the outer diameter of duct ''j'', including any manufacturer-supplied insulation.

L_j = the extended length of duct ''j'' while under test.

j represents the condenser exhaust duct and, for dual-duct units, the condenser exhaust duct and the condenser inlet duct.

Calculate the total heat transferred from the surface of the duct(s) to the indoor conditioned space while operating in cooling mode for the outdoor test conditions in Table 1 of this appendix, as follows. For single-duct portable air conditioners:

$Q_{duct_SD} = h \times A_{duct_j} \times (T_{duct_SD} = - T_{ei})$

For dual-duct portable air conditioners:

$Q_{duct_95} = \Sigma_j\{h \times A_{duct_j} \times (T_{duct_95} - T_{ei})\}$

$Q_{duct_83} = \Sigma_j\{h \times A_{duct_j} \times (T_{duct_83} - T_{ei})\}$

Where:

Q_{duct_SD} = for single-duct portable air conditioners, the total heat transferred from the duct to the indoor conditioned space in cooling mode when tested according to the test conditions in Table 1 of this appendix, in Btu/h.

Q_{duct_95} and Q_{duct_83} = for dual-duct portable air conditioners, the total heat transferred from the ducts to the indoor conditioned space in cooling mode, in Btu/h, when tested according to the 95 °F dry-bulb and 83 °F dry-bulb outdoor test conditions in Table 1 of this appendix, respectively.

h = convection coefficient, 3 Btu/h per square foot per °F.

A_{duct_j} = surface area of duct ''j'', in square feet.

$T_{duct_SD_j}$ = average surface temperature for the condenser exhaust duct of single-duct portable air conditioners, as measured during testing according to the test condition in Table 1 of this appendix, in °F.

$T_{duct_95_j}$ and $T_{duct_83_j}$ = average surface temperature for duct ''j'' of dual-duct portable air conditioners, as measured during testing according to the two outdoor test conditions in Table 1 of this appendix, in °F.

j represents the condenser exhaust duct and, for dual-duct units, the condenser exhaust duct and the condenser inlet duct.

T_{ei} = average evaporator inlet air dry-bulb temperature, in °F.

4.1.2 *Infiltration Air Heat Transfer.* Measure the heat contribution from infiltration air for single-duct portable air conditioners and dual-duct portable air conditioners that draw at least part of the condenser air from the conditioned space. Calculate the heat contribution from infiltration air for single-duct and dual-duct portable air conditioners for both cooling mode outdoor test conditions, as described in this section. Calculate the dry air mass flow rate of infiltration air according to the following equations:

$$\dot{m}_{SD} = \frac{V_{co_SD} \times \rho_{co_SD}}{\left(1 + \omega_{co_SD}\right)}$$

For dual-duct portable air conditioners:

$$\dot{m}_{95} = \left[\frac{V_{co_95} \times \rho_{co_95}}{(1 + \omega_{co_95})}\right] - \left[\frac{V_{ci_95} \times \rho_{ci_95}}{(1 + \omega_{ci_95})}\right]$$

$$\dot{m}_{83} = \left[\frac{V_{co_83} \times \rho_{co_83}}{(1 + \omega_{co_83})}\right] - \left[\frac{V_{ci_83} \times \rho_{ci_83}}{(1 + \omega_{ci_83})}\right]$$

Where:

$\dot{m}_{SD}$ = dry air mass flow rate of infiltration air for single-duct portable air conditioners, in pounds per minute (lb/m).

$\dot{m}_{95}$ and $\dot{m}_{83}$ = dry air mass flow rate of infiltration air for dual-duct portable air conditioners, as calculated based on testing according to the test conditions in Table 1 of this appendix, in lb/m.

V_{co_SD}, V_{co_95}, and V_{co_83} = average volumetric flow rate of the condenser outlet air during cooling mode testing for single-duct portable air conditioners; and at the 95 °F and 83 °F dry-bulb outdoor conditions for dual-duct portable air conditioners, respectively, in cubic feet per minute (cfm).

V_{ci_95}, and V_{ci_83} = average volumetric flow rate of the condenser inlet air during cooling mode testing at the 95 °F and 83 °F dry-bulb outdoor conditions for dual-duct portable air conditioners, respectively, in cfm.

ρ_{co_SD}, ρ_{co_95}, and ρ_{co_83} = average density of the condenser outlet air during cooling mode testing for single-duct portable air conditioners, and at the 95 °F and 83 °F dry-bulb outdoor conditions for dual-duct portable air conditioners, respectively, in pounds mass per cubic foot (lb_m/ft^3).

ρ_{ci_95}, and ρ_{ci_83} = average density of the condenser inlet air during cooling mode testing at the 95 °F and 83 °F dry-bulb outdoor conditions for dual-duct portable air conditioners, respectively, in lb_m/ft^3.

ω_{co_SD}, ω_{co_95}, and ω_{co_83} = average humidity ratio of condenser outlet air during cooling mode testing for single-duct portable air conditioners, and at the 95 °F and 83 °F dry-bulb outdoor conditions for dual-duct portable air conditioners, respectively, in pounds mass of water vapor per pounds mass of dry air (lb_w/lb_{da}).

ω_{ci_95}, and ω_{ci_83} = average humidity ratio of condenser inlet air during cooling mode testing at the 95 °F and 83 °F dry-bulb outdoor conditions for dual-duct portable air conditioners, respectively, in lb_w/lb_{da}.

For single-duct and dual-duct portable air conditioners, calculate the sensible component of infiltration air heat contribution according to:

$$Q_{s_95}\ \dot{m} \times 60 \times [(c_{p_95} \times T_{ai_95} - T_{indoor})) + C_{p_wv} \times (\omega_{ai_95} \times T_{ai_95} - \omega_{indoor} \times T_{indoor})]$$

$$Q_{s_83} = \dot{m} \times 60 \times [(c_{p_da} \times (T_{ai_83} - T_{indoor})) + C_{p_wv} \times (\omega_{ai_83} \times T_{ai_83} - \omega_{indoor} \times T_{indoor})]$$

Where:

Q_{s_95} and Q_{s_83} = sensible heat added to the room by infiltration air, calculated at the 95 °F and 83 °F dry-bulb outdoor conditions in Table 1 of this appendix, in Btu/h.

$\dot{m}$ = dry air mass flow rate of infiltration air, $\dot{m}_{SD}$ or $\dot{m}_{95}$ when calculating Q_{s_95} and $\dot{m}_{sd}$ or $\dot{m}_{83}$ when calculating Q_{s_83}, in lb/m.

c_{p_da} = specific heat of dry air, 0.24 Btu/lb_m-°F.

c_{p_wv} = specific heat of water vapor, 0.444 Btu/lb_m-°F.

T_{indoor} = indoor chamber dry-bulb temperature, 80 °F.

T_{ia_95} and T_{ia_83} = infiltration air dry-bulb temperatures for the two test conditions in Table 1 of this appendix, 95 °F and 83 °F, respectively.

ω_{ia_95} and ω_{ia_83}= humidity ratios of the 95 °F and 83 °F dry-bulb infiltration air, 0.0141 and 0.01086 lb_w/lb_{da}, respectively.

ω_{indoor} = humidity ratio of the indoor chamber air, 0.0112 lb_w/lb_{da}.

60 = conversion factor from minutes to hours.

Calculate the latent heat contribution of the infiltration air according to:

$$Q_{l_95}\ \dot{m} \times 60 \times H_{fg} \times (\omega_{ia_95} - \omega_{indoor})$$

$$Q_{l_83}\ \dot{m} \times 60 \times H_{fg} \times (\omega_{ia_83} - \omega_{indoor})$$

Where:

Q_{l_95} and Q_{l_83} = latent heat added to the room by infiltration air, calculated at the 95 °F and 83 °F dry-bulb outdoor conditions in Table 1 of this appendix, in Btu/h.

$\dot{m}$ = mass flow rate of infiltration air, $\dot{m}_{SD}$ or $\dot{m}_{95}$ when calculating Q_{l_95} and $\dot{m}_{SD}$ or $\dot{m}_{83}$ when calculating Q_{l_83}, in lb/m.

H_{fg} = latent heat of vaporization for water vapor, 1061 Btu/lb_m.

ω_{ia_95} and ω_{ia_83} = humidity ratios of the 95 °F and 83 °F dry-bulb infiltration air, 0.0141 and 0.01086 lb_w/lb_{da}, respectively.

ω_{indoor} = humidity ratio of the indoor chamber air, 0.0112 lb_w/lb_{da}.

60 = conversion factor from minutes to hours.

The total heat contribution of the infiltration air is the sum of the sensible and latent heat:

$$_{infiltration_95} = Q_{s_95} + Q_{l_95}$$

$$_{infiltration_83} = Q_{s_83} + Q_{l_83}$$

Where:

$Q_{infiltration_95}$ and $Q_{infiltration_83}$ = total infiltration air heat in cooling mode, calculated at the 95 °F and 83 °F dry-bulb outdoor conditions in Table 1 of this appendix, in Btu/h.

Q_{s_95} and Q_{s_83} = sensible heat added to the room by infiltration air, calculated at the 95 °F and 83 °F dry-bulb outdoor conditions in Table 1 of this appendix, in Btu/h.

Q_{l_95} and Q_{l_83} = latent heat added to the room by infiltration air, calculated at the 95 °F and 83 °F dry-bulb outdoor conditions in Table 1 of this appendix, in Btu/h.

4.2 *Off-cycle mode.* Establish the test conditions specified in section 3.1.1 of this appendix for off-cycle mode and use the wattmeter specified in section 3.2.3 of this appendix (but do not use the duct measurements in section 3.1.1.6). Begin the off-cycle mode test period 5 minutes following the cooling mode test period. Adjust the setpoint higher than the ambient temperature to ensure the product will not enter cooling mode and begin the test 5 minutes after the compressor cycles off due to the change in setpoint. Do not change any other control settings between the end of the cooling mode test period and the start of the off-cycle mode test period. The off-cycle mode test period must be 2 hours in duration, during which period, record the power consumption at the same intervals as recorded for cooling mode testing. Measure and record the average off-cycle mode power of the portable air conditioner, P_{oc}, in watts.

4.3 *Standby mode and off mode.* Establish the testing conditions set forth in section 3.2 of this appendix, ensuring that the portable air conditioner does not enter any active modes during the test. For portable air conditioners that take some time to enter a stable state from a higher power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301, (incorporated by reference; see § 430.3), allow sufficient time for the portable air conditioner to reach the lowest power state before proceeding with the test measurement. Follow the test procedure specified in Section 5, Paragraph 5.3.2 of IEC 62301 for testing in each possible mode as described in sections 4.3.1 and 4.3.2 of this appendix.

4.3.1 If the portable air conditioner has an inactive mode, as defined in section 2.6 of this appendix, but not an off mode, as defined in section 2.8 of this appendix, measure and record the average inactive mode power of the portable air conditioner, P_{ia}, in watts.

4.3.2 If the portable air conditioner has an off mode, as defined in section 2.8 of this appendix, measure and record the average off mode power of the portable air conditioner, P_{om}, in watts.

5. Calculation of Derived Results From Test Measurements

5.1 *Adjusted Cooling Capacity.* Calculate the adjusted cooling capacities for portable air conditioners, ACC_{95} and ACC_{83}, expressed in Btu/h, according to the following equations. For single-duct portable air conditioners:

$$ACC_{95} = Capacity_{SD} - Q_{duct_SD} - Q_{infiltration_95}$$

$$ACC_{83} = Capacity_{SD} - Q_{duct_SD} - Q_{infiltration_83}$$

For dual-duct portable air conditioners:

$$ACC_{95} = Capacity_{95} - Q_{duct_95} - Q_{infiltration_95}$$

$$ACC_{83} = Capacity_{83} - Q_{duct_83} - Q_{infiltration_83}$$

Where:

$Capacity_{SD}$, $Capacity_{95}$, and $Capacity_{83}$ = cooling capacity measured in section 4.1.1 of this appendix.

Q_{duct_SD}, Q_{duct_95}, and Q_{duct_83} = duct heat transfer while operating in cooling mode, calculated in section 4.1.1.1 of this appendix.

$Q_{infiltration_95}$ and $Q_{infiltration_83}$ = total infiltration air heat transfer in cooling

mode, calculated in section 4.1.1.2 of this appendix.

5.2 *Seasonally Adjusted Cooling Capacity.* Calculate the seasonally adjusted cooling capacity for portable air conditioners, SACC, expressed in Btu/h, according to:

$SACC = ACC_{95} \times 0.2 + ACC_{83} \times 0.8$

Where:

ACC_{95} and ACC_{83} = adjusted cooling capacity, in Btu/h, calculated in section 5.1 of this appendix.

0.2 = weighting factor for ACC_{95}.

0.8 = weighting factor for ACC_{83}.

5.3 *Annual Energy Consumption.* Calculate the annual energy consumption in each operating mode, AEC_m, expressed in kilowatt-hours per year (kWh/year). Use the following annual hours of operation for each mode:

Operating mode	Annual operating hours
Cooling Mode, Dual-Duct 95 °F [1]	750
Cooling Mode, Dual-Duct 83 °F [1]	750
Cooling Mode, Single-Duct	750
Off-Cycle	880
Inactive or Off	1,355

[1] These operating mode hours are for the purposes of calculating annual energy consumption under different ambient conditions for dual-duct portable air conditioners, and are not a division of the total cooling mode operating hours. The total dual-duct cooling mode operating hours are 750 hours.

$AEC_m = P_m \times t_m \times k$

Where:

AEC_m = annual energy consumption in each mode, in kWh/year.

P_m = average power in each mode, in watts.

m represents the operating mode (''95'' and ''83'' cooling mode at the 95 °F and 83 °F dry-bulb outdoor conditions, respectively for dual-duct portable air conditioners, ''SD'' cooling mode for single-duct portable air conditioners, ''oc'' off-cycle, and ''ia'' inactive or ''om'' off mode).

t = number of annual operating time in each mode, in hours.

k = 0.001 kWh/Wh conversion factor from watt-hours to kilowatt-hours.

Total annual energy consumption in all modes except cooling, is calculated according to:

$$AEC_T = \sum_m AEC_m$$

Where:

AEC_T = total annual energy consumption attributed to all modes except cooling, in kWh/year;

AEC_m = total annual energy consumption in each mode, in kWh/year.

m represents the operating modes included in AEC_T (''oc'' off-cycle, and ''im'' inactive or ''om'' off mode).

5.4 *Combined Energy Efficiency Ratio.* Using the annual operating hours, as outlined in section 5.3 of this appendix, calculate the combined energy efficiency ratio, CEER, expressed in Btu/Wh, according to the following:

$$CEER_{SD} = \left[\frac{(ACC_{95} \times 0.2 + ACC_{83} \times 0.8)}{\left(\frac{AEC_{SD} + AEC_T}{k \times t}\right)}\right]$$

$$CEER_{DD} = \left[\frac{ACC_{95}}{\left(\frac{AEC_{95} + AEC_T}{k \times t}\right)}\right] \times 0.2 + \left[\frac{ACC_{83}}{\left(\frac{AEC_{83} + AEC_T}{k \times t}\right)}\right] \times 0.8$$

Where:

$CEER_{SD}$ and $CEER_{DD}$ = combined energy efficiency ratio for single-duct and dual-duct portable air conditioners, respectively, in Btu/Wh.

ACC_{95} and ACC_{83} = adjusted cooling capacity, tested at the 95 °F and 83 °F dry-bulb outdoor conditions in Table 1 of this appendix, in Btu/h, calculated in section 5.1 of this appendix.

AEC_{SD} = annual energy consumption in cooling mode for single-duct portable air conditioners, in kWh/year, calculated in section 5.3 of this appendix.

AEC_{95} and AEC_{83} = annual energy consumption for the two cooling mode test conditions in Table 1 of this appendix for dual-duct portable air conditioners, in kWh/year, calculated in section 5.3 of this appendix.

AEC_T = total annual energy consumption attributed to all modes except cooling, in kWh/year, calculated in section 5.3 of this appendix.

t = number of cooling mode hours per year, 750.

k = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

0.2 = weighting factor for the 95 °F dry-bulb outdoor condition test.

0.8 = weighting factor for the 83 °F dry-bulb outdoor condition test.

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When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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